

United States Court of Appeals
For the Eighth Circuit

No. 18-1258

Lorraine Black

Plaintiff - Appellant

v.

Life Unlimited/Concern Care

Defendant - Appellee

State of Missouri Department of Mental Health

Defendant

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: October 9, 2018

Filed: October 17, 2018

[Unpublished]

Before WOLLMAN, GRUENDER, and STRAS, Circuit Judges.

PER CURIAM.

Lorraine Black appeals after the district court¹ dismissed her civil rights action, upon the motion of defendant Life Unlimited/Concern Care. Upon careful de novo review, we conclude that the district court did not err in granting defendant's motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), *see Kelly v. City of Omaha*, 813 F.3d 1070, 1075 (8th Cir. 2016) (setting forth the standard of review); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009) (discussing the pleading standard under Fed. R. Civ. P. 8), and we find no other basis for reversal.

Accordingly, we affirm. *See* 8th Cir. R. 47B.

¹The Honorable Dean Whipple, United States District Judge for the Western District of Missouri.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-1258

Lorraine Black

Plaintiff - Appellant

v.

Life Unlimited/Concern Care

Defendant - Appellee

State of Missouri Department of Mental Health

Defendant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:17-cv-00806-DW)

JUDGMENT

Before WOLLMAN, GRUENDER and STRAS, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

October 17, 2018

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

United States Court of Appeals

For The Eighth Circuit

Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329

St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

October 17, 2018

Ms. Lorraine Black
8422 N. Beaman Avenue
Kansas City, MO 64154

RE: 18-1258 Lorraine Black v. Life Unlimited/Concern Care

Dear Ms. Black:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

MDS

Enclosure(s)

cc: Mr. Steven Howard Schwartz
Ms. Paige Wymore-Wynn
Ms. Teresa Michelle Young

District Court/Agency Case Number(s): 4:17-cv-00806-DW

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

LORRAINE D. BLACK,)
Plaintiff,) Case No. 17-CV-00806-W-DW
v.)
LIFE UNLIMITED/CONCERN CARE,)
Defendant.)

ORDER

Pending before the Court are two motions: (1) the pro se Plaintiff Lorraine D. Black's (the "Plaintiff") Motion for Leave to Amend the Complaint (the "Motion for Leave to Amend"), and (2) Defendant Life Unlimited/Concern Care's (the "Defendant") Motion to Dismiss Plaintiff's Complaint (the "Motion to Dismiss"). See Docs. 20, 22. Plaintiff filed an untimely opposition to Defendant's Motion to Dismiss (Doc. 24). For the reasons set forth below, Plaintiff's Motion for Leave to Amend (Doc. 20) is DENIED and Defendant's Motion to Dismiss (Doc. 22) is GRANTED.

Plaintiff's original Complaint against Defendant was filed on October 13, 2017. See Doc. 4. The Complaint includes a pre-printed form with several categories of information, including Plaintiff's requested relief of "\$850,000.00 settlement hearing abuse and neglect discrimination for race/sex female disabilities labor law not given pay increase wrongful taking dental fee's out repay." Doc. 4, p. 5.

The Complaint also includes a separate "Civil Rights Complaint." Doc. 4, p. 7-9. This document is written in letter form, is not separated by paragraph numbers, and appears to contain the facts upon which this case arises. Defendant allegedly employed Plaintiff, and Plaintiff states in part that she "was suspended because of [her] race, sex/female, disability and in retaliation for

complaining about safety of clients. This is employment discrimination in violation of Title VII of the Civil Right[s] Act of 1964[.]” Doc. 4. p. 7-8.

On December 12, 2017, Plaintiff filed what the Court construed as an amended complaint. In an Order dated December 13, 2017, the Court struck Plaintiff’s amended complaint. The Order struck the amended complaint for two reasons. The Order explained that under Federal Rule of Civil Procedure 15(a)(2), Plaintiff could amend her complaint “only with the opposing party’s written consent or the court’s leave.” Plaintiff, however, had failed to obtain leave of the Court or the Defendant’s consent.

The Order also explained that the amended complaint failed to comply with Federal Rules 8 and 10 because “it does not contain ‘a short and plain statement of the claim showing that [Plaintiff] is entitled to relief,’ . . . and does not ‘state [the] claims . . . in numbered paragraphs[.]’ Instead, this document is impermissibly written in letter form.” See Doc. 19, Order, filed December 13, 2017, p. 1-2 (citing and quoting Fed. R. Civ. P. 8, 10). The Order further informed Plaintiff that “[b]efore filing any future document, Plaintiff is directed to carefully review the Federal Rules of Civil Procedure, this Court’s Local Rules, and the applicable substantive law. The filing of any non-conforming document will be summarily struck from the record.” Id., p. 2.

On December 19, 2017, Plaintiff filed the pending Motion for Leave to Amend. Doc. 20. Plaintiff also filed a “Memorandum in Support of Motion for Leave to File Amended Complaint,” and a proposed amended complaint, with exhibits. See Doc. 21. p. 1-16. The proposed amended complaint appears to be virtually identical to the amended complaint previously struck by the Court. It is impermissibly written in letter form, is not separated by

numbered paragraphs, and does not contain “a short and plain statement of the claim showing that [Plaintiff] is entitled to relief.” See Fed. R. Civ. P. 8, 10.

On December 21, 2017, Defendant filed the pending Motion to Dismiss. Doc. 22. The Motion to Dismiss moves the Court to dismiss Plaintiff’s original Complaint. Defendant argues in part that Plaintiff’s “Complaint fails to comply with Rule 8(a)(2), as it does not plead a short and plain statement of the claim showing that [Plaintiff] is entitled to relief. The complaint fails to comply with Rule 8(d)(1), as it is not ‘simple, concise, and direct.’ The Complaint fails to comply with Rule 10(b) as it does not list claims in numbered paragraphs.” See Doc. 23, p. 1-2.

Upon review of the record, the Court agrees with the arguments raised by Defendant. In particular, the Court finds that both the original Complaint and the proposed amended complaint fail to comply with Federal Rule 8(a)(2), 8(d)(1), and 10(b).¹ The Court previously informed Plaintiff that her proposed amended complaint failed to comply, but Plaintiff did not correct these errors. Therefore, the Court dismisses Plaintiff’s original Complaint and denies Plaintiff’s request for leave to file an amended complaint. Fed. R. Civ. P. 41(b) (providing that an action may be dismissed when “the plaintiff fails to . . . comply with these rules or a court order”).

Consequently, for the foregoing reasons, it is hereby ORDERED that:

- (1) Defendant’s Motion to Dismiss Plaintiff’s Complaint (Doc. 22) is GRANTED, and Plaintiff’s Complaint (Doc. 4) is DISMISSED; and
- (2) Plaintiff’s Motion for Leave to Amend the Complaint (Doc. 20) is DENIED.

The Clerk of Court is directed to mail a copy of this Order to Plaintiff at her last known address. The Clerk of Court is also directed to close this case.

Date: January 24, 2018

/s/ Dean Whipple
Dean Whipple
United States District Judge

¹ For the reasons stated by Defendant, the Court also finds that Plaintiff failed to state a claim upon which relief can be granted. See Doc. 23, p. 3-9.

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

LORRAINE D. BLACK,)
Plaintiff,) Case No. 17-CV-00806-W-DW
v.)
LIFE UNLIMITED/CONCERN CARE,)
Defendant.)

ORDER

Before the Court is the Plaintiff Lorraine D. Black's (the "Plaintiff") Application for Leave to File Action Without Payment of Fees. See Doc. 1. The Plaintiff also filed a proposed Complaint, and an Affidavit of Financial Status. Plaintiff's Affidavit of Financial Status demonstrates that she cannot pay the filing fee or costs of these proceedings. For purposes of the in forma pauperis analysis only, the Court also finds that the Complaint adequately states a claim and is not otherwise barred.

Accordingly, it is hereby ORDERED that:

- (1) Plaintiff's Application for Leave to File Action Without Payment of Fees (Doc. 1) is GRANTED; and
- (2) because this case is included in the Case Management/Electronic Case Filing (CM/ECF) system, and because Plaintiff is proceeding pro se, the Clerk's office is directed to electronically file the Complaint as of the date of this Order; and
- (3) the Clerk of Court shall forward appropriate process forms to Plaintiff, and within twenty days, Plaintiff shall return the completed summons and service forms to the Clerk's office showing the address where Defendant may be served; and

(4) the Clerk of Court is directed to issue summons and process and deliver same to the United States Marshal for service upon the Defendant, pursuant to Rule 4 of the Federal Rules of Civil Procedure; and

(5) the Plaintiff's failure to timely comply with this Order or any future Order will result in the dismissal of this case without further notice. Plaintiff is also advised that it is her responsibility to monitor all filings and the docket sheet for the duration of this case.

The Clerk of Court shall mail a copy of this Order to Plaintiff via certified and regular mail, return receipt requested, at her last known address.

IT IS SO ORDERED.

Date: October 13, 2017

/s/ Dean Whipple
Dean Whipple
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-1258

Lorraine Black

Appellant

v.

Life Unlimited/Concern Care

Appellee

State of Missouri Department of Mental Health

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:17-cv-00806-DW)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 03, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-1258

Lorraine Black

Appellant

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State of Missouri Department of Mental Health

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ORDER

The mandate issued on November 7, 2018 is hereby recalled.

November 07, 2018

Order Entered Under Rule 27A(a):
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-1258

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Appellant

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State of Missouri Department of Mental Health

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:17-cv-00806-DW)

MANDATE

In accordance with the opinion and judgment of 10/17/2018, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

November 07, 2018

Clerk, U.S. Court of Appeals, Eighth Circuit

**Additional material
from this filing is
available in the
Clerk's Office.**