UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988
TELEPHONE (513) 564-7000
www.ca6uscourts.gov
DEBORAH S. HUNT, Clerk

Filed: April 14, 2015

Ms. Gracie E. McBroom
636 Koebel Avenue
Columbus, Ohio 43207

Re: Case No. 14-3176, *Gracie McBroom v. HR Director Franklin County* – Originating Case No. : 2:12-cv-01074

Dear Ms. McBroom:

The Court issued the enclosed Order today in this case.

Sincerely yours,

"s/" _____
Karen S. Fultz for Jill Colyer
Case Manager
Direct Dial No. 513-564-7094

Cc: Mr. Richard W. Nagel
Mr. Jeffrey Charles Rogers

Enclosure

No. 14-3176

FILED, APRIL 14, 2015

DEBORAH S. HUNT, Clerk

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

GRACIE E. MCBROOM, **ORDER**

Plaintiff-Appellant

v.

HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS

Defendant-Appellee.

Before: BATCHELDER, GIBBONS, and ROGERS, Circuit Judges,

Gracie E. McBroom, an Ohio citizen, has filed a petition for rehearing of this court's order of January 21, 2015, affirming the judgment for defendant in a Title VII action she filed.

Upon consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a).

The petition for rehearing is therefore denied.

ENTERED BY ORDER OF THE COURT

"s/ _____

Deborah S. Hunt, Clerk

No. 13-3176

FILED, APRIL 22, 2015

DEBORAH S. HUNT, Clerk

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

GRACIE E. MCBROOM

Plaintiff-Appellant,

v.

HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS

Defendant-Appellee.

MANDATE

Pursuant to the court's disposition that was filed 01/21/2015 the mandate for this case issues today.

COSTS: NONE

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988
TELEPHONE (513) 564-7000
DEBORAH S. HUNT, Clerk

October 4, 2018

Gracie E. McBroom
636 Koebel Avenue
Columbus, Ohio 43207

Re: Materials Received in this Court

Dear Ms. McBroom,

This office received on October 1, 2018 your box of materials directed to Chief Judge Cole. The box contained four bound volumes. Two of those volumes are letters to the Chief Judge and two of them are appendix volumes. These documents were referred to me for review.

In one letter, you appear to challenge certain holdings made by the district court in *McBroom v. HR Director Franklin County Board of Elections,* No. 2:12-CV-01074 (S.D. Ohio), In the appellate proceeding, this court affirmed and denied rehearing. The United States Supreme Court denied your petition for a writ of certiorari. This court issued a mandate in April 2015, and the case is closed.

In the other letter, you discuss another case, *McBroom v. Bankers Life and Casualty Company*, No. 2:14-cv-00838 (S.D. Ohio), which was appealed to this court in No. 15-4186. The mandate issued in 2017, and that case is closed.

You mention Rule 60(b) in your letters and allege "fraud on the court." The Federal Rules of Civil Procedure generally apply to the district court proceedings, where Rule 60 (b) motions are normally filed. Given that both 14-3176 and 15-4186 are closed, your papers are being returned to you unfiled.

Sincerely,
"s/ Susan Rogers, Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988
TELEPHONE (513) 564-7000

DEBORAH S. HUNT, Clerk

November 2, 2016

Gracie E. McBroom
636 Koebel Avenue
Columbus, Ohio 43207

Re: Case No. 14-3176, McBroom v. HR Director Franklin County Board of Elections; Correspondence Dated October 27, 2016

Dear Ms. McBroom:

Your letter addressed to Chief Judge Cole was referred to me for review and response; judges of this court typically do not correspond directly with litigants. It appears from a review of your letter that you request this court issue an extraordinary writ related to your prior appeal, Case No. 14-3176. The docket in that case reflects that a three-judge panel of this court affirmed the grant of summary judgment for the defendant in an order dated January 21, 2015. The panel subsequently denied your motion for panel rehearing, and the mandate issued April 22, 2015. The case is now closed, and you should generally expect that no further correspondence will be accepted. As such, please find your letter returned unfiled and without ruling.

Sincerely,

"s/ _____
Susan Rogers
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988
TELEPHONE (513) 564-7000

DEBORAH S. HUNT,
Clerk

December 4, 2018

Gracie E. McBroom
636 Koebel Ave.
Columbus, Ohio 43207

Re: Documents Received

Dear Ms. McBroom,

A "Motion for Relief from Judgment or Order" was received in this court that refers to *McBroom v. HR Director Franklin County Board of Elections*, and that carries the case number 14-3176. That case is closed, and the mandate has issued.

Further, the documents that you sent appear to duplicate
a Rule 60 (b) motion that you filed in the district court in the underlying action. They are returned to you unfiled and without further action.

Sincerely,

"s/" _____
Susan Rogers
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988
TELEPHONE (513) 564-7000
DEBORAH S. HUNT, Clerk

January 28, 2019

Gracie E. McBroom
636 Koebel Avenue
Columbus, Ohio 43207

Re: *McBroom v. Bankers Life and Casualty Co.*, No. 15-4186 and,
McBroom v. HR Director Franklin County Board of Elections, No. 14-3176

Dear Ms. McBroom,

Today I received a telephone call from you asking for confirmation regarding the above case. This letter is to confirm that this appeal was closed in June 2017.

In October 2018, we returned to you unfiled two volumes of documents. In November 2018, we received a copy of the motion for relief from judgment that you filed in the district court. The district court denied your motion in an order entered on November 20, 2018. You did not appeal that order. As a result, you have no pending or active appeal in this court. Both of your appeals – 14-3176 and 15-4186 – are closed. There will be no further action on either case.

Sincerely,

"s/"
Susan Rogers
Chief Deputy Clerk

APPENDIX B

Motions

2:12-cv-01074-ALM-NMK
McBroom v. HR Director Franklin
County Board of Elections et al
CASE CLOSED ON 01/10/2014

ADR – CLOSED, JURY

U.S. District Court
Southern District Court

Notice of Electronic Filing

The following transaction was entered on 10/26/2018 at 5:03 PM EDT and filed on 10/25/2018
Case Name: McBroom v. HR Director Franklin County Board of Elections et al
Case Number: 2:12-cv-01074-ALM-NMK
Filer: Gracie E. McBroom
WARNING: CASE CLOSED ON 01/10/2014
Document Number: 71

Docket Text:
MOTION Relief from Judgment or Order by Plaintiff Gracie E. McBroom. (Attachments: # (1) Exhibit, # (2) Exhibit, (3) Exhibit, # (4) Exhibit, # (5) Exhibit) (Jlk)

2:12-cv-01074-ALM-NMK Notice has been electronically mailed to:

Scott J. Gaugler sjgaugle@franklincountyohio.gov
Jeffrey Charles Rogers jrogers@franklincountyohio.gov

2:12-cv-01074-ALM-NMK Notice has been delivered by other means to:

Gracie E. McBroom
636 Koebel Avenue
Columbus, Ohio 43207

. . .

Case: 2:12-cv-01074-ALM-NMK Doc #:6 Filed: 11/21/12
Page: 1 of 6 PAGEID 3#: 579

AO 440 (Rev. 12/09 Summons in a Civil Action

UNITED STATES DISTRICT COURT
For the
For the Southern District of Ohio

Gracie E. McBroom in Pro Se
Plaintiff,

Civil Action No. 2:12- cv- 1074

v.

Franklin County Board of Elections
Defendant.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Assistant Prosecuting Attorney
373 South High Street, 13th Floor
Columbus, Ohio 43215

A lawsuit has been filed against you

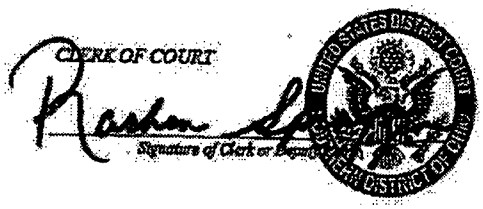
Within 21 days after service of this summons on you (not counting the day you received it – or 60 days if you are the United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) – you must serve on the Plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the Plaintiff or Plaintiff's attorney, whose name and address are:

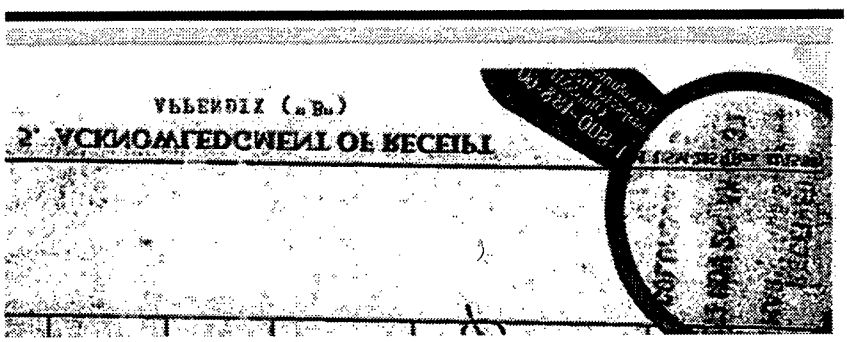
Gracie E. McBroom
636 Koebel Avenue
Columbus, Ohio 43207

