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EMERY v. NORTHEAST ILLINOIS REGIONAL COMMUTER RD. CORP., (N.D.Ill. 2004)  
ELLEN K. EMERY, Plaintiff, v. NORTHEAST ILLINOIS REGIONAL COMMUTER  
RAILROAD CORPORATION d/b/a METRA/METROPOLITAN RAIL, et al., Defendants.

Case No. 02 C 9303.

United States District Court, N.D. Illinois,  
Eastern Division.

June 17, 2004

MEMORANDUM OPINION & ORDER

JOAN GOTTSCHALL, District Judge

Plaintiff Ellen Emery has sued her former employer, defendant Northeast Illinois Regional Commuter Railroad Corporation d/b/a METRA/Metropolitan Rail ("Metra"), as well as several individual Metra officials based on her March 4, 2002 termination from her position as Metra's in-house counsel. While at Metra, Emery specialized in defending Metra from cases brought under the Federal Employer Liability Act ("FELA"), 45 U.S.C. § 51, et seq. Emery alleges that defendants (a) terminated her after she brought her own FELA claim against Metra arising out of an injury she suffered in the workplace, and (b) defamed her by publicly accusing her of breaching her ethical duties to Metra by providing counsel in her FELA case with confidential information regarding Metra's FELA defense strategies. Emery claims that defendants' stigmatizing comments prevented her from finding other employment opportunities in her field. Based on those allegations, Emery brought (1) federal claims against defendants for constitutional deprivation of liberty and property interests under 42 U.S.C. § 1983, conspiracy to violate her constitutional rights, retaliatory discharge under FELA and federal common law, violation of the Older Workers Benefit Protection Act ("OWBPA"), 29 U.S.C. § 626(f), and (2) claims under Illinois law for retaliation, defamation, self-compelled defamation, tortious interference with contractual relations, tortious interference with prospective economic advantage, and civil conspiracy.

Page 2

On September 19, 2003, the court dismissed several of Emery's claims, including her FELA and state law retaliation counts. <sup>[fn1]</sup> On the federal retaliation count, the court held that neither FELA nor any other federal statute creates a cause of action against an employer for retaliating against an employee for bringing a FELA claim. In dismissing the state retaliation claim, the court held that Illinois courts would not likely recognize a claim for FELA retaliation because Emery has an adequate alternative remedy under the Railway Labor Act ("RLA"), 45 U.S.C. § 151, et seq.

Emery has filed a motion requesting that the court reconsider its September 19, 2003 decision to dismiss her state and federal retaliation claims. Specifically, Emery argues that she should be allowed to bring a retaliation claim under state law and FELA

Plaintiff's Exhibit 16

because she has no recourse against defendants under the Railway Labor Act. Along with her motion to reconsider, Emery filed an amended complaint, attempting to address some of the other deficiencies identified in the court's September 19 opinion. Defendants have moved to dismiss that amended complaint, arguing that Emery's Section 1983 claim should be dismissed for failure to state a claim and, because Emery has no other viable federal causes of action, Emery's state claims should be dismissed for lack of jurisdiction. For the reasons stated below, Emery's motion for reconsideration of the court's September 19, 2003 order is denied and defendants' motion to dismiss Emery's amended complaint is granted.

#### ANALYSIS

##### *1. Emery's Motion To Reconsider The Dismissal Of Her FELA Retaliation Claim*

Emery has moved the court to reconsider its decision to dismiss her Section 1983 FELA retaliation claim. However, "neither [FELA] nor any other source of federal law creates a federal right against retaliatory discharge" for a plaintiff who is fired after filing a FELA claim. *Graf v. Elgin, Joliet & E. Ry.*, 790 F.2d 1341, 1344 (7th Cir. 1986); *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, Page 3 258 (2d Cir. 1995); *Mayon v. S. Pac. Transp. Co.*, 805 F.2d 1250, 1252-53 (5th Cir. 1986) (only remedy available for employee terminated for filing FELA claim are the remedies under the Railway Labor Act, not FELA); *Landfried v. Terminal R.R. Assoc.*, 721 F.2d 254, 256 (8th Cir. 1983) ("Congress has not enacted a statute prohibiting an employer from discharging an employee in retaliation for filing a FELA action."); see also *Bielicke v. Terminal R.R. Assoc.*, 30 F.3d 877, 878 (7th Cir. 1994).

Nonetheless, Emery argues that, because she does not have a remedy under the RLA, the court should allow her to bring a FELA retaliation claim. While the lack of a remedy under the RLA could conceivably affect the availability of a retaliation claim under Illinois law, the court cannot find, and Emery does not cite, any authority for the proposition that the lack of an RLA remedy allows the court to create a retaliation cause of action under FELA. Emery's motion for reconsideration is denied.

##### *II. Defendants' Motion to Dismiss*

On a Rule 12(b)(6) motion to dismiss, the court accepts all well-pleaded facts as true and draws all reasonable inferences in the plaintiff's favor. *Hernandez v. City of Goshen*, 324 F.3d 535, 537 (7th Cir. 2003). A complaint will not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him to relief under the law. *Id.*

The only remaining federal claims in Emery's complaint are (a) her Section 1983 claim that defendants deprived Emery of her constitutionally protected liberty interest in her reputation and in pursuing the occupation of her choice and (2) her Section 1983 claim that defendants conspired to deprive her of those liberty interests. Defendants have moved to dismiss those claims, arguing that, because Emery has found comparable employment in her field, there is no set of facts by which Emery can prove that she was

deprived of a constitutionally protected liberty interest. The court agrees with defendants' analysis.

Page 4

Reputation itself is not a liberty interest protected under the Fourteenth Amendment. *Siebert v. Gilley*, 500 U.S. 226, 233 (1991). Rather, to implicate a liberty interest, charges of defamation must be coupled with the alteration of a legal status, such as the loss of employment. Moreover, the constitutionally protected liberty interest in cases such as this is quite narrow. An employee's liberty interest is infringed only if "the circumstances of the discharge, at least if they were publicly stated, had the effect of blacklisting the employee from employment in comparable jobs." *Trejo v. Shoben*, 319 F.3d 878, 889 (7th Cir. 2003). "The employee's . . . reputation . . . must be called into question in a manner that makes it virtually impossible for the employee to find new employment in his chosen field." *Townsend v. Vallas*, 256 F.3d 661, 670 (7th Cir. 2001) (emphasis added).

Emery's Section 1983 claim fails because she has, in fact, found comparable employment in her chosen field. At defendants' request, the court takes judicial notice of the fact that Emery has worked as an attorney for the law firm of Ancel, Glink, Diamond, Bush, DiCiani & Rolek, P.C., specializing in local government law, since July of 2003.

[http://www.ancelglink.com/attorneys/ckc\\_bio.html](http://www.ancelglink.com/attorneys/ckc_bio.html). [fn2]

Emery's job as an attorney at an established Chicago law firm precludes her from arguing that defendants' actions deprived her of a liberty interest in pursuing a career in the field of her choosing and rebuts her claim that it is "virtually impossible" for her to find employment in her field. See, e.g., *Trejo*, 319 F.3d at 889; *Townsend*, 256 F.3d at 670 (holding that plaintiff could not show that his firing as a lifeguard foreclosed prospective employment opportunities because he retained employment as a swim instructor with another employer).

Page 5

A liberty interest is not implicated where the change in employment merely results in reduced compensation or diminished prestige. *Munson v. Friske*, 754 F.2d 683, 693 (7th Cir. 1985). Moreover, mere proof that Emery was "somewhat less attractive to some other employers would not establish the requisite foreclosure of opportunities." *Id.* Rather, the constitution protects only Emery's ability to pursue her chosen profession. In light of Emery's current employment as an attorney within her field of expertise, there is simply no set of facts by which Emery can prove her Section 1983 claim. Defendants' termination of Emery may have stigmatized her and may be actionable as a state defamation claim. However, defendants' acts do not reach a constitutional dimension. Because Emery has not stated a claim for which relief can be granted, both her Section 1983 claim (Count V) and her Section 1983 Conspiracy claim (Count VI) are dismissed.

Since no viable federal claims remain, the court relinquishes jurisdiction over Emery's pendent state claims. [fn3] Emery's amended complaint is dismissed in its entirety. *Wright v. Associated Ins. Cos.*, 29 F.3d 1244, 1251 (7th Cir. 1994) ("[T]he general rule is that once all federal claims are dismissed before trial, the district court should relinquish jurisdiction over pendent state-law claims rather than resolve them on the merits"); *Solon v. Kaplan*, No. 00-C-2888, 2004 WL

725893, \*6 (N.D. Ill. March 31, 2004).

Page 6

#### CONCLUSION

For the foregoing reasons, defendants' motion to dismiss Emery's amended complaint is granted. Emery's motion for reconsideration of the court's September 19, 2003 order is denied.

[fn1] In addition to dismissing Emery's Section 1983 and federal retaliation claims, the court also dismissed the only other federal claim in this action -- Emery's claim under the OWBPA.

[fn2] Pursuant to Fed.R.Evid. 201(b) and (d), the court, upon request by one of the parties, must take judicial notice of facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned" if the requesting party supplies the court with the necessary information. The court determines that it may take judicial notice of Emery's current employment with Ancel, Glink based on that firm's publicly available internet web site.

[fn3] Because the court does not have jurisdiction over Emery's remaining state law claims, the court does not reach Emery's arguments for reconsideration of the court's decision to dismiss Emery's claim for retaliation under Illinois law.

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