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

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CHARLENE J. MCMAHON,

Plaintiff, OPINION AND ORDER

v. 03-C-0702-C

CARROLL COLLEGE,

Defendant.

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This is an employment discrimination case in which plaintiff, an assistant professor, alleges that the defendant improperly denied her tenure because of her gender. Defendant has moved to transfer venue to the Eastern District of Wisconsin. I am granting this motion because the Eastern District of Wisconsin is a more appropriate venue for this lawsuit.

## BACKGROUND

On December 10, 2003, plaintiff filed a complaint alleging two claims for breach of contract, claims of sex discrimination and retaliation under Title VII of the Civil Rights Act of 1964 and a claim under Title IX of the Education Amendments of 1972. All claims arise out of defendant's denial of tenure to plaintiff in 2003.

Both plaintiff and defendant reside in Waukesha, Wisconsin, which is in the federal judicial district for the Eastern District of Wisconsin. According to the complaint, all of the decisions and events relevant to this action occurred in Waukesha on defendant's campus. Defendant says that relevant documents and witnesses also are located in Waukesha. In opposition to transfer, plaintiff notes that the median time from filing to disposition of a civil trial in the Eastern District of Wisconsin is 8.4 months, compared to 4.7 months in the Western District. The median time from filing to trial in a civil case is 18 months in the Eastern District of Wisconsin compared to 8.4 months in this court. This court has scheduled the instant case for trial on February 14, 2004, fourteen months after filing.

Plaintiff's attorney is located in Madison, while defendant's attorney is located in Milwaukee. According to Mapquest, Carroll College is 19.73 miles (27 minutes) from the federal courthouse in Milwaukee and 64.87 miles (72 minutes) from the federal courthouse in Madison.

## OPINION

42 U.S.C. § 2000e-5(f)(3) provides that every United States district court has jurisdiction over a Title VII lawsuit, and that

> Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have

> worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

So, although this statute allows plaintiff to bring her lawsuit in this district, it explicitly acknowledges the application of 28 U.S.C. § 1404, which governs changes of venue. See In Re: Horseshoe Entertainment, 337 F.3d 429, 433(5th Cir.), cert. denied, Rodgers v. Horseshoe Entertainment, ___ U.S. ___, 124 S. Ct. 826 (2003). Pursuant to § 1404(a), a district court may transfer any civil action to any other district if (1) venue is proper in both the transferor and transferee court; (2) transfer is for the convenience of the parties and witnesses; and (3) transfer is in the interests of justice. Conexus Credit Union v. Connex Credit Union, 219 F.R.D. 465, 466 (W.D. Wis. 2003).

Plaintiff's main arguments against transfer to the Eastern District are: 1) she picked this court, and her choice is entitled to "substantial weight"; 2) defendant has failed to demonstrate that it's really more convenient to try this case in Milwaukee; 3) defendant has failed to demonstrate that the interests of justice militate in favor of trying this case in Milwaukee; 4) this court is faster than the Eastern District. I will address these points in order.

First, plaintiff concedes that her choice of a forum other than her home is entitled to less weight than usual, but contends that this court still must give it "serious consideration." Plaintiff cites no case law in support of this proposition; her only point is that because the statute allows her to do this, Congress could not have intended courts to ignore her choice. See Plf.'s Bf. in Opp., dkt. #12, at 3. At least one court of appeals has rejected this logic, finding that unless a plaintiff's choice of forum meets one of the criteria actually listed in § 2000e-5(f)(3), that choice is not entitled to any weight. To the contrary, a choice based only on the statutory language allowing state-wide venue must yield to a different venue that meets the listed criteria. Horseshoe Entertainment, 337 F.3d at 434-35.

In Horseshoe, the court found that because the alleged unlawful employment practice occurred in another district, the records were in that other district, and there were no indications that plaintiff would have worked in plaintiff's chosen district or that defendant had any offices in the chosen district, it was an abuse of discretion for the district court to deny defendant's motion to transfer. The appellate court then scolded the district court for giving too much weight to factors such as "possibility of delay or prejudice" and "the location of counsel" at the expense of the factors listed in the Title VII venue statute. Id. at 435.

If this court were to employ the Fifth Circuit's approach, then it would be compelled to grant defendant's motion because all of the statutory factors either favor transfer to Milwaukee or are neutral. (For instance, although I agree with plaintiff that the location of records and documents is relatively insignificant in this case, to the extent that record

location is a factor specifically mentioned in § 2000e-5(f)(3), it favors transfer). Even if this court expands its analysis to include factors considered under § 1404(a), the balance still tilts toward transfer.

Plaintiff and all of the likely witnesses in this case live and work closer to Milwaukee than to Madison. Plaintiff argues that it's only a 40-mile difference. Actually, the difference is 45 miles and 45 minutes each way. From some points of reference this might be considered inconsequential. But from the perspective of a person working in Waukesha who is called as a trial witness in this case, it amounts to an extra 90 miles and an extra 90 minutes each day, both of which are easily avoidable simply by transferring this case to the Eastern District. This court will not impose such an inconvenience on the witnesses absent a good reason to do so. Plaintiff has not provided one.

To the extent that community interest is relevant to determining the interests of justice, this factor favors the Eastern District. Plaintiff's case has no connection whatsoever to the Western District of Wisconsin. In the Eastern District there is a greater possibility of public interest in this lawsuit, of Waukesha residents serving on the jury, and of media coverage of any trial. Viewed from a slightly different angle, "jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation." Chicago, Rock Island and Pacific R. Co. v. Igoe, 220 F.2d 299, 304 n.4 (7th Cir.), cert. denied, 350 U.S. 822 (1955).

Although both sides address the location of the lawyers, this is not a significant factor. Counsel have been retained to try this case wherever it is venued, and once they are in the host city, they likely will stay there until the trial concludes.

This leaves plaintiff's argument regarding the differences in speed between the two courts. This court takes Fed. R. Civ. P. 1 seriously and has developed a reputation for tight motion deadlines and trial dates, so it understands why plaintiff would prefer to try her case here. But as the actual schedule in this case illustrates, comparing medians does not provide accurate predictions in the real world. As defendant observes, the ten-month gap in the court's averages has been replaced by a four-month gap between this court's actual schedule and a theoretically "average" trial date in Milwaukee. Even then, it is hard to predict what schedule the parties can expect from the Eastern District in a transferred case as opposed to one newly filed. Further, defendant will stipulate to a parallel schedule in Milwaukee to keep this case on track toward prompt resolution. All of this undermines plaintiff's claim that her best chance of returning to the tenure track at Carroll College is by means of a trial victory in this court. (More dispositive of this point is defendant's report that because plaintiff has been denied tenure, her appointment at the college ends on May 31, 2004. See dkt. #16).

Finally, this court rejects plaintiff's implication that the public interest in the effective administration of justice will be compromised if plaintiff is forced to try her case in Milwaukee. Civil litigants in the Eastern District of Wisconsin get their day in court, and

plaintiff has presented no evidence that what she characterizes as judicial delay has resulted in any due process violations or other miscarriages of justice.

In sum, there are several good reasons to grant defendant's motion to transfer venue and no good reasons to deny it.

ORDER

It is ORDERED that defendant's motion to transfer venue of this lawsuit to the United States District Court for the Eastern District of Wisconsin is GRANTED.

Entered this 14th day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge