

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

KEITH LITTLE,

Plaintiff,

vs.

Civil Action 2:09-CV-190  
Judge Frost  
Magistrate Judge King

NATIONWIDE CHILDREN'S HOSPITAL,

Defendant.

OPINION AND ORDER

This is an employment action in which plaintiff alleges that defendant permitted its employees to threaten and harass plaintiff, that defendant made no effort to accommodate plaintiff's disability, that defendant divulged plaintiff's personal information to his co-workers and that defendant manipulated plaintiff's work schedule to cause further emotional and physical duress. This matter is now before the Court on plaintiff's *Motion to Amend the Complaint*, Doc. No. 29 [hereinafter "*Motion to Amend*"], and on plaintiff's *Motion for Leave to File a Complaint against Nationwide Children's Hospital*, Doc. No. 31, in which plaintiff appears to complain about defendant's response to plaintiff's request for production of documents [hereinafter "*Motion to Compel*"].

*Motion to Amend*

Rule 15(a) of the Federal Rules of Civil Procedure provides that "[t]he court should freely give leave [to amend] when justice so requires." F.R. Civ. P. 15(a)(2). "[T]he thrust of Rule 15 is to reinforce the principle that cases 'should be tried on their merits rather than the technicalities of pleadings.'" *Moore v. City of Paducah*, 790 F.2d 557, 559

(6<sup>th</sup> Cir. 1986) quoting *Tefft v. Seward*, 689 F.2d 637, 639 (6<sup>th</sup> Cir. 1982). However, leave to amend is properly denied where the claim sought to be asserted by the amendment would not survive a motion to dismiss. *Kottmyer v. Maas*, 436 F.3d 684, 692 (6<sup>th</sup> Cir. 2006) ("A district court may deny a plaintiff leave to amend his or her complaint. . . when the proposed amendment would be futile.")

In his *Motion to Amend*, plaintiff asks that he be permitted to assert claims of race and gender discrimination under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5. Defendant does not object, in theory, to plaintiff's motion as it relates to a claim of race discrimination, but does object to the assertion of a claim of gender discrimination. *Defendant's Memorandum in Partial Opposition to Plaintiff's Motion to Amend Complaint*, Doc. No. 30 [hereinafter "*Memorandum contra Motion to Amend*"]. In this regard, defendant notes that plaintiff included allegations of race and disability discrimination in an administrative charge filed with the EEOC, but made no allegation of gender discrimination in his administrative charge. *Id.*, *Exhibit A*. Plaintiff has not filed a reply in support of this motion.

A plaintiff wishing to file a lawsuit under Title VII must first file a charge of employment discrimination with the EEOC and receive the statutory notice of the right to sue. 42 U.S.C. §2000e-5(f)(1). In determining whether a plaintiff - particularly a *pro se* plaintiff - has met this prerequisite to suit, a court should construe the administrative complaint liberally so as "to encompass all charges reasonably expected to grow out of the charge of discrimination." *Haithcock v. Frank*, 958, 671, 675 (6<sup>th</sup> Cir. 1992). In filing his administrative charge, plaintiff utilized a standard EEOC form on which he checked the boxes relating to "race" and "disability" discrimination. *Memorandum contra Motion to Amend, Exhibit A*.

Although the form also provided a box relating to "sex" discrimination, plaintiff did not check that box. *Id.* Moreover, a claim of sex or gender discrimination cannot reasonably be expected to grow out of a charge of race and disability discrimination. Under these circumstances, the Court concludes that, because plaintiff did not exhaust his administrative remedies with respect to a claim of gender discrimination under Title VII, such a claim would be properly dismissed. It follows, then, that - as it relates to a claim of gender discrimination - plaintiff's *Motion to Amend* would be futile and is therefore without merit. As it relates to a claim of race discrimination, however, plaintiff's motion is meritorious.

*Motion to Compel*

Plaintiff apparently requested production of "all memos between the hospital's administration or staff regarding any disciplinary actions against Plaintiff between 1995 - 2008." *Motion to Compel*, p. 1. In his *Motion to Compel*, plaintiff appears to complain that defendant objected to this discovery request as "too vague and unduly burdensome." *Id.* However, it appears that defendant has nevertheless produced all documents responsive to plaintiff's request. *Memorandum in Opposition to Plaintiff's Motion to File a Complaint against Nationwide Children's Hospital*, Doc. No. 32.<sup>1</sup> Plaintiff does not offer any basis for concluding that defendant has failed to meet its discovery obligations in this case. His *Motion to Compel* is therefore without merit.

**WHEREUPON** plaintiff's *Motion to Amend*, Doc. No. 29, is **GRANTED** in part and **DENIED** in part. To the extent that plaintiff seeks leave to

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<sup>1</sup>In fact, it appears that defendant even produced - albeit inadvertently - at least one document protected by the attorney client privilege from disclosure to plaintiff. *Motion to Compel*, Exhibit A.

assert a claim of race discrimination under Title VII, the motion is **GRANTED**; to the extent that plaintiff seeks leave to assert a claim of gender discrimination under Title VII, the motion is **DENIED**. Plaintiff is **DIRECTED** to file his amended complaint, consistent with this *Opinion and Order*, within ten (10) days. Plaintiff's *Motion to Compel*, Doc. No. 31, is **DENIED**.

May 10, 2010

s/Norah McCann King  
Norah M<sup>c</sup>Cann King  
United States Magistrate Judge