

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CLARINDA KILPATRICK-RAY	:	CIVIL ACTION
	:	
v.	:	
	:	
SISTER JOAN ALMINDE, ET AL.	:	NO. 06-1889

MEMORANDUM

Baylson, J.

November 27, 2006

I. Introduction

On May 4, 2006, Clarinda Kilpatrick-Ray (“Plaintiff”) filed a Motion to Proceed In Forma Pauperis, accompanied by a two paragraph, unsigned document entitled “Complaint.” (Doc. No. 1). The Court issued an Order on May 10, 2006, directing Plaintiff to file a signed, amended complaint setting forth the names of the individuals or entities she intends to sue, and a “short and plain statement” of the basic factual and legal grounds of her claim(s) against each of the defendants. (Doc. No. 2). Plaintiff filed an amended, pro se complaint on May 17, 2006, naming Sr. Joan Alminde, Monsignor Herbert Bevard, and St. Athanasius Immaculate Conception School as defendants. On September 12, 2006, Defendants filed a motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) or alternatively for summary judgment. (Doc. No. 9). For the reasons set forth below, Defendants’ motion is denied in part and granted in part.

II. Legal Standard

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O’Brien & Frankel, 20 F.3d 1251, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the

plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

III. Facts

St. Athanasius Immaculate Conception School (the “School”) employed Plaintiff as a first-grade teacher from 1983 until the end of the 2004-2005 school year. In a letter dated May 16, 2005, Monsignor Bevard, the Administrating Pastor, informed Plaintiff that the School was not renewing her contract for the 2005-2006 school year because she was unable to produce “sufficient substantiation of [her] sacramental status ... [and] academic status.” (Defendants’ Ex. M). On June 28, 2005, Plaintiff filed a charge of race discrimination with the EEOC, naming the School as Respondent. In the charge, Plaintiff claimed that between November 29, 2004 and January 18, 2005, the School subjected her to “differential treatment” based on her race. On March 17, 2006, the EEOC issued a right to sue letter, informing Plaintiff that after conducting an investigation, it was unable to conclude that there had been a Title 7 violation.

IV. Discussion

A. Title 7 Claim Against the School

Before bringing a Title 7 discrimination claim in federal court, a plaintiff must first exhaust her administrative remedies by filing a charge with the EEOC. Burgh v. Borough Council of Montrose, 251 F.3d 465 (3d Cir. 2001). In this case, the parties do not dispute that Plaintiff exhausted her administrative remedies for her Title 7 claim with respect to the School. Plaintiff’s EEOC charge clearly lists St. Athanasius as the Respondent. Thus, the Court may consider the merits of Defendants’ Motion to Dismiss this portion of Plaintiff’s claim.

In her Amended Complaint, Plaintiff claims that the Defendants: (1) harassed her and created a hostile work environment; (2) subjected her to “overt racism”; (3) sought to rid the school of black teachers; and (4) committed “EEOC violations” and “civil rights violations.”

The EEOC charge¹ sets forth several examples of the “differential treatment” Plaintiff allegedly received during the course of her employment.

Defendants contend that Plaintiff’s hostile work environment claim should be dismissed because the complaint does not allege a prima facie case. This argument is unavailing. At the 12(b)(6) stage, “a complaint requires only a ‘short and plain statement’ to show a right to relief, not a detailed recitation of the proof that will in the end establish such a right.” Pryor v. National College Athletic Ass’n, 288 F.3d 548, 564 (3d Cir. 2002) (citing Swierkiewicz v. Sorema, 534 U.S. 506, 512-13 (2002)). The statement simply must “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512 (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). Plaintiffs are not held to a heightened pleading standard in the employment discrimination context. See Swierkiewicz, 534 U.S. 506 (finding that the McDonnell Douglas prima facie case is an evidentiary standard, not a pleading requirement, and Title 7 plaintiffs must only meet the requirements of Rule 8(a)). Moreover, when the plaintiff is a pro se litigant, the Court has a “special obligation to construe [her] complaint liberally.” Zilich v. Lucht, 981 F.2d 694 (3d Cir. 1992).

In light of the liberal pleading standards and Plaintiff’s pro se status, the Court concludes that the Amended Complaint and EEOC charge state the essence of a hostile work environment claim under Title 7. However, the Court does not construe Plaintiff’s Complaint to include a claim that the School fired her because of her race. At two points in her Response to Defendants’ Motion to Dismiss, Plaintiff states that she did not file the EEOC charge or federal complaint because of the non-renewal of her contract. Additionally, even though Plaintiff filed the EEOC charge after she was fired, she completely fails to mention the fact that she was terminated in it.

¹ Although Plaintiff did not attach the EEOC charge to her complaint, Defendants included it as an exhibit to their Motion to Dismiss. Accordingly, the Court will consider the contents of the charge in deciding this motion. See Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1996 (3d Cir. 1993) (holding that “a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff’s claims are based on the document”); Dixon v. Philadelphia Housing Authority, 43 F.Supp.2d 543, 544 (E.D. Pa. 1999) (concluding that a court may consider an EEOC charge attached to a defendant’s motion to dismiss without converting the motion into one for summary judgment).

If Plaintiff wishes to amend her complaint to state such a claim, she is advised to file a motion promptly under Rule 15(a) seeking leave to amend.

