

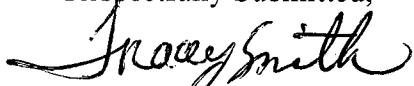
SUPREME COURT OF THE UNITED STATES

WASHINGTON D.C 20543

**MOTION TO FILE PETITION FOR A
WRIT OF CERTIORARI OUT OF TIME**

The plaintiff is respectfully resubmitting her petition for a writ of certiorari as requested by this honorable court for the third time. This honorable court received this information first on February 1, 2018 according to UPS and UPS tracking. The plaintiff final order was received on November 1, 2017. Her material was requesting submitted in a timely matter according to legal advice. The plaintiff mailed her petition for a writ of certiorari as requested for the second time on February 14, 2018 but never received a response. This material is being forwarded For reconsideration of review. The plaintiff has been requested from this office to file out of time and she is respectfully requesting a review.

Respectfully Submitted,



Tracey Smith

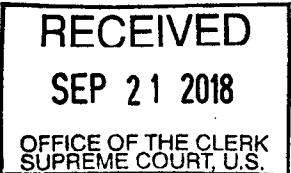
1529 Katy Drive

Mount Morris, Michigan 48458

Phone Number: (810) 908-2224

Plaintiff – Appellant, PRO SE

September 15, 2018



NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 16-2422

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TRACEY SMITH,)
Plaintiff-Appellant,)
v.)
FOOD BANK OF EASTERN MICHIGAN,)
Defendant-Appellee.)
)
) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
) MICHIGAN

FILED
Sep 22, 2017
DEBORAH S. HUNT, Clerk

O R D E R

Before: SILER and BATCHELDER, Circuit Judges; BERTELSMAN, District Judge.*

Tracey Smith, a pro se Michigan resident, appeals the judgment of the district court dismissing without prejudice her complaint for slander and defamation for lack of jurisdiction. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a).*

Smith filed her complaint on July 13, 2016, in the United States District Court for the Eastern District of Michigan and named the Food Bank of Eastern Michigan as the only defendant. She claimed that the basis for the federal court's jurisdiction was "federal question." She asserted that she had been wrongfully discharged from employment at the Food Bank when another employee made "negative statements" about her to her manager. She claimed that this

*The Honorable William O. Bertelsman, United States District Judge for the Eastern District of Kentucky, sitting by designation.

amounted to slander and defamation of her character. Smith did not state what relief she was seeking.

The district court reviewed the complaint and concluded that, although Smith alleged that her complaint involved a federal question, her claims of slander and defamation arose only under state law and were insufficient to invoke the court's jurisdiction. The district court ordered Smith to show cause why the case should not be dismissed for want of jurisdiction.

Smith filed a timely response, asserting that the complaint should not be dismissed "because of the documented evidence" that she possessed. She claimed that a co-worker "fabricated negative stories" about Smith to Smith's manager that caused Smith to be terminated. Smith alleged that she was never written up, did not receive disciplinary action, was an excellent employee, and that her co-worker's slander and defamation resulted in the loss of a job that "she loved and her financial well-being." She requested that the court not dismiss her case.

After reviewing Smith's response, the district court concluded that she "failed to supply any factual basis or legal authority to support her attempt to invoke th[e] Court's jurisdiction," and dismissed her complaint without prejudice.

On appeal, Smith has filed a motion seeking the appointment of counsel. In her pro se brief, she continues to assert her claims for slander and defamation. She also contends that her complaint involves libel. She argues that "if something can be proven . . . it should be accepted." She asserts that the false statements caused her significant injury by causing her to be terminated from her position and asks that this court keep her complaint open. She also contends that this defamation and slander case "would fit better with its companion case"—a Title VII employment discrimination action she previously filed in federal court wherein summary judgment has since been granted in favor of defendant. *See Smith v. Food Bank of E. Mich.*, Case No. 2:14-cv-13795 (E.D. Mich. Apr. 24, 2017). That case is now on appeal.

We review de novo a district court's dismissal for lack of subject matter jurisdiction. *See Willis v. Sullivan*, 931 F.2d 390, 395 (6th Cir. 1991); *Greater Detroit Res. Recovery Auth. v. EPA*, 916 F.2d 317, 319 (6th Cir. 1990). Pursuant to 28 U.S.C. § 1331, federal courts have original jurisdiction over all civil actions that arise under federal law. Pursuant to 28 U.S.C.

§ 1332, federal courts also have jurisdiction over civil actions involving citizens of different states. Federal jurisdiction is determined solely from the face of a plaintiff's complaint. *Gully v. First Nat'l Bank*, 299 U.S. 109, 113 (1936).

The district court did not err in determining that Smith's complaint failed to state a cause of action arising under federal law. "To bring a case within the [(federal question)] statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action." *Id.* at 112. Smith's complaint did not identify any federal statute, act, or provision of the United States Constitution and alleged only that an employee of the Food Bank committed defamation and slander by making false statements about her that caused her to be terminated from her employment. However, defamation and slander are state law claims, *see New Franklin Enters. v. Sabo*, 480 N.W.2d 326, 328 (Mich. Ct. App. 1991), and Smith did not otherwise allege that she was denied any federally secured right.

Nor could the federal court invoke jurisdiction over Smith's complaint on the basis of diversity. Diversity jurisdiction exists under 28 U.S.C. § 1332 where the amount in controversy exceeds \$75,000 and there is complete diversity between the plaintiffs and defendants, i.e., "diversity jurisdiction does not exist unless each defendant is a citizen of a different State from each plaintiff." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373 (1978). Here, both Smith and the Food Bank are citizens of Michigan and Smith made no valuation of the damages she was owed. Because there was no basis for federal jurisdiction, the district court did not err by dismissing Smith's complaint without prejudice.

Finally, to the extent that Smith seeks to amend her previously filed Title VII complaint with the state law claims of slander and defamation, an amendment would be prohibited, as the case has already been adjudicated.

No. 16-2422

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We **AFFIRM** the judgment of the district court. We **DENY** Smith's motion for the appointment of counsel.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt
Deborah S. Hunt, Clerk

Case No. 16-2422

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

ORDER

TRACEY SMITH

Plaintiff - Appellant

v.

FOOD BANK OF EASTERN MICHIGAN

Defendant - Appellee

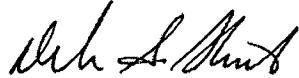
BEFORE: SILER and BATCHELDER, Circuit Judges; BERTELSMAN, U.S. District Judge.*

Upon consideration of appellant's motion to recall the mandate for this appeal,

It is therefore **ORDERED** that the motion be and hereby is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk



Issued: November 01, 2017

* The Honorable William O. Bertelsman, United States District Judge for the Eastern District of Kentucky, sitting by designation.

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