

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

CHARVETTE WILLIAMS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DAKOTA COUNTY BOARD OF )  
 COMMISSIONERS, DAKOTA COUNTY )  
 DEPARTMENT OF CORRECTIONS, )  
 RODNEY HERRON, in his official )  
 capacity and personally, COUNTY OF )  
 DAKOTA, NEBRASKA, and JAMES L. )  
 WAGNER, Dakota County Sheriff in his )  
 official capacity and personally, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

8:09CV201

MEMORANDUM AND ORDER

This matter is before the court on defendants’ motion to dismiss, Filing No. [6](#); motion for extension of time, Filing No. [9](#); appeal from the magistrate’s order, Filing No. [13](#); motion to strike amended complaint, Filing No. [21](#); and motion to strike response, Filing No. [28](#). Plaintiff brings this action alleging violations of Title VII, [42 U.S.C. § 2000e](#) *et seq.*, [42 U.S.C. § 1981](#), and [42 U.S.C. § 1983](#), against the defendants on the basis of race and gender and for retaliation. Defendants filed their motion to dismiss pursuant to [Fed. R. Civ. P. 12\(b\)](#) (1), (2), (4), (5) and (6). Thereafter, the plaintiff filed her motion requesting permission to file an amended complaint to cure the deficiencies alleged in the motion to dismiss. The magistrate judge granted the motion to amend, Filing No. 12, in a text order entry. The defendants then appealed the magistrate judge’s order, arguing that plaintiff should not be permitted to file an amended complaint. Defendants contend that the magistrate judge should not have determined that plaintiffs have a “right” to amend their complaint pursuant to [Fed. R. Civ. P. 15\(a\)](#), since the plaintiff sought leave to do so. Had

the plaintiff simply filed the amended complaint and not asked for leave, the defendants agree that plaintiff would have been permitted to file the amended complaint.

Pursuant to [28 U.S.C. § 636](#), the court has carefully reviewed the magistrate judge's text order and decision and finds it to be correct. The court finds the plaintiff is entitled to amend her complaint whether through the automatic process of [Fed. R. Civ. P. 15\(a\)](#) or through leave of court. This court would have granted plaintiff's motion in any event pursuant to [Fed. R. Civ. P. 15\(2\)](#). Accordingly, the court finds the motion to dismiss shall be denied and the appeal from the magistrate judge's order overruled.

THEREFORE, IT IS ORDERED:

1. Defendants' motion to dismiss, Filing No. [6](#), is denied.
2. The appeal from the magistrate judge's order, Filing No. [13](#), is overruled.
3. Plaintiff's motion for an extension of time, Filing No. [9](#), is denied as moot.
4. Defendants' motion to strike the amended complaint, Filing No. [21](#), is denied as moot.
5. Defendants' motion to strike the response, Filing No. [28](#), is denied as moot.
6. Defendants shall have twenty days from the date of this order to respond to plaintiff's amended complaint.

DATED this 4<sup>th</sup> day of November, 2009.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge

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