

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

PAULA HAYS,

Plaintiff,

v.

No. 09-01254-egb

HENDERSON COUNTY, BRIAN DUKE,
Individually and in his official capacity as Sheriff of
Henderson County, LEILANA MURPHY and
RANDALL BLANKENSHIP,

Defendants.

ORDER GRANTING SUMMARY JUDGMENT

Before the Court is Defendants' Motion to Dismiss and/or Summary Judgment pursuant to Rules 12 and 56 of the Federal Rules of Civil Procedure [D.E.13] and Plaintiff's response in opposition [D.E.15]. Because the Court finds that Plaintiff's claims are barred by the one year statute of limitations and equitable tolling does not apply, the Court GRANTS Defendants' Motion for Summary Judgment.

FACTUAL BACKGROUND

Plaintiff Paula Hays ("Plaintiff") was employed as a correctional officer with the Henderson County Sheriff's Department during the relevant time, until she was terminated on May 9, 2008. Brian Duke ("Duke") is the Sheriff of Henderson County, Tennessee. Leilani Murphy ("Murphy") is the Henderson County Jail Administrator and Randall Blankenship ("Blankenship") is the Chief Deputy of the Henderson County

Sheriff's Office. While the style of this case does not reflect it, both Murphy and Blankenship, as noted within the Complaint, are sued individually and in their official capacity.

According to Plaintiff, she and another deputy complained of various matters relating to the operation of the jail, which they believed were violations of both federal and state laws. On May 2, 2008, Plaintiff was accused of using drugs and was instructed to take a urine drug screen. She complied with the testing at the jail and was informed by Blankenship that she had failed the drug screen for methamphetamine. At Plaintiff's request, Murphy carried her to the local hospital for a blood test to screen for drugs. According to Plaintiff, Murphy requested the hospital test results be sent to her (Murphy) only, and that Murphy, on May 9, 2008, told Plaintiff she was terminated.¹ Plaintiff states that despite her requests, she was not informed of the drug test results until March 2009 [D.E.21]. It was then she first "discovered" the hospital drug test was negative.

In Defendant's Statement of Undisputed Facts [D.E.13-2], it is noted that Plaintiff, through her then attorney Mr. Bede Anyanwu, filed suit in the Henderson County Circuit Court [D.E.13-3] against the Henderson County Sheriff's Department, based upon her May 9, 2008 termination. The case was filed May 6, 2009, three (3) days prior to the expiration of the applicable statute of limitations. It was then involuntarily dismissed on September 14, 2009, by state court order styled Order of Involuntary Dismissal on Behalf of the Defendant, Henderson County, Tennessee [D.E.13-4]. Her attorney signed this order, approving its entry. It appears to the Court that this order was

¹ While Plaintiff attempts to claim that her termination date was unclear, as set forth *infra*, she has sworn to the May 9, 2008 termination date in her Complaint in a previous lawsuit filed in May 2009.

final, with no appeal of this dismissal taken (because there is no indication otherwise in the present record).

Plaintiff now brings a 42 U.S.C. § 1983 claim against all Defendants alleging that she was retaliated against for exercising her right of free speech. In addition, Plaintiff claims that the Defendants have violated the whistleblower provisions of the Tennessee Public Protection Act (“TPPA”), Tenn. Code Ann. § 50-1-301, for terminating her for her alleged refusal to remain silent about alleged illegal activities. Plaintiff also asserts an intentional infliction of emotional distress claim against Defendant Murphy as well as negligent infliction of emotional distress claims against the individual defendants. Additionally, Plaintiff brings a claim pursuant to the Tennessee Governmental Tort Liability Act (“GTLA”), Tenn. Code Ann. § 29-20-201 *et seq.* against Defendant Henderson County and a negligent misrepresentation claim against Defendant Duke.

Defendants have filed the present Motion seeking dismissal and/or summary judgment on the grounds of (1) expiration of the statute of limitations (2) *res judicata*/collateral estoppel from re-litigating the same issues adjudicated in the previous state lawsuit and (3) individual immunity provided by the Tennessee Governmental Tort Liability Act. Plaintiff’s response in opposition argues that Defendants fail to meet the legal standards of either a Rule 12 motion to dismiss or a Rule 56 summary judgment motion [D.E. 15]. Plaintiff further raises the doctrine of equitable estoppel to oppose the Defendants’ statute of limitations defense.

STANDARD OF REVIEW

In evaluating a motion to dismiss for failure to state a claim, the court must construe the complaint in the light most favorable to the plaintiff and accept all factual

allegations as true. *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957). While the complaint “does not need detailed factual allegations,” the plaintiff must supply “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do Factual allegations must be enough to raise a right to relief above the speculative level” *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007). The complaint must allege “enough facts to state a claim for relief that is plausible on its face.” *Id.* at 1974; *see also Gazette v. City of Pontiac*, 41 F.3d 1061, 1064 (6th Cir. 1994) (ruling a complaint need not detail all the particularities of plaintiff’s claim, but must give defendant fair notice of the claim and the grounds upon which it rests).

Regarding a motion for summary judgment, Federal Rule of Civil Procedure 56(c) states that a “judgment sought should be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party; if the evidence is merely colorable or is not significantly probative, summary judgment may be granted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). When ruling on a motion for summary judgment, mere existence of a scintilla of evidence in support of the plaintiff’s position will not be sufficient; there must be evidence on which the jury could reasonably find for the plaintiff. *Id.*

Federal Rule of Civil Procedure 56(e) states that, “when a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party’s pleading, but the adverse

party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." Rule 56(e) requires the opposing party to go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

The Court is treating this motion as one for summary judgment. Federal Rule of Civil Procedure 12(d) provides that when matters outside the pleadings are presented, a motion filed under Rule 12(b)(6) should be treated as one for summary judgment. Here, such matters were presented, including, but not limited to, a Statement of Undisputed Facts [D.E.13-2].

ANALYSIS

All actions brought under 42 U.S.C. § 1983 are subject to a state's statute of limitations for personal injuries. *See Wilson v. Garcia*, 471 U.S. 261, 268-79 (1985). In Tennessee, the statute of limitations for personal injuries is one year. *See TENN. CODE ANN. § 28-3-104*. The one-year statute of limitations also applies to Plaintiff's claim brought pursuant to the TPPA, § 50-1-301 (which includes Plaintiff's claim based on the "Tennessee Whistleblower Act," cited as § 50-1-304 in the Complaint), and to claims brought pursuant to the GTLA, § 29-20-201 *et seq.* Thus, all of the claims raised in the present lawsuit have a one-year statute of limitations which expired prior to the filing of this lawsuit.

Plaintiff acknowledges this statute of limitations defense, but raises equitable tolling in response. Plaintiff argues, "Tennessee's tolling principles, including equitable

estoppel, are available to the Plaintiff to protect both her state and federal law claims” [D.E.15-1 at 4]. She correctly states that to establish entitlement to equitable estoppel, a plaintiff must demonstrate that the defendant has taken affirmative steps to hide or conceal information necessary to make his or her claim. *See e.g., Fahner v. SW Mfg., Inc.*, 48 S.W.3d 141 (Tenn. 2001); *Lusk v. Consol. Aluminum Corp.*, 655 S.W.2d 917 (Tenn. 1983). To successfully assert the doctrine of equitable estoppel, Plaintiff must show that (1) the defendants knew or should have known that its conduct would induce the plaintiff to delay filing suit; (2) the plaintiff’s reliance on this conduct was reasonable; (3) the plaintiff’s delay was not unreasonable or due to a lack of diligence. *Hardcastle v. Harris*, 170 S.W.3d 67, 85 (Tenn. Ct. App. 2004); *see also Cook v. Brandt*, No. 1:07-CV-169, 2008 WL 833205, at *6 (E.D. Tenn. Mar. 27, 2008).

In the present case, Plaintiff alleges that Defendants concealed the hospital drug test results from her for some ten (10) months, until March 2009, and that Defendants knew or should have known that failure and/or refusal to provide this information would delay or prevent the filing of a lawsuit. Plaintiff also states that without knowledge of the results, she was left to believe she tested positive for drugs, and was validly terminated. Finally, Plaintiff claims that despite her attempts, “she was unable to procure the test results from the testing facility directly. Further, she repeatedly requested the test results from Defendant Duke, but was denied until March 2009.”

In this case, Plaintiff has failed to establish any of the three elements of equitable estoppel. First, Plaintiff fails to establish that Defendants knew or should have known that not providing her with the blood test results for ten months would induce the plaintiff to delay filing suit. Plaintiff claims that as a result of this conduct “she was left to believe

she tested positive for drugs, and was validly terminated.” However, it is reasonable for an employer to believe that an innocent employee accused of failing a drug test would know of his or her innocence without having a copy of the test results, and would not be led to believe otherwise if the employee had not used drugs.

Plaintiff has likewise failed to establish that her reliance on the Defendants’ conduct was reasonable. It is certainly not reasonable for an employee to come to the conclusion that he or she tested positive for drugs based on a drug test when the employee maintains innocence. Nor was Plaintiff reasonable in sitting on her rights and failing to pursue her innocence more actively. Rather, she assumed for ten months her “positive” drug test was correct and simply made requests to the Sherriff’s Department and the local hospital for the test results and now claims that she “was forced to rely on the only information she had.” Plaintiff’s continued reliance on Defendants to furnish this information, as month after month passed, likewise was not reasonable. And during this entire time, Plaintiff had every right to access her own medical records at the local hospital where she had requested the blood screen test be administered. In the context of her claims, this inaction on her part was not reasonable.

The Court also finds that Plaintiff’s delay in filing suit was not reasonable and was due to a lack of diligence. As Plaintiff notes, “[i]t is well settled in Tennessee that an employer or its insurer may be estopped to rely upon the one year statute of limitations for filing of a worker’s compensation claim if Plaintiff/Employee justifiably relies upon a misrepresentation or concealment of a material fact on the part of the employer which results in failure to file suit within the one year period of limitations.” *Fahrner v. SW Mfg., Inc.*, 48 S.W.3d 141, 145 (Tenn. 2001) (emphasis added). Here, Plaintiff did file

suit within one year of her claim accruing. Her state court action was filed on May 6, 2009. This was three (3) days before the statute of limitations expired on her claims, which had first accrued on May 9, 2008. Furthermore, there can be no question as to this accrual date, for in paragraph 13 of her state complaint, Plaintiff states, “That on May 9, 2008, Hays was dismissed from her employment with a letter of termination stating that Hays was terminated for testing positive for illicit drugs.” Plaintiff even took oath before a notary public as to the truthfulness of the statements in her complaint. Notwithstanding Plaintiff’s ten-month failure to go beyond mere “requests” for the test results, the Court cannot ignore that she still had sufficient time to hire an attorney and to file her lawsuit in the state court within the two months running up to the expiration of the one-year statute of limitations. Thus she clearly had sufficient time to file this suit in federal court, had she chosen to do so.

Because Plaintiff has failed to establish that the doctrine of equitable estoppel applies, the Court finds that the statute of limitations on her claims has run and her claims are time-barred. Defendants’ Motion is therefore GRANTED. Consequently, the Court need not address Defendants’ remaining defenses.

IT IS SO ORDERED.

s/Edward G. Bryant
EDWARD G. BRYANT
UNITED STATES MAGISTRATE JUDGE

Date: **June 9, 2010**