

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00950-RPM

KIMBERLY BERUBE,

Plaintiff,

vs.

SHERIFF MIKE ENSMINGER, in his official capacity as Sheriff of the County of Teller, Colorado; and
NICKLOS PINELL,

Defendants.

ORDER DISMISSING DEFENDANT NIKLOS PINELL

The defendant Nicklos Pinell moves for partial judgment on the pleadings pursuant to Fed.R.Civ.P. 12(c) or alternatively for summary judgment pursuant to Fed.R.Civ.P. 56 on the claim made against him individually for liability for a hostile work environment claimed by the plaintiff under 42 U.S.C. § 1983 as a violation of the equal protection clause under the Fourteenth Amendment. The motion is based on the two-year statute of limitations and the briefing on the motion addresses the legal question of whether the continuing violation doctrine applicable under Title VII of the Civil Rights Act of 1964, as *amended*, is equally applicable to a constitutional tort. It is not necessary to determine that legal question because in her allegations of sexual misconduct, the plaintiff has not asserted any action by defendant Pinell within the two-year time limitation, which began on April 12, 2011. The plaintiff relies principally on an incident referred to as the “cemetery incident” which occurred after April 12, 2011, the date of the filing of this complaint. Accordingly, the plaintiff has not alleged sufficient facts to support a claim for liability for Nicklos Pinell, individually, within the two years prior to the filing of this complaint and it is therefore

ORDERED that this civil action is dismissed as to defendant Nicklos Pinell.

Dated: January 8th, 2014

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge