

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

TERESA P. ERVIN,

Plaintiff,

v.

Case No. 2:11-cv-02905-STA-cgc

**COLES INC. OF RIPLEY d/b/a
COLE'S HOME SOLUTIONS, and
COLD LUMBER COMPANY d/b/a
COLE'S HOME SOLUTIONS,**

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT

Before the Court is Plaintiff's Motion for Leave to Amend Complaint. (Docket Entry "D.E." #14). The instant motion was referred to United States Magistrate Judge Charmiane G. Claxton. (D.E. #19). For the reasons set forth herein, Plaintiff's Motion is hereby GRANTED.

I. Introduction

On October 13, 2011, Plaintiff filed her Complaint against Defendants Cole Inc. of Ripley d/b/a Cole's Home Solutions and Cole Lumber Company d/b/a Cole's Home Solutions for sexual harassment, hostile work environment, intentional discrimination, and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* Plaintiff's Complaint alleged, *inter alia*, that "Defendant's unlawful actions complained of were intentional, malicious and taken in reckless disregard of the rights of Plaintiff." (Compl. ¶ 24; Pl.'s Mot. to Amend ¶ 5). The parties agreed to a Rule 16(b) Scheduling Order setting the deadline for amending pleadings at February

6, 2012, and the Scheduling Order was approved and entered by the Court on December 5, 2011.

On December 19, 2011, Plaintiff served her First Interrogatories on Defendants, including a request for the “the full and complete name of the legal entity that employed Plaintiff.” (Pl.’s Mot. to Amend ¶ 1). On or about January 26, 2012, Defendants responded that Plaintiff was employed by Cole Cabinet & Construction Co., Inc., d/b/a Cole’s Home Solutions. (Pl.’s Mot. to Amend ¶ 3). Further discovery indicated that Defendant informed the Equal Employment Opportunity Commission that Plaintiff was employed by Cole Holdings, Inc., which owned Cole’s Home Solutions. (Pl.’s Mot. to Amend ¶ 4). Other documents produced during discovery indicated that Plaintiff received insurance benefits from Cole Lumber Company, Inc. and that Defendants claimed Cole Lumber Company was Plaintiff’s employer to the Tennessee Department of Labor and Workforce Development. (Pl.’s Mot. to Amend ¶ 4).

On February 12, 2012, Plaintiff filed a Motion for Leave to Amend Complaint (D.E. #12), which sought to substitute the proper Defendants based upon the discovery received. Defendants did not oppose the motion. On February 14, 2012, Plaintiff filed a Notice Withdrawing its February 12, 2012 Motion for Leave to Amend Complaint. (D.E. #13). Also on February 14, 2012, Plaintiff filed the instant Motion for Leave to Amend Complaint, which sought to substitute the proper Defendants based upon the discovery received and also sought to add a claim for punitive damages. Defendants continue not to oppose the substitution of the proper Defendants; however, Defendants do oppose permitting Plaintiff to amend the Complaint to add a claim for punitive damages after the deadline set forth in the Scheduling Order.

II. Analysis

Plaintiff’s Motion primarily implicates three Rules of Civil Procedure—Rules 6, 15 and 16.

Rule 15 allows a party to amend its pleadings upon consent of the opposing party or with leave of court. Fed. R. Civ. P. 15(a)(2). Rule 16 provides that a “schedule may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). “The primary measure of Rule 16’s ‘good cause’ standard is the moving party’s diligence in attempting to meet the case management order’s requirements.” *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 625 (6th Cir.2002) (quoting *Bradford v. DANA Corp.*, 249 F.3d 807, 809 (8th Cir.2001)). Rule 6(b) provides that, for good cause shown, the court may extend the time to act when the motion has been made after the time has expired if the party failed to act because of excusable neglect. Fed. R. Civ. P. 6(b)(2). The Rule 6(b) excusable neglect standard requires the court to consider five factors: (1) the danger of prejudice to the non-moving party, (2) the length of the delay and its impact on the case, (3) the reason for the delay, (4) whether the delay was within the reasonable control of the moving party, and (5) whether the moving party acted in good faith despite the delay. *Nafziger v. McDermott Int’l, Inc.*, 467 F.3d 514, 522 (6th Cir. 2006).

With respect to Plaintiff’s request to substitute the proper Defendants, the opposing party has consented to this relief. Accordingly, as consent is a proper basis for amending a complaint under Rule 15, the Court finds that Plaintiff should be permitted to amend its complaint to state the proper Defendants.

