

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

CHRISTY S. PEPPER

PLAINTIFF

v.

Civil No. 10-1013

WENDELL GARRETT, DDS

DEFENDANT

O R D E R

Now on this 3rd day of May, 2010, comes on for consideration defendant's **Motion To Dismiss** (document #7), and from said motion, and the response thereto, the Court finds and orders as follows:

1. Plaintiff filed suit in the Circuit Court of Union County, Arkansas, alleging that defendant "violated both federal and state statutes prohibiting sexual harassment in the work place." She also alleged that defendant's conduct was such that it "would be offensive to a civilized society and would not be tolerated," language which appears to invoke a cause of action for intentional infliction of emotional distress, or "outrage," under Arkansas law.

2. Defendant removed the case to this Court based on the presence of a federal question, and now moves to dismiss, contending that plaintiff failed to allege that defendant has enough employees for a cause of action to exist against him under federal or state law, and that the conduct alleged does not suffice to plead a claim of outrage under Arkansas law.

3. In response, plaintiff concedes that defendant does not have at least fifteen employees, the number required to trigger the

federal statute prohibiting sexual harassment. **42 U.S.C. § 2000e(b)**. She does not concede that the number of employees is fewer than that required to trigger the provisions of the Arkansas Civil Rights Act, and she argues that she has sufficiently pled a claim of outrage.

4. It is clear following plaintiff's concession that there is no federal question in this case, and that the Motion To Dismiss should be granted as to the federal claim of sexual harassment. Under **28 U.S.C. § 1367**, the Court may decline to exercise supplemental jurisdiction where it has dismissed all claims over which it has original jurisdiction -- a course of action suggested by plaintiff -- and the Court finds that appropriate in this case.

IT IS THEREFORE ORDERED that defendant's **Motion To Dismiss** (document #7) is **granted in part and denied in part**.

The motion is **granted** insofar as it seeks dismissal of plaintiff's claim under federal law, and that claim is **dismissed with prejudice**.

The motion is **denied** insofar as it seeks dismissal of plaintiff's state law claims.

IT IS FURTHER ORDERED that this matter be **remanded** to the Circuit Court of Union County, Arkansas.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE