

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

CHRISTOPHER NASCIMENTO,	:	NO. 1:08-CV-00326
	:	
Plaintiff,	:	
v.	:	<b>OPINION AND ORDER</b>
	:	
	:	
UNIVERSITY OF CINCINNATI	:	
	:	
Defendant.	:	

This matter is before the Court on Defendant's Motion to Dismiss (doc. 4), Plaintiff's Reponse (doc. 10), and Defendant's Reply (doc. 11). For the reasons stated herein, the Court GRANTS Defendants Motion (doc. 4).

In his amended complaint, Plaintiff asserts claims against his former employer, the University of Cincinnati, for disability discrimination and retaliation in violation of the Americans with Disabilities Act ("ADA"), and retaliation in violation of the Family and Medical Leave Act ("FMLA") (doc. 2). The parties are in agreement that based on the Supreme Court's ruling in Bd. Of Trustees, Univ. Of Alabama v. Garrett, 531 U.S. 356 (2001), Plaintiff's ADA claims are barred by sovereign immunity (doc. 10,11). Plaintiff requests, and Defendant agrees, that Plaintiff's ADA claims be dismissed without prejudice for re-filing in the Ohio Court of Common Pleas (Id.). The parties further agree that, pursuant to the Sixth Circuit's ruling in Touvell v. Ohio Dept. Of MRDD, 422 F.3d 392 (6<sup>th</sup> Cir. 2005), any portion of

Plaintiff's FMLA claim that relates to time off taken to care for Plaintiff's own health conditions must be dismissed (Id.). The Court finds the parties' position well-reasoned and well-taken.

Therefore, for the foregoing reasons, the Court GRANTS Defendant's Motion, and thereby DISMISSES WITHOUT PREJUDICE Plaintiff's ADA Claims for re-filing in the Ohio Court of Claims, and DISMISSES the portions of Plaintiff's FMLA claim that relate to self-care. The portions of Plaintiff's FMLA claim that relate to the care of others remains a viable claim.

SO ORDERED.

Dated: January 21, 2009

/s/ S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge