

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

SAVANNAH M. ROBINSON,)
)
 Plaintiff,)
)
 vs.) No. 01-2391DV
)
 MARK LUTTRELL, DIRECTOR OF THE)
 SHELBY COUNTY DIVISION OF)
 CORRECTION,)
)
 Defendant.)

ORDER DENYING MOTION TO DISMISS

In this employment discrimination lawsuit, *pro se* plaintiff, Savannah Robinson, an African-American and a former employee of the Shelby County Division of Corrections, has filed a complaint alleging racial discrimination in violation of Title VII, 42 U.S.C. § 2000e-5(f). Presently before the court¹ is the Rule 12(b)(6) motion to dismiss filed by the defendant, the Shelby County Division of Corrections. The Division of Corrections claims that it is entitled to dismissal of the complaint because the lawsuit is barred by the statute of limitations and because the complaint fails to state a *prima facie* case of racial discrimination. As of

¹ The parties have consented to the trial of this matter before the undersigned United States Magistrate Judge.

the date of this order, Robinson has not responded to the motion.² For the reasons that follow, the Division of Correction's motion is denied.

ALLEGATIONS IN THE COMPLAINT

In considering a motion to dismiss for failure to state a claim, the court's inquiry is confined to the allegations in the complaint. On May 17, 2001, Robinson, proceeding *pro se* and using a preprinted form complaint, filed the present employment discrimination lawsuit. In Paragraph Five of the complaint, Robinson alleges that on January 5, 1998, the Division of Corrections discriminated against her as alleged in Paragraph Nine of the complaint. Paragraph Nine of the complaint alleges

Because of plaintiff's (1) X race, (2)

² Pursuant to Local Rule 7.2(a)(2), responses to motions in civil cases, unless the motion is pursuant to Fed. R. Civ. P. 12(b) or 56, are to be filed within fifteen days after service of the motion. In the case of a motion to dismiss or a motion for summary judgment, a response shall be filed within 30 days after service. Plaintiff has not filed a response to either of the motions in this case, and the time for responding has now expired.

Rule 7.2(a)(2) further provides that "[f]ailure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion." However, because the motion before the court seeks dismissal of a portion of plaintiff's claim, plaintiff's failure to respond to the motion is not in and of itself grounds for granting either motion. See *Stough v. Mayville Community Schs.*, 138 F.3d 612, 614 (6th Cir. 1998) (holding that district court abused its discretion by dismissing claim pursuant to local rule for failure to respond to motion absent specific findings as to bad faith, prejudice, or prior notice of possible dismissal).

color, (3) sex, (4) religion, (5)
 national origin, defendant

- (a) failed to employ plaintiff.
- (b) terminated plaintiff's employment.
- (c) x failed to promote plaintiff.
- (d) singled out for unfair treatment
harassment and retaliation.

Paragraph Ten goes on to explain plaintiff's claim of
discrimination:

As an African American employee, I was subjected to harsh treatment, disrespect and retaliatory acts along with other members of my race. The treatment toward me began around June 1996 and continued until I decided to terminate 11 years employment with this organization. 8-13-1999. In June 1996, I was falsely accused of using the power of my position to perform favors for my son who was an inmate at that time, when I attempted to ascertain the basis of the charge I was treated with contempt and disrespect From this point on, I was targeted for derogatory treatment by the managing staff. This treatment included slander, negative fabricated-comments that were placed in my personnel file, suspensions and, letters of warnings, demotions. In response to numerous requests for intervention and relief, I was shifted around and placed in positions to ensure my failure. I was assigned the highest risk group of officers with the most inexperienced staff, I was without a work station for more than three months, I was given unreasonable work deadlines without office space or equipment to work.

On January 20, 1998, according to the complaint, plaintiff filed a formal charge of discrimination against the defendant with the Equal Employment Opportunity Commission ("EEOC"), alleging Title VII violations. The EEOC's investigation did not substantiate the charge, and the EEOC issued a "Right to Sue" letter on March 27, 2001, which allowed the plaintiff 90 days in

which to file suit. Plaintiff filed the present lawsuit in federal district court on May 17, 2001.

ANALYSIS

When considering a motion pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss for failure to state a claim upon which relief can be granted, the court must assume that all of the well-pleaded factual allegations in the complaint are true and must construe those facts in a light most favorable to the plaintiff. *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987). A court should grant the motion to dismiss "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Id.* at 12; *see also Broyde v. Gotham Tower, Inc.*, 13 F.3d 994, 996 (6th Cir. 1994); *Achterhof v. Selvaggio*, 886 F.2d 826, 831 (6th Cir. 1989) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

A. The Statute of Limitations Defense

The Division of Corrections first asserts that it is entitled to dismissal of Robinson's claim because it was not filed within the applicable statute of limitations.

A prerequisite for a lawsuit in this case is that plaintiff must have filed a charge of discrimination with the EEOC "within 180 days after the alleged unlawful employment practice occurred." 42 U.S.C. § 2000e-5(e)(1). If the plaintiff instituted proceedings

initially with a state agency, the plaintiff has 300 days in which to file a charge with the EEOC. *Id.*; *Cox v. City of Memphis*, 230 F.3d 199, 201 n. 2 (6th Cir. 2000); *Shipbaugh v. Boys & Girls Clubs of America*, 883 F. Supp. 295 (N.D. Ill. 1995). It appears from the EEOC Determination attached to the complaint that Robinson also filed with the Tennessee Human Rights Commission. If so, the 300 day limitation applies.

As a general rule, the time for filing is "triggered at the time the alleged discriminatory act occurred." *Cox*, 230 F.3d at 202. The doctrine of "continuing violations" provides a narrow exception to the time limits for filing EEOC complaints. *Id.* There are two categories of "continuing violations." *Id.* The first category, which is applicable here, is where there is some evidence of ongoing discriminatory activity such as where an employer continues to impose disparate work assignments or gives unequal pay for equal work.³ *Id.*

The Division of Correction argues in its motion that no date other than June 1996 is stated in the complaint for the alleged racial discrimination, and therefore it presumes all alleged acts of discrimination happened in June 1996. To the contrary, the complaint explicitly states that the acts of discrimination

³ The second category is where a long-standing and demonstrable policy of discrimination has occurred.

described in Paragraph Nine of the Complaint occurred on January 5, 1998. (Comp. ¶ 5.) Liberally construed, the complaint can be interpreted as asserting that Robinson has been the victim of continuing racial discrimination beginning June 1996 and continuing at least until January 5, 1998. Within fifteen days thereafter, Robinson filed a complaint with the EEOC on January 20, 1998. While the Division of Corrections may later come forward with proof that there was no continuing violation, the court is unable to conclude on a motion to dismiss that the allegations in the complaint do not constitute a continuing violation.

After receiving the EEOC determination, Robinson timely filed a complaint in court as required by 42 U.S.C. § 2000e-16(c). That section provides:

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin ... an employee or applicant for employment, if aggrieved by the final disposition of his complaint ... may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate shall be the defendant.

42 U.S.C. § 2000e-16(c). Within 51 days of receiving a determination from the EEOC, she filed the present complaint in federal district court. Thus, the complaint is not time-barred.

B. Failure to State a Prima Facie Case of Discrimination

The Division of Corrections also argues in passing that the complaint does not state a cause of action upon which relief can be granted. The Division's entire argument regarding this issue is set out in one paragraph:

Finally, there is no direct evidence of any alleged racial discrimination or any disparate impact, nor circumstantial evidence of discrimination, only a general allegation the Plaintiff was discriminated against because she is black. That general allegation does not state a prima facie case of racial discrimination under the Equal Employment Opportunity Act.

(Def.'s Mem. in Supp. of Mot. to Dismiss at 4.) Although broadly worded, the complaint alleges racial discrimination in general terms. In ruling on a motion to dismiss, the court looks only to the allegations in the complaint and need not consider whether the plaintiff can substantiate her allegations with evidentiary proof. Drawing inferences in favor of the plaintiff, the complaint states a claim for racial discrimination.

Accordingly, the motion of the Division of Corrections to dismiss is denied.

IT IS SO ORDERED 12th day of September, 2001.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE