

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

ROSE K. TUCKER

PLAINTIFF

v.

No. 4:10CV00400 JLH

BRIARWOOD NURSING AND
REHABILITATION CENTER, INC.

DEFENDANT

ORDER

Rose K. Tucker brings this action against Briarwood Nursing and Rehabilitation Center, Inc., pursuant to Title VII alleging racial discrimination in employment. She has filed a motion for appointment of counsel. Briarwood has filed a motion to dismiss.

Briarwood's motion to dismiss has three components. Briarwood first moves to dismiss Joan Robbins as a defendant. That portion of the motion to dismiss is granted. Joan Robbins, individually, was not the employer and cannot be liable under Title VII. Moreover, the EEOC complaint filed by Rose K. Tucker did not name Joan Robbins. Therefore, Joan Robbins is dismissed as a defendant.¹ Briarwood next argues that the complaint fails to state a claim upon which relief can be granted against it because the only actions alleged in the complaint were actions of Joan Robbins. Joan Robbins, however, was the administrator of the facility. If she terminated Rose K. Tucker because of Tucker's race, as Tucker alleges, Briarwood, as the employer, would be liable under Title VII.

Briarwood next argues that service of process was inadequate because it was served at 415 Rogers Avenue in Fort Smith, Arkansas, instead of receiving service through its registered agent.

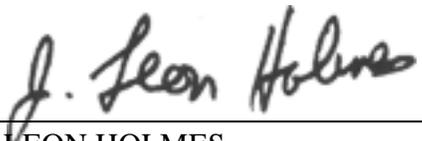
¹ Joan Robbins was not identified in the caption of the complaint, but she was named as a defendant in the text.

Therefore, it says that service was improper under Rule 4(d)(1) of the Arkansas Rules of Civil Procedure. Service on a corporation is not governed by Rule 4(d)(1) of the Arkansas Rules of Civil Procedure but by Rule 4(d)(5), which allows service not only on a registered agent but also on an officer, managing agent, or general agent. The return of summons in this case shows that it was sent by certified mail and signed for by Jerry Sams. Briarwood does not argue that Sams was neither an officer, managing agent, or general agent of the company.

The motion to dismiss is granted in part and denied in part. Joan Robbins is hereby dismissed as a defendant. The motion to dismiss Briarwood Nursing and Rehabilitation Center, Inc., is denied. Document #15.

Rose K. Tucker has also filed a motion for appointment of counsel. She has supported her motion by letters from three attorneys saying that they could not represent her. That motion is granted. Document #13. Counsel for Rose K. Tucker will be appointed by separate order.

IT IS SO ORDERED this 26th day of July, 2010.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE