

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

AUDREY KING,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO. 11-0480-KD-C
)	
BISHOP STATE COMMUNITY)	
COLLEGE and DEPARTMENT OF)	
POST-SECONDARY EDUCATION for)	
the STATE OF ALABAMA,)	
)	
Defendants.)	

ORDER

This action is brought pursuant to 42 U.S.C. § 1981 and is now before the Court on the motion to dismiss filed by plaintiff Audrey King and the response filed by defendants Bishop State Community College and the Department of Post-Secondary Education for the State of Alabama (docs. 15, 16). Plaintiff moves to dismiss with prejudice her claims based on race discrimination.¹ Defendants do not oppose the motion.

A plaintiff may voluntarily dismiss an action pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. Rule 41(a)(1)(i) provides for dismissal where the defendant has not served “either an answer or a motion for summary judgment” and section (ii) provides for dismissal by stipulation “signed by all parties who have appeared.” Neither are appropriate in this instance.

¹ Plaintiff also moves to dismiss without prejudice “any claim which was or could have been asserted based on her allegations of improper placement on the Defendants’ salary schedule (not based on race discrimination), so that any claim based on those allegations may be preserved for possible future litigation.” (Doc. 15). The first paragraph of the complaint states that “[t]his is an action for civil rights discrimination, and is brought pursuant to 42 U.S.C. Section 1981” and the complaint contains only one count which alleges race discrimination. The Court does not have jurisdiction to enter an order regarding claims which are not before the Court.

However, Rule 41(a)(2) provides that “[e]xcept as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2).

Therefore, the Court construes the motion as a motion to dismiss pursuant to Rule 41(a)(2). Upon consideration, the motion is **GRANTED** and this action is **dismissed with prejudice**.

No other order shall be forthcoming from the Court except upon application by either party for final judgment as prescribed by Rule 58 of the Federal Rules of Civil Procedure.

DONE and **ORDERED** this 2nd day of August, 2012.

s / Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE