

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
2008 FEB -1 PM 3:33
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

HORACE L. COOK

SIGN _____
BY DEPUTY CLERK

VERSUS

CIVIL ACTION

BATON ROUGE GENERAL
MEDICAL CENTER

NO. 07-351-A

RULING

This matter is before the court on a motion for summary judgment by defendant, Baton Rouge General Medical Center (doc. 30). *Pro se* plaintiff, Horace L. Cook, opposed the motion (doc. 37) and it was referred to Magistrate Judge Christine Noland (doc. 39).

On August 31, 2007, plaintiff filed a motion to amend the fifth paragraph of his complaint to specifically allege that his retaliatory discharge and religious freedom claims are being asserted pursuant to Title VII (doc. 20). A hearing was held on the motion, after which the Magistrate Judge denied the motion because plaintiff had failed to file a claim with the EEOC within the time allowed by regulation, rendering his requested amendment futile (doc. 24). Plaintiff then filed a notice of an appeal of that order to the United States Court of Appeals for the Fifth Circuit (doc. 34).

Subsequent to the filing of the notice of appeal, the Magistrate Judge

recommended that defendant's pending motion for summary judgment be granted and that plaintiff's claims be dismissed with prejudice (doc. 41).¹ Plaintiff timely objected (doc. 42).²

On January 8, 2008, the court advised counsel that plaintiff's notice of appeal divested the court of jurisdiction over this matter and, therefore, reserved ruling on the motion for summary judgment pending action by the Court of Appeals (doc. 43). The Fifth Circuit's dismissal of the appeal for lack of jurisdiction was entered into the record on January 16, 2008 (doc. 44), at which point this court regained jurisdiction.

In his objection, plaintiff insists that he was terminated on June 14, 2006, and not on May 11, 2006, as stated in the report and recommendation. Even if that were true, it would have no bearing on the fact that there is still no evidence in the record that plaintiff has ever filed the necessary EEOC charge for purposes of his Title VII claim. As for his § 1983 and slander/defamation claims, a June 14, 2006 termination date would likewise have no bearing on the Magistrate Judge's correct conclusion that summary judgment is appropriate for legal reasons *other than* that those claims had prescribed.

¹The Magistrate Judge did not, as plaintiff suggests, "rule" on the motion currently before the court. She merely provided a report and recommendation as to how the motion should be ruled upon. This document constitutes the "ruling."

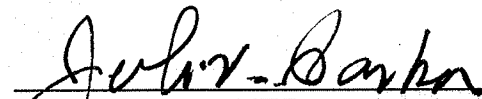
²Over one month after filing his objection, plaintiff filed a "motion for new trial" (doc. 45) and a "motion to affirm" (doc. 47). Despite being captioned as such, both contain arguments that are virtually identical to those made in the original objection. The court will therefore consider them to be untimely supplemental objections.

Having carefully considered the complaint, the record, the law applicable to this action, the Report and Recommendation of United States Magistrate Christine Noland dated November 29, 2007 (doc. 41), and plaintiff's objection thereto (doc. 42), the court hereby approves the report and recommendation of the magistrate judge and adopts it as the court's opinion herein.

CONCLUSION

Accordingly, the motion for summary judgment by defendant, Baton Rouge General Medical Center (doc. 30) is hereby **GRANTED** and the claims of plaintiff, Horace L. Cook, shall be **DISMISSED WITH PREJUDICE**. Judgment shall be entered accordingly.

Baton Rouge, Louisiana, February 1, 2008.



JOHN V. PARKER
UNITED STATES DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA