

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WANDA McCANN-SMITH,

Plaintiff,

v.

ST. MARY'S HOSPITAL,

Defendant.

ORDER

10-cv-546-slc¹

In an October 7, 2010 order, I granted plaintiff Wanda McCann-Smith leave to proceed on her claim that defendant St. Mary's Hospital discriminated against her because she is black. In addition, I warned plaintiff that she might later be barred from bringing her claim unless she has received a "right to sue" letter from the Equal Employment Opportunities Commission. Now plaintiff has submitted a letter stating that she wishes to "withdraw [her] federal action . . . until a decision will be reached in the matter. Then [she] will continue [her] claim in federal court." This language is somewhat ambiguous, but I understand plaintiff to be seeking voluntary dismissal of the present case in order to seek a

¹ For the purpose of issuing this order, I am assuming jurisdiction over this case.

remedy from the EEOC. However, plaintiff is mistaken to the extent she believes that she would be able to “continue” the present case at some later point following voluntary dismissal. If I accept plaintiff’s notice of voluntary dismissal, the present case will be dismissed without prejudice. If plaintiff then received a right to sue letter, she would not be able to reopen this particular case. Instead, she would have to file a brand new complaint and be responsible for a new filing fee.

Another option would be for the court to stay the case until the Title VII administrative process is complete, allowing plaintiff to resume the original lawsuit if she later receives a right to sue letter. Herrmann v. Cencom Cable Associates, Inc., 999 F.2d 223, 225 (7th Cir. 1993). However, I will not stay the case unless plaintiff makes it clear that she has started or is about to start the administrative process. Her latest submission does not make this clear. I will give plaintiff until November 1, 2010 to inform the court whether she has started or is about to start the administrative process on this claim, and whether she wishes to have the court stay this case so that she may pursue administrative remedies. If plaintiff does not respond by November 1, I will accept her notice of voluntary dismissal and direct the clerk of court to close this case.

Entered this 19th day of October, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge