IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DOROTHY A. BUCKNER,

Plaintiff,

v. **No. 2:09-cv-02695**

GCA SERVICES GROUP, INC., and
SHELBY COUNTY SCHOOLS,

Defendants.

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE OF COURT TO FILE
FIRST AMENDED COMPLAINT

Before the Court is Plaintiff Dorothy A. Buckner's Motion for Leave of Court to File First Amended Complaint. (D.E. #24). In the instant motion, Plaintiff seeks to omit the claims pursuant to 42 U.S.C. § 1981 against Defendant Shelby County Schools ("Schools"), to omit all claims of racial discrimination against Defendant Schools and Defendant GCA Services Group, Inc. ("GCA"), to amend the statement of facts regarding further information on exhaustion of remedies with the Equal Employment Opportunity Commission ("EEOC"), and to correctly identify Defendant Schools as "Shelby County Board of Education." The motion was referred to United States Magistrate Judge Charmiane G. Claxton for determination. For the reasons set forth herein, Plaintiff's Motion for Leave of Court to File First Amended Complaint is GRANTED.

I. Introduction

This case arises from allegations of unlawful discrimination and retaliation on the basis of

sex and race in violation of 42 U.S.C. § 2000e, et seq., ("Title VII") and 42 U.S.C. § 1981 ("Section 1981"). On October 28, 2009, Plaintiff filed her Complaint against Defendant Schools and Defendant GCA. Along with the Complaint, Plaintiff attached a July 9, 2008 Charge of Discrimination with the EEOC and a July 31, 2009 Dismissal and Notice of Rights in relation to that charge. The July 9, 2008 Charge of Discrimination solely alleges that GCA is the party that discriminated against Plaintiff and makes no reference whatsoever to Shelby County Board of Education, Shelby County Schools, Bartlett High School, or any other entity.

On December 1, 2009, Defendant Schools filed a Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Defendant asserted that its proper title is "Shelby County Board of Education"and argued that Plaintiff's case against it should be dismissed for failure to exhaust administrative remedies. Plaintiff responded on February 3, 2010 that she had since "cured the jurisdictional deficiency alleged in SCBE's Motion to Dismiss" pursuant to 29 C.F.R. § 1601.12(b), which allows relation back of a Charge of Discrimination that is later amended due to technical defects or omissions. Plaintiff filed her First Amended Complaint on February 3, 2010. However, Plaintiff failed to seek leave of court to file the amended document, and it was stricken by the District Court on February 12, 2010.

On February 23, 2010, Plaintiff filed the instant motion requesting leave to properly file the First Amended Complaint. In addition to her Motion for Leave to Amend, Plaintiff filed several new documents evidencing her attempts to exhaust her remedies with the EEOC. First, Plaintiff filed an affidavit explaining the difficulties she perceived in filing her EEOC charge, including her allegations that the EEOC instructed her she could not file a charge against "Shelby County Schools" because they were not her employer. Next, Plaintiff attached her EEOC Intake

Questionnaire from April 29, 2008, which listed both "Bartlett High" and "GCA Service Group—Leoniel" as the "Organization Contact Information." The EEOC Intake Questionnaire further alleges that Phillip Smith of "Bartlett High" was the person responsible for the discriminatory acts, including "sexually suggestive comments" and disparate treatment in the workplace.

Next, Plaintiff attached a second Charge of Discrimination from June 2, 2008, which was not previously included in the record, that alleged racial discrimination and retaliation against "Bartlett High." Plaintiff attached a Notice of Charge of Discrimination that was sent to "Bartlett High" on June 5, 2008 with a Request for Information regarding the claims. Plaintiff attached an EEOC "Request for Withdrawal of Charge of Discrimination," signed on June 23, 2008, in which Plaintiff requested to withdraw her charge because "[i]t is the wrong company." This document does not specifically state which party is the "wrong company," but Plaintiff additionally attached a draft Charge of Discrimination against Shelby County Schools that is dated June 23, 2008, unsigned, and marked over in large, handwritten letters, "Wrong Respondent."

Additionally, Plaintiff attached the July 9, 2008 Charge of Discrimination, as was included with the Complaint, that lists GCA as the sole respondent against claims discrimination and retaliation on the bases of race and sex. Finally, Plaintiff filed a January 14, 2010 Charge of Discrimination against "Shelby County School" alleging discrimination and retaliation on the basis of race and sex. Plaintiff contends that this January 14, 2010 Charge of Discrimination cured any previous failures to exhaust her remedies against Shelby County Schools pursuant to 29 C.F.R. § 1601.12(b).

II. Analysis

The sole issue presented in the instant case is whether Plaintiff should be permitted leave to file a First Amended Complaint. Plaintiff seeks to file the First Amended Complaint for four reasons: (1) to omit the claims pursuant to Section 1981 against Defendant Shelby County Schools; (2) to omit all claims of racial discrimination against Defendant Schools and Defendant GCA; (3) to amend the statement of facts regarding further information on exhaustion of remedies with the EEOC; and (4) to correctly identify Defendant Schools as "Shelby County Board of Education."

As to the first two requests, Plaintiff may voluntarily dismiss any claims against any defendants pursuant to Rule 41 of the Federal Rules of Civil Procedure without obtaining leave of court. Thus, if Plaintiff wishes to voluntarily dismiss the claims pursuant to Section 1981 against Defendant Schools and all claims of racial discrimination against both Defendants, Plaintiff need only comply with the requirements of Rule 41.

As to Plaintiff's request to amend the statement of facts to add further information regarding her exhaustion of remedies with the EEOC, Rule 15 of the Federal Rules of Civil Procedure provides that the court "should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(1)(B). However, such leave should not be granted in cases of "undue delay, undue prejudice to the opposing party, bad faith, dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, or futility." Foman v. Davis, 371 U.S. 178, 182 (1962).

In this case, Plaintiff does not seek to add any new claims against Defendants, but merely wishes to provide a more complete factual basis of Plaintiff's filings with the EEOC. As this case is in the initial stages of litigation, the Court does not find that the proposed amendments would unduly delay the proceedings or unduly prejudice Defendant Schools. Additionally, the Court does not find evidence in the record of bad faith, dilatory motive, repeated failure to cure deficiencies,

or futility of amendment. Accordingly, the Court finds that Plaintiff's request to amend the statement of facts to add further factual basis regarding her exhaustion of remedies should be GRANTED.

Finally, Plaintiff requests to correct the name of Defendant Schools from "Shelby County Schools," as listed on her initial Complaint, to "Shelby County Board of Education." Defendant Schools clarified in its Motion to Dismiss that its proper title is "Shelby County Board of Education." Thus, Plaintiff merely wishes to properly name the entity against which her Complaint was filed and against which her case has been proceeding. Accordingly, Plaintiff's request to properly name Defendant Schools in the First Amended Complaint is hereby GRANTED.

III. Conclusion

For the reasons set forth herein, Plaintiff's Motion for Leave of Court to File First Amended Complaint (D.E. #24) is hereby GRANTED.

IT IS SO ORDERED this 7th day of May, 2010.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE