IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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WANDA McCANN-SMITH,

Plaintiff,

v.

MERITER HOSPITAL,

Defendant.

OPINION and ORDER

10-cv-547-slc

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Plaintiff Wanda McCann-Smith has filed a complaint in which she alleges that defendant Meriter Hospital suspended and then fired her from her job as a mental health specialist because she is black and because she complained about racial discrimination. Because plaintiff is proceeding in forma pauperis under 28 U.S.C. § 1915, I must screen the complaint to determine whether it states a claim upon which relief may be granted. Having reviewed the complaint, I conclude that plaintiff states a claim under Title VII of the Civil Rights Act and 42 U.S.C. § 1981.

Plaintiff alleges that defendant suspended and then fired her earlier this year on the ground that she disclosed to a friend of a patient that the patient was in the hospital, in violation of privacy policies. Plaintiff denies that she did this and believes that defendant's

explanation is a pretext for discrimination because the hospital had no reason to credit the patient's word over hers. She notes that the patient alleged that the "incident occurred at [plaintiff's] house." In addition, she alleges that she had worked for defendant for 16 months, that white employees had "protested" when she received a raise a few weeks earlier, that her supervisor did not come to her aid in response to those protests, that the human resources department threatened to fire her if she complained and that she was asked to return her keys even before she was fired.

Both Title VII and § 1981 prohibit racial discrimination and retaliation in the workplace. 42 U.S.C. § 2000e-2(a) (Title VII prohibits discrimination "because of race"); 42 U.S.C. § 2000e-3 (Title VII prohibits retaliating against employee for "oppos[ing]" discrimination prohibited by statute); Walker v. Abbott Laboratories, 340 F.3d 470, 475-77 (7th Cir. 2003) (§ 1981 prohibits racial discrimination in employment contracts, even at-will relationships); Stephens v. Erickson, 569 F.3d 779, 786 (7th Cir. 2009) (§ 1981 prohibits retaliation because of race). At this stage, plaintiff's allegations of discrimination and retaliation are sufficient to state a claim upon which relief may be granted. Swanson v. Citibank, NA, 614 F.3d 400 (7th Cir. 2010) (complaint alleging discrimination is sufficient if it "identifies the type of discrimination that she thinks occur[red] . . ., by whom . . . and when").

Plaintiff should know that she will not be able to stand on her allegations at later

stages in the case. To prove her claims at summary judgment or trial, she will have to come forward with specific facts showing that a reasonable jury could find in her favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Fed. R. Civ P. 56.

With respect to her discrimination claims, plaintiff will have to show that her race was one of the reasons she was suspended and terminated. Hossack v. Floor Covering Associates of Joliet, Inc., 492 F.3d 853, 860 (7th Cir. 2007). Similarly, to prevail on her retaliation claim, plaintiff will have to show that her allegation of racial discrimination was one of the reasons she was suspended and terminated.

Discrimination and retaliation claims are classic examples of claims that are easy to allege but hard to prove. Many pro se plaintiffs make the mistake of believing that they have nothing left to do after filing the complaint, but that is far from accurate. A plaintiff may not prove her claim with the allegations in her complaint, Sparing v. Village of Olympia Fields, 266 F.3d 684, 692 (7th Cir. 2001), or her personal beliefs, Fane v. Locke Reynolds, LLP, 480 F.3d 534, 539 (7th Cir. 2007).

A plaintiff can prove discrimination and retaliation claims in various ways. For example, plaintiff may adduce evidence that defendant treated similarly situated employees who are not African American better than her, Scaife v. Cook County, 446 F.3d 735, 739 (7th Cir. 2006), or that defendant consistently treated poorly other black employees or employees who complained about discrimination. Hasan v. Foley & Lardner LLP, 552 F.3d

520, 529 (7th Cir. 2008). A "similarly situated" employee is someone who is "directly comparable" to the plaintiff in all material respects." Grayson v. O'Neill, 308 F.3d 808, 819 (7th Cir. 2002). Relevant factors may include whether the employees had the same job description, were subject to the same standards, were subject to the same supervisor and had comparable experience, education, and other qualifications. Bio v. Federal Express Corp., 424 F.3d 593, 597 (7th Cir. 2005).

In addition, plaintiff may rely on evidence of suspicious timing or discriminatory statements by a decision maker or statements suggesting that the decision maker was bothered by plaintiff's complaints about discrimination. E.g., Mullin v. Gettinger, 450 F.3d 280, 285 (7th Cir. 2006); Culver v. Gorman & Co., 416 F.3d 540, 545-50 (7th Cir. 2005). However, even if plaintiff was fired a short time after she complained, that closeness in time is rarely enough to prove an unlawful motive without additional evidence. Mobley v. Allstate Insurance Co., 531 F.3d 539, 549 (7th Cir. 2008) ("Evidence of temporal proximity, however, standing on its own, is insufficient to establish a causal connection for a claim of retaliation.")

Evidence of discrimination may include a showing that defendant's reasons for their actions are pretextual. Simple v. Walgreen Co., 511 F.3d 668 (7th Cir. 2007). A pretext is more than just a mistake or a foolish decision; it is a lie covering up a true discriminatory or retaliatory motive. Forrester v. Rauland-Borg Corp., 453 F.3d 416, 419 (7th Cir. 2006).

"[T]he question is never whether the employer was mistaken, cruel, unethical, out of his head, or downright irrational in taking the action for the stated reason, but simply whether the stated reason was his reason: not a good reason, but the true reason." Id. at 417-18. A plaintiff may show that a decision is pretextual with evidence that an employer's stated motive did not actually motivate the decision, Freeman v. Madison Metropolitan School District, 231 F.3d 374, 379 (7th Cir. 2000), that defendant "grossly exaggerated" the seriousness of an incident, Peirick v. Indiana University-Purdue University Indianapolis Athletics Dept., 510 F.3d 681, 693 (7th Cir. 2007), that defendant violated its own policies and procedures, Davis v. Wisconsin Dept. of Corrections, 445 F.3d 971, 976-77 (7th Cir. 2006), or with any other evidence tending to show that the employer's stated reason is false.

Finally, plaintiff should know that Title VII includes various procedural requirements that a plaintiff must satisfy before filing a lawsuit in federal court. One important requirement is that a plaintiff may not bring a discrimination claim until she has received a "right to sue" letter from the Equal Employment Opportunities Commission. 42 U.S.C. § 2000e-5(f). Once she receives that letter, she has 90 days to file a lawsuit. Prince v. Stewart, 580 F.3d 571, 574 (7th Cir. 2009). See also 42 U.S.C. § 2000e-5(e)(1) (plaintiff must file charge with EEOC within 300 days of alleged unlawful employment practice). Although defendant has the burden to prove that plaintiff failed to meet these requirements, if defendant meets that burden, plaintiff's claims will have to be dismissed. Salas v. Wisconsin

Dept. of Corrections, 493 F.3d 913 (7th Cir. 2007). Thus, before plaintiff proceeds further, she should consider whether she will be able to obtain the necessary evidence to prove her claims and whether she has satisfied all the procedural requirements of bringing this suit. Fed. R. Civ. P. 11.

ORDER

IT IS ORDERED that

1. Plaintiff Wanda McCann-Smith is GRANTED leave to proceed on her claims that defendant Meriter Hospital violated her rights under Title VII of the Civil Rights Act and 42 U.S.C. § 1981 by suspending and terminating her because of her race and because she complained about racial discrimination.

2. For the remainder of this lawsuit, plaintiff must send defendant a copy of every paper or document that she files with the court. Once plaintiff learns the name of the lawyer that will be representing defendant, she should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that she has sent a copy to defendant or to defendant's attorney.

3. Plaintiff should keep a copy of all documents for her own files. If she is unable to use a photocopy machine, she may send out identical handwritten or typed copies of her documents.

4. I am sending copies of plaintiff's complaint and this order to the United States Marshal for service on defendant.

Entered this 7th day of October, 2010.

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