



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

PHYLLIS A. WILSON,
Plaintiff,

vs.

JOHN A. CLOYD, Assessor Richland
County; ELIZABETH MCDONALD,
Deputy Assessor Richland County,
Defendants.

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CIVIL ACTION NO. 3:15-01391-MGL

ORDER ADOPTING THE REPORT AND RECOMMENDATION,
GRANTING DEFENDANTS’ MOTIONS TO DISMISS, AND GRANTING
PLAINTIFF’S MOTION FOR LEAVE TO AMEND HER COMPLAINT

This case was filed pursuant to Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e, *et seq.*, and the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621, *et seq.* Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the Court grant Defendant Cloyd’s Motion to Dismiss and Defendant McDonald’s Motion to Dismiss and Substitute Parties. The Magistrate Judge also recommends that the Court grant Plaintiff twenty-one (21) days from the issuance of this Order to file an Amended Complaint naming Richland County as the proper defendant in this case. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court.

Mathews v. Weber, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on August 25, 2015, and the Clerk of Court entered Plaintiff's objections on September 11, 2015. Defendants then replied to Plaintiff's objections on September 21, 2015. The Court has reviewed the objections to the Report, but finds them to be without merit. Therefore, it will grant the parties' motions accordingly.

In Plaintiff's objections, she makes no specific objections to the Report. Instead, she generally reiterates claims that the Magistrate Judge has already considered and rejected. Because the Court agrees with the Magistrate Judge's treatment of those issues, it need not discuss them again here. Therefore, it will overrule Plaintiff's objections.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report to the extent it does not contradict this Order and incorporates it herein. Therefore, it is the judgment of the Court that Defendant Cloyd's Motion to Dismiss and Defendant McDonald's Motion to Dismiss and Substitute Parties are **GRANTED**.

On September 16, 2015, Plaintiff also filed a Motion to Amend her Complaint, and Defendants filed a Response in Support of Plaintiff's Motion to Amend her Complaint on September 21, 2015. After reviewing Plaintiff's Motion to Amend her Complaint and Defendants' Response in Support, it is also the judgment of the Court that Plaintiff's Motion to Amend her Complaint is **GRANTED**.

To be clear, Plaintiff's Motion to Amend her Complaint (ECF No. 39) by itself is insufficient to amend her complaint. Plaintiff shall have twenty-one (21) days from the issuance of this Order to file an Amended Complaint naming Richland County as the proper defendant in this case. Plaintiff must concurrently submit a summons and form USM-285 for Richland County to the Court.

Plaintiff initially sued Defendants in their individual capacities. Plaintiff may amend her complaint to sue Defendants Cloyd and McDonald in their official capacities as well. *See Birkbeck v. Marvel Lighting Corp.*, 30 F.3d 507, 510 (4th Cir. 1994) (citing *Harvey v. Blake*, 913 F.2d 226, 227-28 (5th Cir. 1990)).

Defense counsel shall advise the Court, in writing within fourteen (14) days from the date of this Order, whether they are authorized to accept service for Richland County. If counsel notifies the Court that they are not so authorized, a separate order shall be entered directing the United States Marshal to effect service on Richland County on Plaintiff's behalf as she is proceeding in forma pauperis in this case.

IT IS SO ORDERED.

Signed this 24th day of September, 2015, in Columbia, South Carolina.

s/ Mary Geiger Lewis

MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.