

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

TERRINICA N. MOSS,

Plaintiff,

v.

CASE NO. 4:12cv103-RH/CAS

CAPITAL REGIONAL
MEDICAL CENTER et al.,

Defendants.

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ORDER ON MOTION TO DISMISS

This case is before the court on the report and recommendation, ECF No. 15, and the objections, ECF Nos. 17 and 18. I have reviewed *de novo* the issues raised by the objections. The report and recommendation is correct and will be adopted as the court's opinion.

The recommendation is that the defendants' motion to dismiss should be granted in part and denied in part. One further point deserves mention: the motion to dismiss, and in turn the report and recommendation, do not address the plaintiff's claims under 42 U.S.C. § 1981. District courts in this circuit have held that supervisors with the capacity to hire and fire or those who can recommend

such decisions are subject to liability under § 1981. *See Moss v. W&A Cleaners*, 111 F. Supp. 2d 1181, 1188 (M.D. Ala. 2000); *Cisero v. Wal-Mart Stores East, L.P.*, No. 3:05-CV-1105-J-32-JRK, 2008 WL 2074414 at *5 (M.D. Fla. May 15, 2008); *Hornsby v. Three Dollar Café, III, Inc.*, No. CIVA1:03CV1668GET, 2006 WL 47471 at *4 (N.D. Ga. Jan. 9, 2006). *See also Burstein v. Emtel, Inc.*, 137 F. App'x 205, 208 (11th Cir. 2005) (holding a defendant not liable under § 1981 because he did not participate in the decision at issue). And the fact that the plaintiff did not sign a contract with the supervisor is not determinative. *See Faraca v. Clements*, 506 F.2d 956, 959 (5th Cir. 1975) (stating that “a third party’s interference with those rights guaranteed under Sections 1981 and 1982 will subject such a person to personal liability”). These are matters that can be addressed in due course.

IT IS ORDERED:

The report and recommendation is ACCEPTED and adopted as the court’s opinion. The motion to dismiss, ECF No. 11, is GRANTED IN PART and DENIED IN PART as set out in the report and recommendation. The case is remanded to the magistrate judge for further proceedings.

SO ORDERED on August 9, 2012.

s/Robert L. Hinkle

United States District Judge