
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

EDITH BARKER,

Plaintiff,

v.

AMANDA SMITH, BRAD JOHNSON,
SCOTT BAIRD, SCOTT ANDERSON,
RUSTY LUNDBERG, CRAIG JONES,
PHIL GOBLE and GARY HERBERT;

Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 1:18-cv-00068-DB-CMR

District Judge Dee Benson

Magistrate Judge Cecilia M. Romero

Before the court is the Report and Recommendation issued by Magistrate Judge Cecilia M. Romero, dated February 13, 2020. (Dkt. No. 44.) In this Report and Recommendation, Magistrate Judge Romero recommends that the court dismiss this action. The parties were notified of their right to file objections to the Report and Recommendation within 14 days of service pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Ms. Barker objected to the Report and Recommendation on March 16, 2020. (Dkt. No. 49.) Defendants responded to Ms. Barker's Objection on April 3, 2020. (Dkt. No. 52.)

Ms. Barker's First Amended Complaint (Dkt. No. 30) asserts three causes of action: (1) Violation of Title VII; (2) Violation of the Americans with Disabilities Act ("ADA"); and (3) Violation of Civil Rights under 42 U.S.C. § 1983. She names Governor Gary Herbert as a defendant, along with seven other individual defendants, each of whom is employed by the State of Utah: Scott Anderson, Scott Baird, Phil Goble, Brad Johnson, Craig Jones, Rusty Lundberg, and Amanda Smith. In the Report and Recommendation, Magistrate Judge Romero concluded that Ms. Barker's Title VII and ADA claims should be dismissed with prejudice because the First Amended Complaint includes only individual Defendants. Title VII and the ADA only provide

for causes of action against a plaintiff's employer. While these Defendants may have been Ms. Barker's supervisors or managers, they were not her employer.

Magistrate Judge Romero also recommended that Ms. Barker's § 1983 claim be dismissed without prejudice for failing to state a plausible claim for relief. Specifically, Magistrate Judge Romero found that Ms. Barker's Amended Complaint lacked sufficient factual allegations of the personal involvement, causation, and state of mind to tie any of the Defendants to Ms. Barker's alleged harm. Magistrate Judge Romero further found that Ms. Barker's § 1983 claim warranted dismissal for being entirely duplicative of the claims asserted in Case No. 1:18-cv-00061.

The court has performed a de novo review of the record that was before the magistrate judge and the reasoning set forth in her Report and Recommendation. Having carefully reviewed the record, as well as the arguments set forth in Ms. Barker's Objection, the court agrees with the reasoning and assessment of Magistrate Judge Romero. Accordingly, the court finds that the analysis and conclusion of the magistrate judge are correct, and the Report and Recommendation will be adopted. Plaintiff's Objection is therefore overruled.

For the foregoing reasons, it is hereby ORDERED that the Report and Recommendation (Dkt. No. 44) is ADOPTED, and this action is DISMISSED. Plaintiff's Motion to Consolidate this case (Dkt. No. 49) is DISMISSED as moot.

DATED this 15th day of June, 2020.

BY THE COURT:

A handwritten signature in black ink that reads "Dee Benson". The signature is written in a cursive style and is positioned above a horizontal line.

DEE BENSON
United States District Judge