UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

RANZER TURNER and SANDI TURNER,

Plaintiff,

-vs- Case No. 5:13-cv-627-Oc-10PRL

LAKE COMMUNITY ACTION AGENCY,

Defendant.
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ORDER

Plaintiffs Ranzer Turner and Sandi Turner have filed an eight-count Complaint against Defendant Lake Community Action Agency (the "Agency"), asserting a host of federal and state law claims arising out of Mr. Turner's employment with the Agency (Doc. 1). The case is now before the Court on the Agency's motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted (Doc. 13). The Turners, who are represented by counsel, have not filed a response to the motion, and the time for responding has long expired.

Upon due consideration, and for the reasons discussed below, the motion to dismiss is due to be granted, and this case shall be dismissed in its entirety.

Background Facts and Procedural History

Ranzer Turner is 66-year old African American male. The identity of Sandi Turner is not clear from the Complaint and there are no claims or factual allegations relating to Ms. Turner. She will be dropped as a party to this case, pursuant to Fed. R. Civ. P. 21.

Mr. Turner was hired by the Agency on April 2, 2002, and held the position of Family and Community Partnership Manager. He alleges that at all times he was qualified to hold his position, and performed all of his job duties in a competent manner. He was constructively discharged from his employment on January 31, 2013.

At all relevant times, Mr. Turner's direct supervisor was Procha Greene, a female. Mr. Turner was the only male employee supervised by Ms. Greene. While employed by the Agency, Mr. Turner alleges that Ms. Greene subjected him to severe and pervasive harassment and discrimination on the basis of his gender. He further alleges that Ms. Greene and the Agency retaliated against him for reporting the harassment and discrimination.

Mr. Turner alleges that Ms. Greene unlawfully harassed, discriminated, and retaliated against him in the following ways: (1) favored a female employee over him; (2) paid a less qualified female employee a higher salary; (3) provided a female employee with an assistant and a greater number of staff to supervise than Mr. Turner; (4) provided a female employee with a company vehicle, but refused to give one to Mr. Turner; (5) gave Mr. Turner lower performance evaluations than female employees; (6) removed several of

Mr. Turner's job duties and replaced them with menial tasks; (7) took key tools away from Mr. Turner; (8) scrutinized Mr. Turner's hours worked more closely than similarly situated female employees; (9) reprimanded and disciplined Mr. Turner but did not reprimand female employees for similar infractions; (10) attempted to prevent Mr. Turner from attending staff meetings; (11) attempted to prevent him from attending staff training; (12) modified Mr. Turner's work hours; (13) belittled and demeaned him in front of other staff; (14) permitted other employees to also belittle and demean Mr. Turner; and (15) spoke negatively about Mr. Turner to other employees. (Doc. 1, ¶¶ 28(a)-(p)).

Mr. Turner alleges that he repeatedly made formal and informal complaints to upper management, including to the head of human resources, Timothy Bridges. He further alleges that the Agency either ignored his complaints, conducted an insufficient investigation into his complaints, and/or failed to take sufficient remedial actions to ensure that the wrongful conduct would stop.

Mr. Turner filed separate timely charges of discrimination and retaliation with the Equal Employment Opportunity Commission ("EEOC") and the Florida Commission on Human Relations ("FCHR"). On February 1, 2013, the FCHR issued a Notice of Determination: No Cause letter to Mr. Turner, which stated that "no reasonable cause exists to believe that an unlawful employment practice occurred, and this complaint is hereby dismissed pursuant to Fla. Stat. § 760.11(7)." (Doc. 13, Ex. B). The Notice further informed Mr. Turner that he could request an administrative hearing with the FCHR within 35 days of the date of the Notice, and that failure to request an administrative hearing

within this 35 day period would result in any claims under the FCRA being barred. (Id.).

On May 2, 2013, the EEOC issued to Mr. Turner a Dismissal and Notice of Rights (Doc. 13, Ex. A). The EEOC's Notice stated that "the EEOC is unable to conclude that the information obtained establishes violations of the statutes." (Id.). The Notice further provided that if Mr. Turner chose to file a lawsuit, it must be filed within 90 days of receipt of this Notice. (Id.).[1]

Mr. Turner filed his Complaint in this Court on August 7, 2013 (Doc. 1). The Complaint was originally filed in the Orlando Division, and was transferred to this Court on December 19, 2013 (Doc. 12). The Complaint alleges eight claims against the Agency: (1) a claim of gender discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* ("Title VII"); (2) a claim of retaliation in violation of Title VII; (3) a claim of gender discrimination in violation of the Florida Civil Rights Act of 1992, Fla. Stat. § 760.06-760.11 ("FCRA"); (4) a state law claim for "emotional harm;" (5) a state law claim for negligent supervision; (6) a state law claim for negligent retention; (7) a common law

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[1]The Court may take judicial notice of the documents relating to Mr. Turner's charges filed with the EEOC and the FCHR without converting the Agency's motion to dismiss into a motion for summary judgment. These documents are public records of administrative agencies, they are specifically referred to in Mr. Turner's Complaint (Doc. 1, ¶¶ 7-10), and the documents are central to Mr. Turner's claims because they are a condition precedent to suit. See Day v. Taylor, 400 F.3d 1272, 1276 (11th Cir. 2005); Maxcess, Inc. v. Lucent Technologies, Inc., 433 F.3d 1337, 1340 (11th Cir. 2005); Luke v. Residential Elevators, Inc., No. 4:10-cv-524-SPM-WCS, 2011 WL 311370 at * 2 (N.D. Fla. Jan. 28, 2011). See also Starship Enterprises of Atlanta, Inc. v. Coweta County, Ga., 708 F.3d 1243, 1252 n. 13 (11th Cir. 2013); Financial Sec. Assur., Inc. v. Stephens, Inc., 500 F.3d 1276, 1284 (11th Cir. 2007).

tort claim for defamation; and (8) a common law tort claim for battery. He seeks back and front pay, compensatory damages, punitive damages, and attorney's fees and costs.[2]

Standard of Review

In passing on a motion to dismiss under Rule 12(b)(6), the Court is mindful that "[d]ismissal of a claim on the basis of barebones pleadings is a precarious disposition with a high mortality rate." Int'l Erectors, Inc. v. Wilhoit Steel Erectors Rental Serv., 400 F.2d 465, 471 (5th Cir. 1968). For the purposes of a motion to dismiss, the Court must view the allegations of the complaint in the light most favorable to plaintiff, consider the allegations of the complaint as true, and accept all reasonable inferences that might be drawn from such allegations. Speaker v. U.S. Dep't of Health & Human Servs., 623 F.3d 1371, 1379 (11th Cir. 2010); Jackson v. Okaloosa County, Fla., 21 F.3d 1532, 1534 (11th Cir.1994). Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations of the complaint. Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007).

In order to avoid dismissal, a complaint must allege "enough facts to state a claim to relief that is plausible on its face" and that rises "above the speculative level." Speaker, 623 F.3d at 1380 (citing Twombly, 550 U.S. at 570, 127 S. Ct. at 1964–65, 1974). A claim

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[2]Although Mr. Turner purports to assert claims of age discrimination and disability discrimination (Doc. 1, ¶ 1), his factual allegations only present claims of gender discrimination and retaliation, and he nowhere alleges any claim for relief under the Age Discrimination in Employment Act or the Americans With Disabilities Act. The Court will therefore presume that the reference to these statutes on the first page of his Complaint was in error.

is facially plausible "'when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" Id. (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009)). The plausibility standard requires that a plaintiff allege sufficient facts to nudge his "claims across the line from conceivable to plausible." Twombly, 550 U.S. at 570, 127 S. Ct. at 1974. Moreover, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions." Id., 555 U.S. at 555, 127 S. Ct. at 1964-65.

Discussion

I. The Complaint is a Shotgun Pleading

The Court agrees with the Agency that Mr. Turner's Complaint is a classic example of a "shotgun pleading" which this Circuit and this Court frown upon. A shotgun complaint "contains several counts, each one incorporating by reference the allegations of its predecessors, leading to a situation where most of the counts . . . contain irrelevant factual allegations and legal conclusions." Strategic Income Fund, L.L.C. v. Spear, Leeds, & Kellogg Corp., 305 F.3d 1293, 1295 (11th Cir. 2002). See also Cramer v. State of Florida, 117 F.3d 1258, 1263 (11th Cir. 1997). "Consequently, allegations of fact that may be material to a determination of count one, but not count four, are nonetheless made a part of count four. . . . [I]t is virtually impossible to know which allegations of fact are intended

to support which claim(s) for relief." Anderson v. Dist. Bd. of Trs. of Cent. Florida Cmty. Coll., 77 F.3d 364, 366 (11th Cir. 1996).

