

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

MELISSA ROSS

PLAINTIFFS

vs.

Civil Action No. 3:09-CV-113 HTW-LRA

MISSISSIPPI DEPARTMENT OF EDUCATION
d/b/a MISSISSIPPI SCHOOL FOR THE DEAF

DEFENDANT

ORDER

Before the court is defendant Mississippi Department of Education d/b/a Mississippi School for the Deaf's ("MDE") motion for partial summary judgment [Docket No. 28]. The key issue in this matter is whether defendant discharged plaintiff in retaliation for plaintiff's involvement (i.e., testimony that was expected but not given) in an Equal Employment Opportunity Commission (EEOC) investigation delving into the matters of a different MDE employee. This court has subject matter jurisdiction over this dispute under federal question jurisdiction pursuant to Title 28 U.S.C. § 1331.¹

Defendant's motion for summary judgment is governed by Rule 56² of the

¹Title 28 U.S.C. § 1331 provides: "The district courts shall have original jurisdiction of all civil cases arising under the Constitution, laws, or treaties of the United States."

² Federal Rule of Civil Procedure 56(a) reads as follows:

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

Rule 56(b) of the Federal Rules of Civil Procedure provides, in pertinent part, that "[a] party against whom a claim . . . is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a

Federal Rules of Civil Procedure. Summary judgment is appropriate only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” F.R.C.P. Rule 56(c). *See also Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

I. FACTS

Plaintiff is Melissa Ross (“Ross”). She began her employment with MDE in August of 2006, as a Vision/Hearing Impaired Teacher I. Although she was certified to teach business education and computer discovery, she taught home economics courses. Plaintiff alleges that throughout her time working at MDE, race issues affected the operation of the school. In May 2006, plaintiff received a poor performance evaluation which she grieved using MDE's grievance procedures. The grievance was accepted and the poor performance evaluation was withdrawn. In *Pamela Hervey v. Mississippi Department of Education* EEOC Charge No. 423-2007-00541, plaintiff was identified as a potential witness in an EEOC investigation concerning another employee who was complaining of racial matters. In July 2007, plaintiff's employment with MDE

summary judgment in the party's favor as to all or any part thereof.”

Rule 56(c) of the Federal Rules of Civil Procedure provides, in pertinent part, the following:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

was terminated. Plaintiff says this was retaliation.

Plaintiff asserts that Dr. Rosie Pridgen was the decision maker who recommended her termination. Dr. Pridgen served as Interim Superintendent for the School for the Deaf and was responsible for overseeing operations at the time plaintiff was there. The process for termination involves a series of recommendations. The first is from Dr. Pridgen to Dr. Daphney Buckley, Deputy State Superintendent. Then, the process includes Dr. Hank Bounds, who was then the State Superintendent of Education. Dr. Bounds relied upon Dr. Buckley's information that plaintiff did not have a valid license in upholding her termination. Both Dr. Bounds and Dr. Buckley believed plaintiff was operating under an emergency license at the time of her termination. One of the proffered reasons for terminating plaintiff given by Dr. Bounds and Dr. Buckley is that she did not have a proper license. Plaintiff avers to the contrary, that the proffered reasons *supra* are untrue and unsupported. Plaintiff says she obtained the required licensure with certification to teach in the field of Home Economics prior to being terminated.

Defendant offers additional reasons for plaintiff's termination, to wit: that based on a declining number of students, there were academic areas where the number of teachers needed in the past was no longer required; that plaintiff was one of the teacher's Ms. Hervey allegedly hired with questionable skills or that plaintiff's performance was not up to standard.

Plaintiff filed her Charge of Discrimination with the Equal Employment Opportunity Commission on July 18, 2007, claiming wrongful termination and retaliation. She was was given her notice of right to sue by the U.S. Department of

Justice on October 8, 2008.

Ross instituted this action against MDE on December 29, 2008, by filing a complaint in Circuit Court of Hinds County, Mississippi. Plaintiff claims that she was the victim of wrongful termination and retaliation in violation of Title VII³ and Title 42 U.S.C. 1981⁴ and 1983.⁵ She also claims MDE committed the tort of outrage and was grossly negligent in inflicting emotional distress upon her. She seeks reinstatement or front

³ Title VII refers to the Civil Rights Act of 1964, codified as Subchapter VI of Chapter 21 of 42 U.S.C. § 2000e [2] *et seq.* It prohibits discrimination by covered employers on the basis of race, color, religion, sex or national origin (see 42 U.S.C. § 2000e-2[23]).

⁴ Title 42 U.S.C. § 1981 provides in pertinent part:

(a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) For purposes of this section, the term “make and enforce contracts” includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

⁵ Title 42 U.S.C. § 1983 provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

pay, back pay, compensatory damages, punitive damages, attorneys fees, and costs.

CONCLUSION

The court denies defendant's motion for partial summary judgment on plaintiff's retaliation claim citing genuine issues of material fact.

Defendant argues that plaintiff does not have a right under Title 42 U.S.C. § 1981 because defendant is a public employer and plaintiff is a public employee. This court agrees and grants summary judgment to defendant on plaintiff's § 1981 claim.

Defendant also contends that it is not subject to liability under Title 42 U.S.C. § 1983 and cites *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 66 (1989), for the proposition that [s]ection 1983 provides a federal forum to remedy deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties." Defendant argues that "states, state agencies and state officials in their official capacities may not be sued under Title 42 U.S.C. § 1983 for damages or other retrospective relief" *Scanlon v. Department of Mental Health*, 828 F. Supp. 421, 424, n.4 (S.D. Miss. 1993). This court agrees and grants summary judgment to defendant on plaintiff's § 1983 claim.

Defendant next argues that plaintiff has no proof to support her claim of negligent infliction of emotional distress. This court agrees.

Defendant avers that punitive damages are not available against governmental entities in Title VII or § 1983 cases. *Oden v. Oktibbeha County, Miss.*, 246 F.3d 458, 465-66 (5th Cir. 2001). This court agrees and grants summary judgment for defendant on plaintiff's punitive damages claim.

The court denies defendant's request for summary judgment on plaintiff's tort of outrage claim and will preserve it along with plaintiff's retaliation claim for trial.

SO ORDERED, this the 18th day of March, 2010.

**s/ HENRY T. WINGATE
CHIEF JUDGE
UNITED STATES DISTRICT COURT**

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Order