With respect to Plaintiff’s request to add a claim for punitive damages, Plaintiff’s counsel states that, “[d]uring the ensuing days after filing the withdrawn motion to amend,” he “reexamined her complaint and realized that a demand for punitive damages had been inadvertently left out of the prayer for relief section of the complaint.” (Memo. in Support of Pl.’s Mot. to Amend at 3). Plaintiff’s counsel avers that he believed that the Complaint had included a prayer for punitive

damages, as evidenced by Paragraph 24, which claims that Defendants' actions were taken intentionally, with malice, or with intentional disregard for Plaintiff's rights. (Memo. in Support of Pl.'s Mot. to Amend at 3). Plaintiff's counsel states that he has not acted in an intentionally dilatory fashion and has not attempted in any way to slow the advancement of the case. (Memo. in Support of Pl.'s Mot. to Amend at 3). Plaintiff's counsel adds that the instant motion was only filed eight days after the passing of the deadline to amend pleadings and that Defendants cannot be prejudiced, as the parties are just now exchanging written discovery. (Memo. in Support of Pl.'s Mot. to Amend at 3-4).

Defendants respond that Plaintiff has asserted "no cause for her basis to fail to pray for punitive damages in her original complaint." (Def.'s Resp. to Pl.'s Mot. to Amend at 1). Defendants argue that inadvertent error due to attorney oversight is not sufficient to demonstrate good cause. (Def.'s Resp. to Pl.'s Mot. to Amend at 2-3). Defendants also argue that the reference to allegations of intentionality or maliciousness in the Complaint are not sufficient to excuse Plaintiff's counsel's failure a request for punitive damages in the prayer for relief. (Def.'s Resp. to Pl.'s Mot. to Amend at 3).

After obtaining leave of Court, Plaintiff filed a Reply to Defendant's Response. (D.E. #18). Plaintiff's Reply notes that Defendants "fail to indicate any prejudice that will be suffered by Defendants if Plaintiff is allowed to include a claim for punitive damages." (Pl.'s Reply at 1). Plaintiff additionally argues that Defendants are relying on a "hyper technical reading of the case law" and are ignoring "the reasoning behind the 'good cause' showing for amending the scheduling order—specifically, ensuring efficiency in the Court's ability to manage its docket and avoiding undue or unnecessary delay." (Pl.'s Reply at 2). Plaintiff reiterates that the proposed amendment

of a prayer for punitive damages will not cause any delay in the case and will not prejudice Defendants. (Pl.'s Reply at 2).

Upon review, the Court must balance the factors set forth above to determine whether the failure to timely request an amendment is justified by excusable neglect. As to the danger of prejudice to the non-moving party, there is no showing of any prejudice that Defendants will face by the request to add this prayer for relief. Plaintiff had already alleged that the conduct at issue was done either intentionally, maliciously, or with intentional disregard for Plaintiff's rights. Additionally, the request has been made at an early stage of the litigation when discovery is in its initial stages. As to the length of delay and its impact upon the case, the request was filed a mere eight days after the passing of the deadline to amend pleadings. Once again, even Defendants do not allege that there will be any unfair delay or impact upon the case due to this belated request.

As to the reason for the delay, Plaintiff admits that the failure to include the prayer for punitive damages in the Complaint was due to counsel's oversight. Likewise, as to whether the delay was under the control of the moving party, Plaintiff admits that it was counsel's inadvertent error that resulted in the delay. Yet as to whether the moving party acted in good faith despite the delay, Plaintiff filed the instant motion immediately upon realizing that the error had occurred, and there is no evidence that Plaintiff attempted to delay the advancement of the case in any way. Plaintiff's allegations of intentionality and maliciousness in the Complaint further bolster the finding that Plaintiff acted in good faith and intended for a request for punitive damages to be listed in the Complaint.

Ultimately, the Court finds that the balance of the factors weighs in favor of permitting Plaintiff to amend the Complaint to add a claim for punitive damages. While Plaintiff admits to

making an error with respect to the request for damages, Plaintiff took all steps to correct the mistake as promptly as possible with as minimal impact upon Defendants and upon the prompt resolution of this matter as possible. Under such circumstances, the Court finds good cause to determine that Plaintiff's counsel's error constitutes excusable neglect and that the proposed amendment to the prayer for relief should be allowed.

III. Conclusion

For the reasons set forth herein, Plaintiff's Motion for Leave to Amend is hereby GRANTED.

IT IS SO ORDERED this 13th day of April, 2012.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE