

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**BARBARA ANN WILSON,**

**Plaintiff,**

**v.**

**THE BIRMINGHAM LIBRARY  
FOUNDATION, et. al.,**

**Defendants.**

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**CV-10-BE-2386-S**

**ORDER**

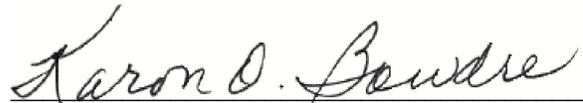
This matter is before the court on “Motion to Dismiss Defendant The Birmingham Public Library Foundation” (doc. 5); this court’s “Order to Show Cause” (doc. 7) and Plaintiff’s response (doc. 9); and “Plaintiff’s Motion to Amend” (doc. 10). Defendants filed no objection to the motion to amend.

The court DENIES the motion to dismiss at this time. It acknowledges Plaintiff’s response to its Order in which she objected to the Foundation’s being dismissed based on the statements in the motion to dismiss, unsubstantiated by affidavits or other admissible evidence, before Plaintiff has had an opportunity to conduct discovery regarding the accuracy of those statements. However, the court’s ruling is without prejudice to the Foundation’s subsequent re-filing the motion or filing a motion for summary judgment with evidentiary support.

The court GRANTS “Plaintiff’s Motion to Amend” pursuant to Fed. R. Civ. P. 15(a)(1), which provides that “[a] party may amend its pleading once as a matter of course within (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21

days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b) . . . , whichever is earlier.” In the instant case, Plaintiff served the Complaint on the City of Birmingham on September 16, 2010 and served it on the Foundation on September 27, 2010, so its motion to amend, filed on October 4, 2010 was within 21 days of service. She also filed the motion within 21 days of the City’s answer and the Foundation’s motion to dismiss, both filed on September 20, 2010. Thus, no matter whether the court addresses the 21 day period under subsection (A) or (B) of Rule 15(a)(1), Plaintiff’s motion to amend falls within the time period allowed. The court notes, however, that timeliness of the amendment does not necessarily mean that it relates back under Rule 15(c).

DONE and ORDERED this 20<sup>th</sup> day of October, 2010.

  
KARON OWEN BOWDRE  
UNITED STATES DISTRICT JUDGE