

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

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|------------------------|---|------------------------|
| ANNELISE BRIGHT, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. CIV-16-1188-M |
| |) | |
| UNIVERSITY OF OKLAHOMA |) | |
| BOARD OF REGENTS, |) | |
| |) | |
| Defendant. |) | |

ORDER

Before the Court is defendant’s Motion to Dismiss, filed October 20, 2016. On February 23, 2017, plaintiff, who is proceeding *pro se*, filed her response, and on March 2, 2017, defendant filed its reply.

On September 20, 2016, plaintiff filed this action in the District Court of Cleveland County, State of Oklahoma. In her Petition, plaintiff appears to be asserting a cause of action for discrimination and retaliation in violation of the Americans with Disabilities Act of 1990 (“ADA”) and a cause of action for libel. On October 13, 2016, defendant removed this action to this Court. Defendant now moves to dismiss plaintiff’s Petition pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6).

Defendant asserts, in part, that plaintiff’s ADA cause of action should be dismissed because defendant is entitled to sovereign immunity under the Eleventh Amendment. The United States Supreme Court has held that suits brought against a state or its entities to recover money damages under Title I of the ADA are barred by the Eleventh Amendment. *See Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 360 (2001). Since defendant is an entity of the State of Oklahoma,

the Court finds that plaintiff's ADA claim, which is seeking money damages under Title I, is barred by the Eleventh Amendment and should be dismissed.¹

Further, defendant asserts, in part, that because plaintiff failed to exhaust or allege exhaustion of her administrative remedies, plaintiff's libel claim should be dismissed. Tort claims against the State of Oklahoma and its political subdivisions are governed by the Oklahoma Governmental Tort Claims Act ("OGTCA"). *See* Okla. Stat. tit. 51, § 153. The OGTCA provides, in pertinent part:

A. Any person having a claim against the state or a political subdivision within the scope of Section 151 et seq. of this title shall present a claim to the state or political subdivision for any appropriate relief including the award of money damages.

B. Except as provided in subsection H of this section, and notwithstanding any other provision of law, claims against the state or a political subdivision are to be presented within one (1) year of the date the loss occurs. A claim against the state or a political subdivision shall be forever barred unless notice thereof is presented within one (1) year after the loss occurs.

Okla. Stat. tit. 51, § 156(A), (B).

Having carefully reviewed plaintiff's Petition, as well as her response to defendant's motion to dismiss, the Court finds that plaintiff's libel claim should be dismissed. Specifically, the Court finds that plaintiff's libel claim is governed by the OGTCA. The Court further finds that plaintiff has not alleged that she presented any tort claim to defendant as required under the OGTCA. Accordingly, the Court finds that plaintiff's libel claim should be dismissed for failure to exhaust administrative remedies.

¹ The Court would note that defendant's removal of this action does not act as a waiver of defendant's immunity from liability, but only acts as a waiver of defendant's immunity from suit in federal court. *See Trant v. Okla.*, 754 F.3d 1158, 1173 (10th Cir. 2014) ("we recognize that a state may waive its immunity from suit in a federal forum while retaining its immunity from liability.").

Accordingly, for the reasons set forth above, the Court GRANTS defendant's Motion to Dismiss [docket no. 5] and DISMISSES this action.

IT IS SO ORDERED this 4th day of April, 2017.


VICKI MILES-LAGRANGE
UNITED STATES DISTRICT JUDGE