In his Complaint, Mr. Turner incorporates and realleges every single allegation into each of his eight claims, including allegations purporting to set forth the legal elements of each claim. For example, he has incorporated into his defamation and battery claims all of his factual and legal allegations concerning his Title VII and FCRA discrimination and retaliation claims, as well as his allegations concerning his negligent retention and supervision claims (Doc. 1, ¶¶ 88, 101). In order to ascertain whether Mr. Turner's Complaint in its current form contains any viable causes of action, the Court would therefore have to "rummage through page after page of facts and conclusions to make independent determinations regarding what allegations, if any, fit with each claim, if any." Carvel v. Godley, 404 Fed. Appx. 359, 361 (11th Cir. 2010).

Under these circumstances, it is clear that Mr. Turner has failed to comply with the dictates of Fed. R. Civ. P. 8 and 10, and that his "shotgun pleading" Complaint should be dismissed in its entirety for this reason alone. Paylor v. Hartford Fire Ins. Co., 748 F.3d 1117, 1126-27 (11th Cir. 2014).[3] However, other reasons exist which further support dismissal of this case.

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[3]The Court is further persuaded by the fact that Mr. Turner, who is represented by counsel, has not asked for leave to amend his Complaint, and the Court is under no obligation to *sua sponte* grant such relief under such circumstances. Wagner v. Daewoo Heavy Industries America Corp., 314 F.3d 541 (11th Cir. 2002) (en banc).

II. The Title VII Claims (Counts I and II) are Time Barred

Counts I and II of Mr. Turner's Complaint allege claims under Title VII based on theories of gender discrimination and retaliation, respectively. In order to bring a viable claim under Title VII, a plaintiff must exhaust his administrative remedies. Wilkerson v. Grinnell Corp., 270 F.3d 1314, 1317 (11th Cir. 2001). First, in deferral states such as Florida, a plaintiff must timely file a complaint with the EEOC and/or the appropriate state agency within 300 days of the alleged unlawful employment practice. 42 U.S.C. § 2000e-5(e)(1). Second, upon receiving a notice of right-to-sue letter from the EEOC upon the termination of the Commission's investigation, the plaintiff may bring a civil action against the defendant within 90 days of receipt of the notice. 42 U.S.C. § 2000e(f)(1). See also Stallworth v. Wells Fargo Armored Services Corp., 936 F.2d 522, 524 (11th Cir. 1991). It is the plaintiff's burden to prove that he complied with these time limits. Kerr v. McDonald's Corp., 427 F.3d 947, 951 (11th Cir. 2005); Green v. Union Foundry Co., 281 F.3d 1229, 1233-34 (11th Cir. 2002).

In this case, the EEOC mailed its Dismissal and Notice of Rights letter to Mr. Turner on May 2, 2013 (Doc. 13, Ex. A). Assuming an additional three days for mailing, the 90-day period ended on Saturday, August 3, 2013. See Fed. R. Civ. P. 6(d); Kerr v. McDonald's Corp., 427 F.3d 947, 953 n. 9 (11th Cir. 2005). The next business day would be Monday, August 5, 2013. See Fed. R. Civ. P. 6(a)(1)(C). Mr. Turner did not file his Complaint, however, until August 7, 2013, two days after this extended 90-day period

expired. And while Mr. Turner baldly alleges in his Complaint that "he initiated this suit within the proscribed ninety days," (Doc. 1, ¶ 9), the EEOC's Dismissal and Notice of Rights letter clearly demonstrates the implausibility of such an allegation. Moreover, Mr. Turner has not responded to the Agency's motion to dismiss, and therefore has not posited any argument suggesting that his Complaint was timely filed, or that the 90-day period should be equitably tolled. As such, the Court finds that the Title VII claims are untimely and due to be dismissed.

III. The Court Declines Supplemental Jurisdiction Over the State Law Claims

With the Title VII claims dismissed as untimely, the only claims remaining are six state law claims (Counts III-VIII). A review of the Complaint readily demonstrates that the Court does not have original subject matter jurisdiction over these claims – the Parties are not citizens of diverse jurisdictions, and the claims are not predicated on any federal law. See 28 U.S.C. §§ 1331-1332. The only basis for the Court's jurisdiction over these claims is pendent and ancillary supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

The Court may decline to exercise supplemental jurisdiction if it "has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). The Eleventh Circuit Court of Appeals has "encouraged district courts to dismiss any remaining state claims when . . . the federal claims have been dismissed prior to trial." Raney v. Allstate Ins. Co., 370 F.3d 1086, 1089 (11th Cir. 2004). See also Carnegie–Mellon University v. Cohill, 484 U.S. 343, 350 n. 7, 108 S. Ct. 614 (1988) ("in the usual case in which all federal-law claims

are eliminated before trial, the balance of factors to be considered ... will point toward declining to exercise jurisdiction over the remaining state-law claims"); Busse v. Lee County, Fla., 317 Fed. Appx. 968, 973 (11th Cir. Mar. 5, 2009) ("we expressly encourage district courts to [refrain from exercising supplemental jurisdiction over state-law claims] when all federal claims have been dismissed pretrial"); Eubanks v. Gerwen, 40 F.3d 1157 (11th Cir. 1994) (remanding case to district court to dismiss state law claims where court had granted summary judgment on the federal law claims).

Because all federal claims have now been dismissed, and pursuant to this Circuit's precedent and 28 U.S.C. § 1367(c), the Court is inclined to refrain from exercising supplemental jurisdiction over the five remaining state law claims. However, where § 1367(c) applies, "considerations of judicial economy, convenience, fairness, and comity may influence the court's discretion to exercise supplemental jurisdiction." Baggett v. First Nat. Bank of Gainesville, 117 F.3d 1342, 1353 (11th Cir. 1997) (citations omitted). Here, judicial economy, convenience, and fairness all weigh in favor of having these state law claims determined by the appropriate state court, which is the final arbiter of state law. See Hardy v. Birmingham Bd. of Educ., 954 F.2d 1546, 1553 (11th Cir. 1992).

Fairness also militates in favor of declining to exercise supplemental jurisdiction. The statute of limitations in Florida for tort claims of negligence, battery, and intentional or negligent infliction of emotional distress is four years, see Fla. Stat. § 95.11, and the statute of limitations for a defamation claim is two years. See Fla. Stat. § 4(g). Mr. Turner alleges that he was constructively discharged from his employment on January 31, 2013. Thus,

it is highly likely that the limitations periods for these claims have not expired, and he is free to reassert these claims in state court. It is also possible that Mr. Turner's FCRA claim, assuming he has properly exhausted his administrative remedies, is not time barred (and if he failed to properly exhaust his administrative remedies, this claim is barred in any event). Therefore it does not appear that Mr. Turner will suffer any harm from the dismissal of these claims.

The Court will decline to exercise its supplemental jurisdiction over the six remaining state law claims (Counts III-VIII), which will be dismissed without prejudice. See Crosby v. Paulk, 187 F.3d 1339, 1352 (11th Cir. 1999) ("If [the Court] decides to dismiss these state-law claims, then they should be dismissed without prejudice so that the claims may be refiled in the appropriate state court."); Austin v. City of Montgomery, 196 Fed. Appx. 747, 754 (11th Cir. 2006) ("When a court declines to exercise supplemental jurisdiction under § 1367(c)(3) because only state claims remain, the proper action is a dismissal without prejudice so that the complaining party may pursue the claim in state court.").

Conclusion

Accordingly, upon due consideration, it is hereby ORDERED that Defendant Lake Community Action Agency's Motion to Dismiss (Doc. 13) is GRANTED. The Plaintiff's Complaint (Doc. 1) is DISMISSED in its entirety. The Title VII claims (Counts I and II) are dismissed. The remaining state law claims (Counts III-VIII) are dismissed without

prejudice. The Clerk is directed to enter judgment accordingly, terminate all pending motions, and close the file.

IT IS SO ORDERED.

DONE and ORDERED at Ocala, Florida this 2nd day of September, 2014.

UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record
Maurya A. McSheehy