

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

LUDMYLA SKORYCHENKO,

Plaintiff,

v.

MEMORANDUM and ORDER
06-C-0078-S

THE WOMEN'S COMMUNITY, JOHN M.
SCHELLPFEFFER and ANDREW W. SCHMIDT,

Defendants.

The above entitled matter was remanded to this Court by the United States Court of Appeals for the Seventh Circuit for consideration of plaintiff's claims under Title II and Title VI of the Civil Rights Act of 1964. Plaintiff alleges that The Women's Community and attorneys John M. Schellpfeffer and Andrew Schmidt discriminated against her on the basis of her national origin.

On February 27, 2007 defendants Schellpfeffer and Schmidt filed a motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law, an affidavit and a brief in support thereof. On the same date defendant The Women's Community also filed a motion for summary judgment. These motions have been fully briefed and are ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by

both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendants' motions for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Ludmyla Skorychenko was born in the Ukraine in 1945. She attended college at the Technical University of Zaporizhia and became an electronics engineer. She worked in the military

industrial complex of the Soviet Union. When the Soviet Union collapsed she lost her job. Thereafter she started corresponding with American Ernest Tompkins.

Plaintiff moved to the United States on October 24, 2004 and married Mr. Tompkins on November 18, 2004. On May 7, 2005 Tompkins physically abused plaintiff. He then began divorce proceedings.

Plaintiff arrived at the Women's Community on May 7, 2005 seeking temporary housing. The Women's Community is a private non-profit corporation that provides temporary, emergency shelter for abuse victims who are in immediate danger. It also provides victim support and advocacy services for victims of domestic and sexual violence.

The resident capacity of the Women's Community is 28 residents. Because of this limited capacity the policy of the Women's Community is that abuse victims may reside there for up to thirty days. Plaintiff was advised of this policy when she arrived at the shelter.

The Women's Community is obligated to provide interpreters for a specific language only if the surrounding population justifies requiring interpretation service for that language. Pursuant to the Limited English Proficiency (LEP) Policy included in the Wisconsin Department of Workforce Development's Civil Rights Compliance Plan Requirements controlling the Women's Community, the only populations that support an interpreter requirement in

Wisconsin are Spanish and Hmong. Although the LEP policy established no requirement that Russian or Ukrainian interpreters be made available, the Women's Community arranged for an interpreter for plaintiff whenever possible.

When plaintiff resided at the Women's Community, staff endeavored to help her find a job and assisted her with using a computer to find job opportunities. The Women's Community does not provide financial support or assistance to any of its residents. The Women's Community does not have the funding or resources to provide medical care to any of its clients.

As plaintiff's thirty days expired she was advised that she must leave the shelter. On Wednesday June 22, 2005 Julie, a staff member at the Women's Community, wrote plaintiff a note advising that she had been living at the shelter for over a month and proposing a meeting to discuss her departure. On June 28, 2005 Ms. Graham-Jennings met with plaintiff to discuss the fact that she had exceeded her thirty day stay. Plaintiff was advised that she would must find alternate housing.

On July 15, 2005 plaintiff was informed by the staff that she must leave the shelter. Plaintiff refused to leave and called 911. The police responded. Staff at the Women's Community informed the police that plaintiff had been at the shelter for 69 days and refused to leave. The police told plaintiff that she must leave and escorted her to the Salvation Army. The Women's Community

staff wrote Plaintiff a letter advising her that she could continue to receive services, but could no longer reside at the shelter.

There is a document entitled "Know Your Rights: A Reference to Victims of Domestic Violence in the State of Wisconsin." This document states that organizations like the Women's Community may provide shelter for up to two years.

In 2005 the Women's Community sheltered 107 women. The average length of stay for the women was 22 nights. The Women's Community asked 11 women to leave because they were not participating in programs or had exceeded the 30 day stay. Of these 11 women 9 were white, one was black and one was Asian.

In 2006 the Women's Community sheltered 132 women. The average length of stay for the women was 20 nights. The Women's Community asked 29 women to leave because they were not participating in programs or had exceeded the 30 day stay. Of these 29 women 26 were white, one was black, one was Native American and one was Asian.

The Women's Community gave plaintiff referrals to the State Domestic Violence Coalition which has an immigration attorney and to a private immigration attorney.

The Women's Community referred plaintiff to Judicare which provides legal assistance without cost based on determinations of eligibility for assistance under the provisions of the Legal Services Corporation Act and regulations. Through Judicare

plaintiff retained attorney John M. Schellpfeffer on May 25, 2005 to represent her in her divorce action. He was her counselor of record until October 24, 2005.

Because plaintiff refused to accept Attorney Schellpfeffer's advice and counsel, he moved to withdraw as her counsel on October 13, 2005. On October 24, 2005 the Circuit Court of Marathon County granted Schellpfeffer's motion to withdraw.

On October 19, 2005 Andrew W. Schmidt agreed to represent plaintiff in her divorce action. He was her counsel of record until December 28, 2005. After plaintiff threatened to sue defendant Schmidt he moved to withdraw as her counsel. His motion was granted on December 27, 2005 by the Marathon County Circuit Court.

On February 16, 2006 plaintiff's divorce action was tried to the Circuit Court of Marathon County. Plaintiff appealed the judgment entered in her divorce.

MEMORANDUM

Plaintiff claims that the Women's Community discriminated against her on the basis of her national origin in six areas: 1) assistance finding a job/job training; 2) providing a certified interpreter to help her communicate with them; 3) help finding a lawyer; 4) supporting her financially/covering expenses for applications and documents she needed to send; 5) providing housing

for up to 2 years and 6) paying for medical care. She pursues her claim under Title II and Title VI of the Civil Rights Act of 1964.

Title II prohibits discrimination in places of public accommodation. 42 U.S.C. § 2000a. Title VI prohibits discrimination by a program receiving Federal financial assistance.

Because plaintiff has no direct evidence of discrimination she must rely on the burden-shifting method. McDonnell Douglas Corp. V. Green, 411 U.S. 792 (1973). Under this method, plaintiff must show she is a member of a protected class, she is otherwise qualified to receive the housing or service benefits offered by the Women's Community, she was denied those benefits and the Women's Community treated similarly situated individuals not in the protected class more favorably. Id. at 802. The burden then shifts to the defendant to articulate a legitimate non-discriminatory reason for its decision. The plaintiff then must show that defendant's reason is a pretext for discrimination. Id.

Plaintiff claims that the Women's Community discriminated against her by failing to provide assistance in finding her a job or job training. Although it is disputed whether or not she received assistance in finding a job or job training, there is no evidence that women who were not Ukrainian received this assistance. Plaintiff has not met her burden of showing a prima facie case of discrimination.

Plaintiff claims that she was discriminated against because she was not provided an interpreter. Plaintiff has not shown that she was entitled to receive an interpreter under the LEP policy which governed the Women's Community. She has not established a prima facie case of discrimination concerning the denial of an interpreter.

Plaintiff claims that she was discriminated against when she was not assisted in finding an attorney. Plaintiff was not denied this benefit. The Women's Community referred her to Judicare and to an Immigration attorney. Since she was not denied this benefit, she cannot meet her burden of establishing a prima facie case of discrimination.

Plaintiff claims that the Women's Community did not support her financially because of her National Origin. The Women's Community does not provide financial assistance to any of its residence. Since plaintiff was not entitled to this benefit, she can not establish a prima facie case of discrimination.

Plaintiff claims that she was denied housing due to discrimination. She bases this claim on the fact that the reference guide for domestic violence states that housing may be provided for two years. This is not a requirement with which the Women's Community had to comply. The Women's Community's Policy was to provide thirty days of housing for each woman because of its

limited capacity. Plaintiff was entitled to thirty days of housing and she received 69 days.

Plaintiff was not denied the housing benefit to which she was entitled. Further she has not shown that she was treated less favorably than women who were not Ukrainian. Plaintiff has not established a prima facie case that the Women's Community defendant discriminated against her on the basis of her National Origin when it asked her to leave the shelter after 69 days.

Plaintiff claims that she was denied medical care because of her National Origin. The Women's Community does not provide this benefit to any of its residents. Plaintiff has failed to establish a prima facie case of discrimination concerning the denial of medical care.

Plaintiff was not satisfied with the assistance she received from the Women's Community. It is undisputed, however, that her treatment by the Women's Community was based on its policies and not on plaintiff's National Origin. She was treated the same as women who were not from the Ukraine. Defendant The Women's Community is entitled to judgment in its favor on plaintiff's discrimination claims and its motion for summary judgment will be granted.

Plaintiff claims that the defendants John Schellpfeffer and Andrew Schmidt failed to provide her legal assistance under provisions of the Legal Services Corporation Act. 42 U.S.C. §2996.

The Legal Services Corporation Act does not authorize a private right of action, Fultz v. Neighborhood Legal Services, 654 F. Supp. 881, 886 (W.D. Pa. 1987) and individuals may not be held liable under this Act. Shotz v. City of Plantation, Fla., 344 F. 3d 1161, 1169 (11th cir. 2003). Plaintiff has not stated a claim for relief under this Act.

Plaintiff claims defendants Schellpfeffer and Schmidt violated Title VI of the Civil Rights Acts of 1964 which prohibits discrimination by a program receiving Federal financial assistance. The program that received the financial assistance is Judicare and not the private attorneys paid by Judicare. See Jackson v. Conway, 476 F. Supp. 896, 903 (E.D. Mo. 1979), *aff'd* 620 F.2d 680 (8th Cir. 1980).

To prevail on a discrimination claim under Title VI plaintiff would have to prove that she was denied benefits by Judicare because of her National Origin. She was not denied benefits. She was provided two attorneys by Judicare to represent her in her divorce action. She was afforded representation by Judicare from May 25, 2005 to December 28, 2005. The fact that both attorneys eventually moved to withdraw from representing plaintiff does not mean that she was denied benefits by Judicare. Further there is no evidence in the record that the motions to withdraw by the attorneys were based on plaintiff's National Origin. Rather, both attorneys moved to withdraw because of their inability to

effectively represent her. Defendants Schellpfeffer and Schmidt are entitled to judgment in their favor on plaintiff's Title VII claims and their motion for summary judgment will be granted.

Remaining are a state law claim for intentional infliction of emotional distress and perhaps state law claims for breach of contract and malpractice against the defendant attorneys. This Court declines to exercise continuing supplemental jurisdiction over this claim pursuant to 28 U.S.C. § 1367(c)(3) and United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1986). See Brazinski v. Amoco Petroleum Additives, Co., 6 F.3d 1176, 1182 (7th Cir. 1993). Although defendants request the Court dismiss this claim, it will instead remand the state law claims to Marathon County Circuit Court from which it was removed.

Plaintiff is advised that in any future proceedings in this matter she must offer argument not cumulative of that already provided to undermine this Court's conclusion that her claims must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that the motion of defendant The Women's Community for summary judgment on plaintiff's discrimination claims is GRANTED.

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IT IS FURTHER ORDERED that the motion of defendants John M. Schellpfeffer and Andrew W. Schmidt for summary judgment on plaintiff's discrimination claims is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants the Women's Community, John M. Schellpfeffer and Andrew W. Schmidt against plaintiff DISMISSING her complaint and all federal law claims contained therein with prejudice and costs.

IT IS FURTHER ORDERED that plaintiff's state law claims are REMANDED to Marathon County Circuit Court.

Entered this 28th day of March, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge