

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

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Filed: December 12, 2008

Nos. 07-3847/07-4097

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

ELIZABETH POWELL,)

Plaintiff-Appellant,)

v.)

WAL-MART STORES, INC., LEROY SCHUETZ,)
STEVEN BERTSCHY, CHRISTOPHER WALTERS,)
JONATHAN FORTMAN, CURTIS FOWLER,)
DANIEL McLAUGHLIN, WALTER)
TRUSZKOWSKI, STANISLAW KOSTEK,)
PINNACLE MANAGEMENT, INC., BARRY)
CLIFTON, PAUL MUDD, JOHN KENDALL, MIKE)
RANDAZZO, SCOTT BAILEY, and VINCENT)
ROMANO,)

Defendants-Appellees.)

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE
NORTHERN DISTRICT OF
OHIO

**MEMORANDUM
OPINION**

BEFORE: MARTIN and McKEAGUE, Circuit Judges; and COLLIER, Chief District Judge.*

PER CURIAM. Elizabeth Powell sued Wal-Mart Stores, Inc., Pinnacle Management, Inc., and a number of individuals over an injury she suffered while working at Wal-Mart Stores. She alleged violations of the federal Racketeer Influenced and Corrupt Organizations Act (“RICO”), the Ohio Pattern of Corrupt Activity Act (“Ohio PCA”), and negligence and reckless disregard for the safety of others under Ohio common law. The district court dismissed Powell’s RICO and Ohio

*The Honorable Curtis L. Collier, Chief United States District Judge for the Eastern District of Tennessee, sitting by designation.

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PCA claims for failing to allege a viable claim for relief. The district court dismissed her common-law claim as time-barred. The district court subsequently denied Powell's motion under Federal Rule of Civil Procedure 60 for relief from judgment. Powell appealed both the district court's original judgment dismissing her claims and the court's denial of her Rule 60 motion.

Having carefully considered the parties' briefs on appeal and the record of the proceedings below, we are not persuaded that a lengthy opinion is necessary. As to Powell's RICO and Ohio PCA claims, we **AFFIRM** for the reasons set forth by the district court. *Powell v. Wal-Mart Stores, Inc.*, No. 1:06-CV-603, slip op. at 2-4 (N.D. Ohio Aug. 14, 2007) ("*Powell II*") (on Powell's Rule 60 motion); *Powell v. Wal-Mart Stores, Inc.*, No. 1:06-CV-603, 2007 WL 987321, at *2 (N.D. Ohio Mar. 30, 2007) ("*Powell I*") (on defendants' motions to dismiss).

As to Powell's state common-law claim, a fair reading of the complaint confirms that Powell asserted this claim against Pinnacle Management under a theory of respondeat superior and not against Wal-Mart Stores or any of the individual defendants. *See* Complaint ¶¶ 85-86. Pinnacle Management argued in its motion to dismiss that the claim was time-barred. Powell failed to respond to the argument, and the district court dismissed the claim. *Powell I*, 2007 WL 987321, at *2. In a subsequent motion to alter or amend, she argued for the first time that her state common-law claim was not time-barred under Ohio's savings statute, O.R.C. § 2305.19; she reiterated the argument in her Rule 60 motion. We agree with the district court that Powell failed to address the defense in a timely manner, and, therefore, we likewise **AFFIRM** for the reasons stated by the district court. *Powell II*, slip op. at 4-6.