

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

ROBERT LAMB

PLAINTIFF

v.

No. 3:14-cv-216-DPM

DONNA WALKER, in her individual and official capacities as a supervisor at the Division of Services for the Blind for the Arkansas Department of Human Services; CASSONDR A WILLIAMS, in her individual and official capacities as a supervisor at the Division of Services for the Blind for the Arkansas Department of Human Services; KATY MORRIS, in her individual and official capacities as a Director of the Division of Services for the Blind for the Arkansas Department of Human Services; ARKANSAS DEPARTMENT OF HUMAN SERVICES; and DIVISION OF SERVICES FOR THE BLIND

DEFENDANTS

ORDER

Lamb brings two claims against his former employer and supervisors: a retaliation claim under the Family Medical Leave Act and a tort claim of outrage under Arkansas law. Defendants have moved to dismiss Lamb's outrage claim based on sovereign immunity, statutory immunity, and a failure to state a claim upon which relief can be granted. Defendants are right on all three grounds.

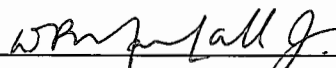
First, sovereign immunity bars suit against the state and the state agencies on this state law claim regardless of the relief sought. *Monroe v. Arkansas State University*, 495 F.3d 591, 594 (8th Cir. 2007); *Cooper v. St. Cloud State University*, 226 F.3d 964, 968 (8th Cir. 2000). Second, Ark. Code Ann. § 19-10-305(a) provides state employees with statutory immunity from civil liability in their personal capacity for non-malicious acts. Lamb's conclusory allegation that the defendants acted willfully is not enough to show malice. *Fegans v. Norris*, 351 Ark. 200, 208, 89 S.W.3d 919, 925 (2002).

Third, although prospective injunctive and declaratory relief are available against state employees in their official capacities, the pleaded facts viewed in a light most favorable to Lamb simply do not support an outrage claim. "The conduct at issue must be 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in civilized society.'" *Freeman v. Bechtel Construction Co.*, 87 F.3d 1029, 1031 (8th Cir. 1996) (Arkansas law). Lamb's allegations that defendants scored his performance evaluation low, and failed to consider him for various promotion opportunities, in retaliation to his use of FMLA leave time fall short of egregious conduct. "Merely

describing conduct as outrageous does not make it so." *Givens v. Hixson*, 275 Ark. 370, 372, 631 S.W.2d 263, 264 (1982).

Defendants' motion, *No* 9, is therefore granted. Lamb's outrage claim is dismissed. The dismissal is with prejudice as to the Arkansas Department of Human Services and Division of Services for the Blind. The dismissal is without prejudice as to Walker, Williams, and Morris in their official and individual capacities. Lamb may move to amend his complaint, with an attached proposed pleading, in due course if discovery reveals facts that would support an outrage claim.

So Ordered.



D.P. Marshall Jr.
United State District Judge

27 April 2015