

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

WANDA McCANN-SMITH,

Plaintiff,

v.

MERITER HOSPITAL,

Defendant.

ORDER

10-cv-547-slc

These are proposed civil actions for monetary relief in which plaintiff Wanda McCann-Smith contends that defendant St. Mary's Hospital and Meriter Hospital

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

wrongfully terminated her employment and treated her differently from other employees because of her race.

On October 14, 2010, plaintiff filed a letter stating that she wished to “withdraw [her] federal action . . . until a decision will be reached in the matter. Then [she] will continue [her] claim in federal court.” I understood her to be seeking voluntary dismissal of case no. 10-cv-546-slc in order to seek a remedy from the Equal Employment Opportunities Commission, but her statement that she would “continue” her claim made it unclear whether she really sought immediate voluntary dismissal. In an October 19 order, I explained to plaintiff that once the court accepted her notice of voluntary dismissal, she would not be able to reopen her lawsuit under the same case number. I gave plaintiff until November 1, 2010 to inform the court whether she would prefer to stay the case. Plaintiff failed to respond by that deadline, so on November 8, 2010 I directed the clerk of court to close the case.

That same day, plaintiff filed a letter in case no. 10-cv-547-slc containing language similarly ambiguous to that in her letter in case no. 10-cv-546-slc, again making it unclear whether plaintiff is aware that voluntary dismissal of the case would force her to file a new lawsuit if she wished to later pursue her claims.

Now plaintiff has filed a motion to stay both cases rather than see them voluntarily dismissed. She states that she “was informed by an attorney to dismiss [her claims in this court] until a final decision was reached in both cases.” I take this to mean that she is pursuing a remedy from the Equal Employment Opportunities Commission. There is no

difficulty granting plaintiff's motion to stay in case no. 10-cv-547-slc because the case has not yet been closed. Accordingly, I will stay this case.

As for case no. 10-cv-546-slc, which *has* been closed, I will construe plaintiff's motion as one brought under Fed. R. Civ. P. 60(b). United States v. Mt. Vernon Memorial Estates, Inc., 734 F.2d 1230, 1235 (7th Cir. 1984) (noting that "a district court has the authority under Rule 60(b) to vacate a voluntary dismissal and reopen the case"). I conclude that defendant St. Mary's Hospital would not be prejudiced if this case is reopened and stayed while plaintiff pursues administrative remedies. Therefore, I will grant plaintiff's Rule 60(b) motion, vacate her notice of voluntary dismissal, reopen and stay case no. 10-cv-546-slc.

However, the court will not stay these cases forever. For now, the cases will be stayed for three months. If plaintiff wishes to have the cases stayed beyond February 23, 2011, she must to update the court on the status of her complaints before the EEOC. If plaintiff fails to update the court in February, I will remove the stay and close these cases.

Finally, I note that defendant Meriter Hospital has filed a motion for extension of time to file its answer in case no. 10-cv-547-slc. Because I am staying that case, the motion will be denied as moot. New deadlines will be set once plaintiff has pursued her administrative remedies.

ORDER

IT IS ORDERED that

1. Plaintiff Wanda McCann-Smith's motions to vacate her notice of voluntary

dismissal and stay case no.10-cv-546-slc, dkt. #8, are GRANTED.

2. Plaintiff's motion to stay case no. 10-cv-547-slc, dkt. #11, is GRANTED.

3. Defendant Meriter Hospital's motion for an extension of time to file an answer in case no. 10-cv-547-slc, dkt. #12, is DENIED as moot.

4. Proceedings in these cases are STAYED until February 23, 2011. Plaintiff has until that date to update the court on the status of her complaints with the Equal Employment Opportunities Commission.

Entered this 24th day of November, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge