

United States District Court
Southern District of Texas

ENTERED

March 28, 2017

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

PATRICIA ORTIZ-SORNSON,

Plaintiff,

VS.

RHONDA MCDONALD, et al,

Defendants.

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CIVIL ACTION NO. 4:16-CV-174

ORDER PARTIALLY ADOPTING REPORT AND RECOMMENDATION

Before the Court is Defendants’ Motion to Dismiss Pursuant to Rules 12(b)(2), 12(b)(4), and 12(b)(5). (Doc. No. 23.) On February 23, 2017, United States Magistrate Judge Dena Hanovice Palermo issued a Report and Recommendation (“R & R”) recommending that the motion be denied; the returns of service for Defendants Marlene Hollier, Rhonda McDonald, Steven B. Schnee, and the Harris Center¹ be quashed; and that the Court grant Plaintiff 21 days from the adoption of the R & R to effectuate proper service on Defendants. (Doc. No. 27.)

In addition, Judge Palermo recommended *sua sponte* the dismissal of the following claims for failure to state a claim upon which relief can be granted: the § 1981 discrimination claim against the Harris Center, Hollier, and Schnee; the § 1981 retaliation claim against Hollier, McDonald, Schnee, and the Harris Center; the Family and Medical Leave Act (FMLA) interference and retaliation claims against Schnee and Hollier; the intentional infliction of emotional distress claim against Hollier, McDonald, Schnee, and the Harris Center. *Id.* Judge Palermo recommended that Plaintiff be granted leave to amend to re-plead her § 1981 and

¹ Plaintiff named as a defendant the Mental Health Mental Retardation Agency of Harris County, Texas, now known as the Harris Center for Mental Health and IDD. The Court follows Judge Palermo’s R & R in referring to this Defendant as “the Harris Center.”

FMLA claims within 21 days of the adoption of the R & R. *Id.*

Defendants filed objections to the R & R on March 9, 2017. (Doc. No. 28.)² Defendants do not object to the portions of the R & R pertaining to Defendants' claim of improper service. Therefore, pursuant to Federal Rule of Civil Procedure 72(b), the Court reviews those recommendations for clear error. Finding no clear error, the Court **ADOPTS** the portions of the R & R pertaining to improper service. It is therefore **ORDERED** that the Motion to Dismiss is denied; the returns of service for Defendants Marlene Hollier, Rhonda McDonald, Steven B. Schnee, and the Harris Center are quashed; and Plaintiff has 21 days to effectuate proper service on Defendants.

Defendants object to some of the *sua sponte* recommendations in the R & R. (Doc. No. 28 at 3.) Because the Complaint was not served properly, the Court declines to adopt the *sua sponte* recommendations regarding individual claims.

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this the 28th day of March, 2017.



HON. KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

² Plaintiff filed neither objections to the R & R nor a response to Defendants' objections.