

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO: 7:12-CV-20-FL

SHERRYL LYNN JACOBS,)	
)	
Plaintiff,)	
)	
v.)	
)	
ROBESON COUNTY PUBLIC)	
LIBRARY, BOARD OF DIRECTORS)	
FOR THE ROBESON COUNTY)	
PUBLIC LIBRARY, ROBERT F.)	
FISHER, HORACE STACY, GAYLE)	
McLEAN, and TINA MELLEN-STEPP-)	
THOMAS,)	
)	
Defendants.)	
)	

**INDIVIDUAL DEFENDANTS' MEMORANDUM
OF LAW IN SUPPORT OF MOTION TO DISMISS**

INTRODUCTION

Plaintiff Sherryl Lynn Jacobs has brought this action for relief for alleged discriminatory discharge and retaliation in violation of Title I of the Americans With Disabilities Act ("ADA"), 42 U.S.C. §§ 12111-12117. As defendants, Plaintiff has named her former employer, Robeson County Public Library, as well as the Board of Directors of the Robeson County Public Library (seated from 2007-2009), and individual members of the Board of Directors, Horace Stacy, Gayle McLean, and the former Directors of the Library, Robert F. Fisher and Tina Stepp-Mellen-Thomas. The individual defendants, the unnamed Board members and Fisher, Stacy, McLean, and Mellen-Stepp-

Thomas, submit this memorandum of law in support of a motion to dismiss them because they are not employers within the meaning of the ADA, and, thus, cannot be held liable for violations of the ADA.

ARGUMENT

THE CLAIMS AGAINST DEFENDANTS FISHER, STACY, McLEAN, AND MELLEN-STEPP-THOMAS MUST BE DISMISSED BECAUSE THE INDIVIDUAL DEFENDANTS ARE NOT EMPLOYERS WITHIN THE MEANING OF THE ADA AND, THUS, THEY CANNOT BE HELD LIABLE FOR VIOLATIONS OF THE ADA.

The Fourth Circuit Court of Appeals has held that because the ADA specifically makes the remedies applicable to Title VII actions applicable to ADA employment actions, 42 U.S.C. § 12117(a), and because Title VII creates a remedy for employment discrimination by employers, but does not authorize a remedy against individuals acting on behalf of the employer for violation of its provisions, the ADA does not allow an action against individual defendants for conduct protected by the ADA. *Baird ex rel. Baird v. Rose*, 192 F.3d 462, 472 (4th Cir. 1999); *see also Lissau v. S. Food Serv., Inc.*, 159 F.3d 177, 181 (4th Cir. 1998) (joining the circuit courts holding that supervisors are not liable in their individual capacities for Title VII violations); *Birkbeck v. Marvel Lighting Corp.*, 30 F.3d 507, 511 (4th Cir. 1994) (only the employer, and not an individual supervisor, is a proper defendant under the Age Discrimination in Employment Act ["ADEA"]).

In this case, Plaintiff alleges that her former employer, Robeson County Public Library, discriminated against her and terminated her employment on account of her unspecified disability. She does not allege that the individual defendants employed her separate from her employment by the library. Rather, she asserts only that they oversaw all financial and personnel expenditures and personnel actions. (Compl. ¶ 3.) Significantly, Plaintiff does not allege that the individual defendants had an affirmative role in her treatment or her discharge, but even if she had made such an assertion, as individuals who represent her former employer as members of the Board or as Directors, the individual defendants cannot be held liable for any ADA violations alleged. Mere membership on the board of the employer or employed by the employer does not make the individual defendants employers. *See, e.g., Worman v. Farmers Co-op. Ass'n*, 4 F. Supp. 2d 1052 (D. Wyo. 1998) (individual board members of employer could not be held liable under the ADEA); *Griswold v. New Madrid County Group Practice, Inc.*, 920 F. Supp. 1046 (E.D. Mo. 1996) (same).

Because none of the individual defendants was Plaintiff's employer, none of the individual defendants can be held liable for a violation of the ADA. Accordingly, defendants Fisher, Stacy, McLean, and Mellen-Stepp-Thomas should be dismissed from this suit.

CONCLUSION

For the foregoing reasons, defendants Fisher, Stacy, McLean, and Mellen-Stepp-Thomas respectfully request that their motion to dismiss be granted in its entirety and that each of them be dismissed with prejudice.

This the 3rd day of April, 2012.

/s/ William R. Purcell, II

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Attorney for Defendants

CERTIFICATE OF SERVICE

I herby certify that a copy of the foregoing has been served upon Plaintiff by depositing a copy thereof in the United States mail, first-class, postage prepaid, addressed as follows:

Ms. Sherryl Lynn Jacobs
Post Office Box 175
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This the 3rd day of April, 2012

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