

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 9, 2010

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP2203

Cir. Ct. No. 2008CV15155

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

THERESA GARNER,

PLAINTIFF-APPELLANT,

v.

**STATE OF WISCONSIN, UNIVERSITY OF WISCONSIN-MILWAUKEE,
UNIVERSITY OF WISCONSIN SYSTEM, UNIVERSITY OF WISCONSIN
SYSTEM ADMINISTRATION, JOELY B. URDAN, SHANNON E.
BRADBURY, BRENDA SEDMAK, ALAN CRIST, JASON BEIER,
SANDRA D. HUMES, AMY R. WATSON AND DIANE LUND,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order and a judgment of the circuit court for Milwaukee County: WILLIAM SOSNAY, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Theresa Garner appeals the circuit court's order and judgment dismissing her action against the State of Wisconsin, the University

of Wisconsin-Milwaukee, the University of Wisconsin System, the University of Wisconsin System Administration, Joely B. Urdan, Shannon E. Bradbury, Brenda Sedmak, Alan Crist, Jason Beier, Sandra D. Humes, Amy R. Watson and Diane Lund. Garner argues: (1) that the defendants violated her rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e; (2) that the defendants violated the Wisconsin Fair Employment Act, WIS. STAT. § 111.322; (3) that the defendants violated the Open Records Law, WIS. STAT. § 19.37; (4) that the defendants refused to comply with the Freedom of Information Act, 5 U.S.C. § 552; (5) that the defendants violated WIS. STAT. § 103.13; and (6) that the defendants defamed her. We affirm.

¶2 Garner first argues the defendants retaliated against her by refusing to rehire her in violation of Title VII of the Civil Rights Act of 1964. *See* 42 U.S.C. § 2000e. Garner has failed to name any defendants against whom a claim under Title VII may be brought. Garner's Title VII claim against the individual defendants fails because Title VII does not provide for individual liability of employees within an organization; it holds the employer liable. *See United States Equal Emp't Opportunity Comm'n v. AIC Sec. Investigations*, 55 F.3d 1276, 1280–1282 (7th Cir. 1995). Garner's Title VII claim against the University of Wisconsin-Milwaukee, the University of Wisconsin System, and the University of Wisconsin System Administration fails because the Wisconsin statutes designate the Board of Regents of the University of Wisconsin System as the employer for persons working in the University of Wisconsin System or at any of its campuses, and thus the Board of Regents is the entity subject to suit. *See* WIS. STAT. §§ 36.07 and 36.09(1)(e). Garner may not sue the State of Wisconsin under Title VII here since the Board of Regents, not the State, was Garner's employer. The circuit court properly dismissed this claim.

¶3 Garner argues that the defendants “thwarted [her] efforts to enforce her employment rights” in violation of the Wisconsin Fair Employment Act, WIS. STAT. § 111.322(2m) (“[I]t is an act of employment discrimination to ... discriminate against any individual because ... [t]he individual files a complaint or attempts to enforce any right under ... [WIS. STAT. §]103.13.”). Garner has not adequately developed this argument. *See Roehl v. American Family Mut. Ins. Co.*, 222 Wis. 2d 136, 149, 585 N.W.2d 893, 898 (Ct. App. 1998) (we will not consider inadequately developed arguments). Moreover, she now appears to disclaim that she wishes to pursue a claim under the Wisconsin Fair Employment Act. The Wisconsin Fair Employment Act “is not designed to create a private cause of action” where there are adequate remedies in proceedings before an administrative agency. *See Bachand v. Connecticut Gen. Life Ins. Co.*, 101 Wis. 2d 617, 627, 305 N.W.2d 149, 153 (Ct. App. 1981). Thus, Garner is not entitled to relief under the Wisconsin Fair Employment Act.

¶4 Garner argues that the defendants violated the Open Records Law. An action under the Open Records Law must be commenced by petition for writ of *mandamus*. *See* WIS. STAT. § 19.37; *see also Newspapers, Inc. v. Breier*, 89 Wis. 2d 417, 440, 279 N.W.2d 179, 190 (1979). Garner did not file a petition for writ of *mandamus* under § 19.37 asserting a violation of the Open Records Law. Garner failed to properly commence an action asserting this claim. Thus, she has not stated a claim on which relief may be granted.

¶5 Garner contends that the defendants refused to comply with the Freedom of Information Act, 5 U.S.C. § 552. The Freedom of Information Act applies only to federal agencies; it does not apply to state agencies. *Grand Central P’ship, Inc. v. Cuomo*, 166 F.3d 473, 484 (2nd Cir. 1999). The circuit court properly dismissed Garner’s claim against the defendants for allegedly

violating the Freedom of Information Act because the defendants are not federal agencies.

¶6 Garner argues that the defendants violated WIS. STAT. § 103.13 by refusing to remove documents from her personnel file at her request. That statute does not vest an employee with a private remedy against an employer; the penalty for violating the statute is a forfeiture enforceable by an action in the name of the State. Section 103.13(8) (“Any employer who violates this section may be fined not less than \$10 nor more than \$100 for each violation. Each day of refusal or failure to comply ... is a separate violation.”). Since Garner has no enforceable private remedy for the alleged actions of the defendants, the circuit court properly dismissed this claim.

¶7 Finally, Garner argues that the defendants defamed her by informing the Equal Employment Opportunity Commission Investigator Wendy Martin and Intake Supervisor Marian Drew that she “was terminated” and had “several performance deficiencies.” A defamatory communication is a false statement communicated by speech, conduct, or in writing that “tends to harm one’s reputation so as to lower him or her in the estimation of the community or to deter third persons from associating or dealing with him or her.” *Torgerson v. Journal/Sentinel, Inc.*, 210 Wis. 2d 524, 534, 563 N.W.2d 472, 477 (1997) (citation omitted). The defendants provided the allegedly defamatory statements as part of the Equal Employment Opportunity Commission’s investigation of Garner’s claims. The Commission keeps information provided to it in the course of an investigation in strict confidence. *See* 42 U.S.C. § 2000e–8(e). The allegedly defamatory statements were made as part of a confidential investigation, and there is no allegation that confidentiality was breached. Thus, there is no way the statements could have harmed Garner’s reputation “so as to lower ... her in the

estimation of the community or deter third persons from associating or dealing with ... her” because the statements were not known to the public. The circuit court properly dismissed Garner’s defamation claim.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

