

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

TAMARA BROWN,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 14-cv-02174-SHM/tmp
)	
DESOTO COUNTY SCHOOLS,)	
)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Before the court by order of reference is defendant DeSoto County School District's (incorrectly named in the complaint as Desoto County Schools) ("School District") Motion to Dismiss this case pursuant to: (1) Fed. R. Civ. P. 12(b)(6) because the claim is time-barred by the applicable ninety-day statute of limitations found in 42 U.S.C. § 2000e-5(f)(1); (2) Fed. R. Civ. P. 12(b)(3) because venue is improper in the Western District of Tennessee pursuant to 42 U.S.C. § 2000e-5(f)(3); and (3) Fed. R. Civ. P. 12(b)(2) because the court lacks personal jurisdiction over the School District. Alternatively, the School District argues that the case should be transferred to the Northern District of Mississippi.

For the reasons set forth below, it is recommended that the Motion to Dismiss be denied without prejudice and that the case be transferred to the Northern District of Mississippi.

I. PROPOSED FINDINGS OF FACT

This motion arises from an action brought by Tamara Brown ("Brown") against the School District alleging employment discrimination on the basis of race in violation of Title VII of the Civil Rights Act of 1964. (ECF No. 1.) According to her charge filed with the Equal Employment Opportunity Commission ("EEOC"), on or about March 25, 2011, Brown applied for full-time teaching positions at DeSoto Central Middle School, located in Southaven, Mississippi, and Center Hill Elementary School, located in Olive Branch, Mississippi, both of which are schools within the School District. (ECF Nos. 1-1, 11-1.) She later interviewed for the positions on July 5, 2011, but she was not hired by the School District. (ECF No. 1-1.) Brown alleges that she was not hired because of her race (African-American), which she believes is supported by her assertion that during the time she was a substitute teacher at both locations, she allegedly observed that neither school employed African-American teachers. Id. The EEOC dismissed her claim, as it was "unable to conclude that the information obtained establishe[d] violations of the statutes." Id. The EEOC mailed the Right to Sue ("RTS") letter to Brown on February 23, 2013. The RTS

letter informed Brown that she must file a lawsuit "WITHIN 90 DAYS of [her] receipt of this notice[,] or [her] right to sue based on this charge will be lost." Id. (emphasis in original). Brown filed this lawsuit on March 11, 2014. (ECF No. 1.) The School District subsequently filed the instant Motion to Dismiss. (ECF No. 11.)

II. PROPOSED CONCLUSIONS OF LAW

"If the plaintiff presents a prima facie case that venue is proper, after reading the pleadings and affidavits in the light most favorable to the plaintiff, the defendant's motion [to dismiss for improper venue] will be denied." Zimmer Enters. v. Atlandia Imps., Inc., 478 F. Supp. 2d 983, 986 (S.D. Ohio 2007); see also Centerville ALF, Inc. v. Balanced Care Corp., 197 F. Supp. 2d 1039, 1046 (S.D. Ohio 2002) (internal citation omitted). The School District moves for dismissal for improper venue based on Fed. R. Civ. P. 12(b)(3). When venue is challenged, the plaintiff has the burden of proving that venue is proper. See Gone to the Beach, LLC v. Choicepoint Servs., Inc., 434 F. Supp. 2d 534, 536-37 (W.D. Tenn. 2006). "A district court has discretion to choose the appropriate procedure for deciding a motion to dismiss for improper venue." Ring v. Roto-Rooter Servs. Co., No. 1:10-CV-179, 2010 WL 3825390, at *3 (S.D. Ohio Sept. 28, 2010) (internal citation omitted). "The court can determine the motion on the basis of

affidavits alone or by conducting an evidentiary hearing.” Centerville ALF, Inc., 197 F. Supp. 2d at 1046. “If a defendant prevails on a Rule 12(b)(3) challenge, the Court has the discretion to decide whether the action should be dismissed or transferred to an appropriate court” Stamper v. Shinseki, No. 2:10-CV-280, 2011 WL 3739217, at *2 (E.D. Tenn. Aug. 24, 2011) (citing Audi AG v. Volkswagen, 204 F. Supp. 2d 1014, 1017 (E.D. Mich. 2002)); see also First of Michigan Corp. v. Bramlet, 141 F.3d 260, 262 (6th Cir. 1998) (“The decision of whether to dismiss or transfer is within the district court’s sound discretion”). Transfer is generally preferable to dismissal. See Long v. Dart Int’l, Inc., 173 F. Supp. 2d 774, 777 (W.D. Tenn. 2001).

Venue in the present case is determined by the exclusive venue provision of Title VII, which, in relevant part, states:

Such an action may be brought [1] in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, [2] in the judicial district in which the employment records relevant to such practice are maintained and administered, or [3] in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice

28 U.S.C. § 2000e-5(f)(3); see also Downing v. Foley & Lardner LLP, No. 09-14351, 2010 WL 1494767, at *3 (E.D. Mich. Apr. 9, 2010) (“Section 5(f)(3) is not simply a supplement to 28 U.S.C. § 1391; it is the exclusive venue provision for all Title VII

discrimination actions.”) (citing Gwin v. Reynolds & Reynolds Co., No. 01C770, 2001 WL 775969 (N.D. Ill. July 10, 2001)). “If the plaintiff brings suit in a jurisdiction that does not satisfy one of the venue requirements listed in 42 U.S.C. § 2000e-5(f)(3), venue is improper.” Id. (quoting Spencer v. Rumsfeld, 209 F. Supp. 2d 15, 17 (D.D.C. 2002)). The court will analyze each of these statutory bases for venue below.

A. An Action May Be Brought in Any Judicial District in the State in Which the Unlawful Employment Practice Is Alleged to Have Been Committed

The School District is located in DeSoto County, Mississippi, which forms the southern border of Shelby County, in which Memphis, Tennessee is located.¹ According to the Declaration of Van Alexander (“Alexander”), the School District’s Associate Superintendent, the School District’s administrative office and principal place of business is located at 5 East South Street, Hernando, Mississippi, 38632. (ECF No. 11-1, ¶ 3.) “DCSD [DeSoto County School District] is a governmental entity, a political subdivision of the State of Mississippi, that is governed by the DeSoto County School Board. DCSD operates 34 public schools in DeSoto County, Mississippi, including Center Hill Elementary School and DeSoto Central Middle School[,]” the two schools at which Brown applied for

¹According to Brown’s complaint, she lives in Memphis, Tennessee. (ECF No. 1.) Brown presumably filed suit in the Western District of Tennessee because that is where she resides.

teaching positions.² (Id. ¶ 4.) Although it is unclear exactly where the alleged unlawful employment practice occurred (whether at the School District's administrative office or at the schools themselves), it is undisputed that the alleged adverse employment action or actions occurred in DeSoto County, Mississippi because, according to Alexander's declaration, "[a]ll decisions and actions relating to Ms. Brown's employment with DCSD were made in DeSoto County, Mississippi." (Id. ¶ 7.) Moreover, to the extent that the effects of the discriminatory acts were felt by Brown in this district, "under the plain, unambiguous language of the statute, venue is proper only where the unlawful employment practice is alleged to have been committed, regardless of where its effects are felt." Whipstock v. Raytheon Co., No. 07-11137, 2007 WL 2318745, at *3 (E.D. Mich. Aug. 10, 2007). Based on the foregoing, this court is satisfied that any unlawful employment action that may have occurred took place in DeSoto County, as that is where the School District made the decision not to hire Brown. Under the first clause of Title VII's venue provision, venue is improper in the Western District of Tennessee.

²Center Hill Elementary School is located at 13662 Center Hill Road, Olive Branch, Mississippi, 38654; DeSoto Central Middle School is located at 2611 Central Parkway, Southaven, Mississippi, 38672.

B. An Action May Be Brought in the Judicial District in Which the Employment Records Relevant to Such Practice Are Maintained and Administered

Associate Superintendent Alexander declares that “[a]ll records regarding DCSD’s employment decisions are maintained in DeSoto County, Mississippi.” (ECF No. 11-1, ¶ 7.) Alexander further alleges that “[a]ll of DCSD’s operations are in DeSoto County, Mississippi; DCSD has no operations in Tennessee. DCSD maintains no offices in Tennessee, and operates no schools in Tennessee. DCSD does not own or lease real estate in Tennessee. . . . DCSD does not maintain or administer any records in Tennessee.” (Id. ¶ 5.) Brown does not deny or otherwise challenge any of these assertions. Based on these uncontested facts, there is no reason to believe that any of the records relating to Brown’s potential employment with DCSD would be located in the Western District of Tennessee. Therefore, venue is improper in this district. See Downing, 2010 WL 1494767, at *3 (finding that venue in the Eastern District of Michigan was improper under the second clause of the venue provision of Title VII since “[p]laintiff’s employment records are maintained and administered in Wisconsin”).

C. An Action May Be Brought in the Judicial District in Which the Aggrieved Person Would Have Worked but for the Alleged Unlawful Employment Practice

Brown asserts - and the School District, via the declaration of Associate Superintendent Alexander, confirms -

that she applied for employment at two schools, DeSoto Central Middle School and Center Hill Elementary School, both of which are located in DeSoto County, Mississippi. (ECF Nos. 1-1; 11-1, ¶ 6.) It is undisputed that had Brown been hired by the School District, she would have worked in the Northern District of Mississippi, not the Western District of Tennessee. See Downing, 2010 WL 1494767, at *3. As there is no factual dispute regarding where Brown would have worked had she been hired, it is clear that venue is improper in the Western District of Tennessee under the third clause of Title VII's venue provision.

III. RECOMMENDATION

For the above reasons, it is recommended that this case be transferred to the Northern District of Mississippi. It is further recommended that the School District's Motion to Dismiss be denied without prejudice, so that the School District may renew its motion after this case is transferred.

Respectfully submitted,

s/ Tu M. Pham

TU M. PHAM
United States Magistrate Judge

June 12, 2014

Date

NOTICE

WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THIS REPORT AND RECOMMENDED DISPOSITION, ANY PARTY MAY SERVE AND FILE SPECIFIC WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND

RECOMMENDATIONS. ANY PARTY MAY RESPOND TO ANOTHER PARTY'S OBJECTIONS WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY. 28 U.S.C. ' 636(b)(1); FED. R. CIV. P. 72(b)(2); L.R. 72.1(g)(2). FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.