B. Title 7 Claim Against the Individual Defendants

The parties dispute whether Plaintiff exhausted her administrative remedies as to the individual defendants, Sr. Alminde and Monsignor Bevard. Plaintiff attaches a “Charge Questionnaire” to her Response which lists Sr. Alminde and Monsignor Bevard as Respondents. (Plaintiff’s Ex. 7). Defendants attach what appears to be the final “Charge of Discrimination” listing only the School. (Defendants’ Ex. B).

Assuming that Plaintiff did not include the individual defendants in the EEOC charge, this does not necessarily preclude the Court from considering this technically unexhausted portion of the claim. Although a Title 7 action “ordinarily may be brought only against a party previously named in an EEOC action ... [there is] an exception when the unnamed party received notice and when there is a shared commonality of interest with the named party.” Schafer v. Bd. of Public Education of School District of Pittsburgh, 903 F.2d 243, 251-252 (3d Cir. 1990). The Third Circuit has established a four-part test for determining whether a district court should consider a claim despite imperfect exhaustion. Glus v. G.C. Murphy Co., 629 F.2d 248, 251 (3d Cir. 1980), *vacated on other grounds*, 451 U.S. 935. The factors are:

1. Whether the role of the unnamed party could have been ascertained through reasonable effort at the time the EEOC complaint was filed;
2. Whether the interests of the named party are so similar to the unnamed party that for purposes of obtaining voluntary conciliation and compliance it would be unnecessary to include the unnamed party in the EEOC proceedings;
3. Whether the unnamed party’s absence from the EEOC proceedings resulted in actual prejudice to the interests of the unnamed party; and
4. Whether the unnamed party has in some way represented to the complainant that its relationship with the complainant is to be through the named party. Id.

In Glus, the court found that the interests of the named party (the local union) were identical to the interests of the unnamed party (the international union). The liability of the unions arose from their participation in the same collective bargaining agreements; they were represented by the same attorney; and their close relationship could have led the plaintiff to reasonably conclude that the local union represented the international union. Id. at 251-52.

Courts have also exercised jurisdiction over an unnamed party when the party is mentioned in the body of the EEOC complaint but is not listed in the caption. See, e.g., Kunwar v. Simco, 135 F.Supp.2d 649, 653-54 (E.D. Pa. 2001); Dreisbach v. Cummins Diesel Engines, Inc., 848 F.Supp. 593, 596-97 (E.D. Pa. 1994). Likewise, courts have permitted certain claims to proceed when those claims were included in an intake questionnaire but were not included in the actual charge filed with the EEOC. See Carter v. Philadelphia Stock Exchange, No. CIV. A. 99-2455, 1999 WL 715205, at *1 (E.D. Pa. Aug. 25, 1999) (permitting an ADA claim to proceed because it was included in the questionnaire and “appears to have been within the scope of a reasonable investigation by the EEOC”). On the other hand, when a party is not referred to at all in the EEOC charge and right to sue letter, courts have dismissed the claim for failure to exhaust. See, e.g., Davies v. Polyscience, Inc., 125 F.Supp.2d 391, 393-94 (E.D. Pa. 2001).

In this case, the individual defendants were not named in either the caption or the body of the EEOC charge. However, it seems that Plaintiff included their names in the initial questionnaire, and the EEOC position statement filed by the School contains numerous references to the actions of Sr. Alminde and Monsignor Bevard. Furthermore, the School and individual defendants are represented by the same attorney. These factors strongly suggest that the individual defendants were on notice of Plaintiff’s claims, and their conduct fell within the scope of a reasonable EEOC investigation. Accordingly, the Court finds that complete exhaustion is excused in this case, and the Plaintiff may proceed with her Title 7 hostile work environment claim against Sr. Alminde and Monsignor Bevard.

C. ADA Claim

In her Amended Complaint, Plaintiff alleges that she suffered “health damages from medically unhealthy conditions, intentionally fostered by the defendants.” Likewise, the

defendants “intentionally impeded [her] ability to receive adequate and necessary medical treatment” and sought to “destroy [her] good name and financial stability” once she became disabled. To the extent Plaintiff seeks to bring a claim under the ADA, she has not exhausted her administrative remedies. See 42 U.S.C. § 2000e-5(e)(1) (requiring a person to file a charge with the EEOC before bringing a civil action in court). In her EEOC charge, Plaintiff clearly noted that she was alleging race discrimination. She did not check off the “disability” box nor did she make any specific allegations in the body of the charge that would suggest disability discrimination. Thus, the Court finds that Plaintiff’s ADA claim does not fall within the scope of the EEOC charge or any reasonable investigation conducted by the EEOC, and is therefore dismissed.

D. State Law Claims

The remainder of Plaintiff’s Complaint alleges a number of state law claims including defamation, destruction or alteration of documents, and destruction of property. The Court will permit Plaintiff to proceed with these claims.

V. Conclusion

For the foregoing reasons, Defendants’ Motion to Dismiss is denied in part and granted in part. An appropriate order follows.

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ORDER

AND NOW, this 27th day of November, 2006, it is hereby ORDERED that Defendants' Rule 12(b)(6) Motion to Dismiss (Doc. No. 9) is disposed of as follows:

1. The Motion is DENIED as to the Title 7 claim and state law claims against all Defendants.
2. The Motion is GRANTED as to the ADA claim against all Defendants.
3. A Rule 16 scheduling conference will be held on December 7, 2006 at 3:45 p.m. Plaintiff must appear at the conference in person.

BY THE COURT:

/s/ Michael M. Baylson

Michael M. Baylson, U.S.D.J.