

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:17cv657-GCM

DANNIE MONTGOMERY,)	
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
THE ANSON COUNTY BOARD OF)	
EDUCATION,)	
)	
Defendant.)	
_____)	

This matter is before the Court upon Defendant’s Motion to Dismiss for Failure to Prosecute and for Sanctions, or, in the Alternative, Motion to Compel (Doc. No. 15), and upon Plaintiff’s Motion to Extend Time (Doc. No. 21). Both motions have been fully briefed and are ripe for disposition.

This the second lawsuit Plaintiff has filed against her former employer. In her first lawsuit, *Montgomery v. Anson County Bd. Of Educ.*, No. 3:16CV309 (*Montgomery I*), Plaintiff sued Defendant for failure to promote. The lawsuit was characterized by dilatory behavior on the part of the Plaintiff, resulting in an extraordinary expenditure of time and resources on the part of the Defendant as well as this Court. *Montgomery I* ended with an Order granting summary judgment in favor of the Defendant and a fee award in excess of \$100,000 granted to Defendant for attorney’s fees incurred in defending against Plaintiff’s meritless discrimination claims.

While *Montgomery I* was still pending, Defendant terminated Plaintiff’s employment based upon its finding that Plaintiff had engaged in numerous instances of serious misconduct,

including but not limited to habitual tardiness, failure to follow the directions of her principal, misuse of the Andon County Schools' email system, and flagrant abuse of the Board's substitute teacher policy. The Plaintiff responded by filing the present lawsuit on November 9, 2017, alleging that the Defendant's decision to terminate her was retaliatory.

Plaintiff sent a request for waiver of service to Defendant on February 2, 2018, and the Defendant timely answered the Complaint on April 10, 2018. The Court entered its Pretrial Order and Case Management Plan on May 8, 2018, and Defendant served its First Set of Interrogatories and Requests for Production of Documents and original Notice of Deposition via Plaintiff's then-counsel, Ms. Brown, on June 21, 2018. On that same day, Plaintiff's counsel moved to withdraw, alleging that she had been involved in an automobile accident. The motion was contested and the Court entered an Order on August 3 allowing Ms. Brown to withdraw but declining to stay the litigation. Plaintiff retained new counsel who filed a Notice of Appearance on September 25. The discovery deadline was October 15. Plaintiff now seeks to extend the discovery deadline to March 15, 2019.

Plaintiff has yet to conduct any discovery of her own, answer the Defendant's outstanding discovery requests, or appear for her deposition. While the Court does not feel that the harsh sanction of dismissal is warranted at this time, the Court will compel Plaintiff to respond to Defendant's discovery requests and appear for a deposition. Moreover, the Court will deny Plaintiff's request for an extension of the deadlines in the Pretrial Order.

IT IS THEREFORE ORDERED THAT Defendant's Motion to Dismiss for Failure to Prosecute and for Sanctions, or, in the Alternative, Motion to Compel (Doc. No. 15) is hereby granted in part and denied in part. The Court denies Defendant's Motion to Dismiss, but grants the Motion to Compel. Plaintiff is directed to respond to the Defendant's outstanding discovery

requests within fourteen (14) days, and appear for a deposition within twenty (20) days. *Failure to timely comply with this Order will result in dismissal of her claims.* Plaintiff is further directed to pay all attorney's fees and costs incurred by Defendant resulting from her failure to appear for her deposition. Defendant is directed to submit an affidavit detailing such costs within seven (7) days.

IT IS FURTHER ORDERED THAT Plaintiff's Motion to Extend Time (Doc. No. 21) is hereby denied except that the Court will extend the mediation deadline to December 31, 2018.

Signed: November 20, 2018

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