If you fail to respond, judgment by default will be entered against you for the relief demanded in the Complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 11/21/12





"ACKNOWLEDGMENT OF RECEIPT
RECEIVED NOVEMBER 26, 2012"

PROCESS RECEIPT AND RETURN

U.S. Department of Justice
U.S. Department Marshals Service

PLAINTIFF
Gracie E. McBroom in Pro Se
DEFENDANT
Franklin County Board of Elections
SERVE NAME OF INDIVIDUAL COMPANY CORPORATION ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
HR Director Franklin County Board of Elections
280 E. Broad Street, Rm 100, Columbus, Ohio 43215

SEND NOTICE OF SERVICE COPY AT NAME AND ADDRESS BELOW

Ms. Gracie E. McBroom
636 Koebel Avenue
Columbus, Ohio 43207

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE
Signature of Attorney or other Originator requesting service on behalf of "s/Gracie E. McBroom
SPACE BELOW FOR USE OF U.S. MARSHALL ONLY DO NOT WRITE BELOW THIS LINE
. .. Signature of Authorize USMS Deputy or Clerk
"s/ Dillin Date: **12/03/2012**
Name and title of individual served (if not shown above)
David Magers, Franklin Co. Board of Elections, HR Dept.
Date of Service **2/7/2012** Signature of U.S. Marshall or Deputy "s/_____
Dillin

Case: 2:12-cv-01074-ALM-NMK Doc #: 12 Filed: 02/14/13 Page: 1 of 2 PAGEID 608

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

GRACIE E. MCBROOM, **Civil Action 2:12-cv-1074**

Plaintiff,

Judge Marbley

v. **Magistrate Judge King**

HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS,

Defendant.

ORDER

Plaintiff, who is proceeding in forma pauperis without the of counsel, brings this civil action alleging that she was removed as an election official on account of her race and color. Named as defendants are "HR Director Franklin County Board of Elections and Scott J. Gaugler, a Franklin County Assistant Prosecuting Attorney. The claims against the Franklin County Assistant Prosecuting Attorney were dismissed on December 4, 2012. Order Doc. No. 10.

Service of process was apparently affected on defendant HR Director Franklin County Board of Elections on December 7, 2012. See Marshals Process Sheet and Return, Doc. No. 11, p. 6 ("I served the summons on . . . DAVID MAGERS, who is designated by law to accept service of process on behalf of . . . FRANKLIN CO. BOARD OF ELECTIONS, H.R. DEPT., 12/7/2012.")

This defendant was granted 45 days after service of process to respond to the Complaint. Order, Doc. No. 7, p. 2.

The time for responding has passed with no appearance on behalf of or response to the Complaint by the remaining defendant.

Defendant HR Director Franklin County Board of Elections is therefore **ORDERED** to report on the status of this case within fourteen (14) days.

The Clerk is **DIRECTED** to provide a copy of this Order to all named parties and to the Franklin County Prosecutor, at 373 South High Street, 14th Floor, Columbus, Ohio 43215.

February 14, 2013

/"s"/

Norah McCann King

United States Magistrate Judge

Case: 2:12-cv-01074-ALM-NMK Doc #: 15 filed: 03.04/13
Page: 1 of 1 PAGEID # 625

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GRACIE E. MCBROOM,
Plaintiff,

Civil Action 2:12-cv-1074
Judge Marbley
Magistrate Judge King

vs.

HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS,
Defendant.

ORDER

Upon motion, Doc. No 14, defendant HR Director Franklin County Board of Elections is **GRANTED** leave to file answer instanter.

The Clerk is **DIRECTED** to file the Answer, which is attached to the motion.

March 4, 2013

"s/ _____
Norah McCann King
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
www.ohsd.uscourts.gov

John P. Hehman, Clerk of Court

Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati,OH
513-564-7500

Joseph P. Kinneary U.S. Courthouse
85 Marconi Boulevard
Columbus, OH 43215

Federal Building
200 West Second Street
Dayton, OH 45402
937-512-1400

Gracie E. McBroom
636 Koebel Ave
Columbus, OH 43207

Re: McBroom v. HR Director Franklin County Board of Elections

Dear Ms. McBroom:

Enclosed please find the document you requested per our phone conversation. The document was #41 on the docket. The Response in Opposition re 33 MOTION [Defendant] Franklin County Memorandum Contra and Motion to Dismiss filed by [Defendant] HR Director Franklin County Board of Elections, which was filed by s/ Scott Gaugler on 6/10/13.

Sincerely,

" s/" _____

Case: 2:12-cv-01074-ALM-NMK Doc #: 22 Filed: 03/21/13
Page: 1 of 2 PAGEID #: 680

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GRACIE E. MCBROOM,
Plaintiff,

Civil Action 2:12-cv-1074
Magistrate Judge King

vs.

HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS,
Defendant.

ORDER

Plaintiff, who is proceeding in forma pauperis without the assistance of counsel, has filed a *Motion for Recusal*, Doc. No. 21. Plaintiff bases her motion on the Court's "refusa[al] to act on the Default Judgment by already arriving at an unfair conclusion about Plaintiff's *case"* and in striking *Plaintiff's Answer of Defendant Franklin County Board of Elections to Plaintiff's Complaint,* Doc. No. 18. *See Motion for Recusal*, pp. 2-3.

Federal law requires a federal judicial officer to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455 (a). The bias or prejudice that mandates recusal, however, must be wrongful or inappropriate, i.e., either relying on knowledge acquired outside the proceedings or displaying deep-seated and unequivocal antagonism that would render fair judgment impossible. *Liteky v. United States,* 510 U.S. 540 (1994). In this regard, judicial rulings alone almost never constitute a basis for recusal. Id.; *United States v. Grinnell Corp.,* 384 U.S. 563, 583 (1966).

First, Plaintiff's argument that the Court has failed "to act on the Default Judgment" is without merit. Plaintiffs Motion for default judgment. Doc. No. 19. was filed on

That motion is not fully briefed, *see* S.D. Ohio Civ. R. 7. 2 (a) (2) (permitting a memorandum in opposition to be served within twenty-one (21 days from the date of service of a motion), and a delay in ruling on the motion does not suggest any bias on behalf of the Court.

Second, Plaintiff's argument is based on a judicial ruling that simply does not manifest bias against any party in this action. The Court ordered *Plaintiff's Answer to Defendant's Answer of Defendant Franklin County Board of Elections* to Plaintiff's Complaint, Doc. No. 18, stricken from the record because the "[t]he Federal Rules of Civil Procedure do not . . . permit a response to an answer." Order, Doc. No. 20 (citing Fed. R. Civ. P. 7 (a)). The Court's reference to and application of the Federal Rules of Civil Procedure do not suggest any bias on behalf of the Court.

Accordingly, as it relates to the undersigned, *Plaintiff's Motion for Recusal,* Doc. No. 21, is **DENIED.**

March 18, 2013

" s/" _____
Norah McCann King
United States Magistrate Judge

U.S District Court
Southern District of Ohio
Notice of Electronic Filing

The following transaction was entered on 1/10/14 at 1:52 PM EST and filed on 1/10/2014
Case Name: McBroom v. HR Director Franklin County Board of Elections et al
Case Number: 2:12-cv-01074-ALM-NMK
Filer:
Document Number: 59
Docket Text:

ORDER granting [41] Motion to Dismiss; denying [55] motion for status conference; denying [56] Motion for Judgment on the Pleadings; denying [19] motion for Default; denying [33] Motion opposing summary judgment. This action is hereby DISMISSED. Signed by Algenon L. Marbley on 1/10/24 (cw) 2:12-cv-01074-ALM-NMK. Notice has been electronically mailed to:
Scott J. Gaugler sjaugler@franklin countyohio..gov
Jeffrey Charles Rogers jrogers@franklincountyohio.gov
2:12-cv-01074-ALM0-NMK. Notice has been delivered by other means to: Gracie E. McBroom, 636 Koebel Avenue, Columbus, Ohio 43207. The following document(s) are associated with this transaction
Document description: Main Document
Original filename: n/a
Electronic document Stamp:
[10353c424b14cdd4fe0f8044d3ac1717a6a334b726ff36ec149 bd608166b4e327bbe4
07f3c44073806195563558907ae2bcfc768118727cdc3e7fee6d 1098b6144]]

Motions
2:12-cv-01074-ALM-NMK
McBroom v. HR Director Franklin
County Board of Elections et al
CASE CLOSED on 01/10/24

ADR -, CLOSED, JURY
U.S. District Court
Southern District of Ohio

Notice of Electronic Filing

The following transaction was entered on 10/26/2018 at 5:03 PM EDT and filed on 10/25/2018
Case Number: McBroom v. HR Director Franklin County Board of Elections et al
Case Number: 2:12-cv-74-ALM-NMK
Filer: Gracie E. McBroom
WARNING: CASE CLOSED on 01/10/2014
Document Number: 71

Docket Text:
MOTION Relief from Judgment or Order by Plaintiff Gracie E. McBroom. (Attachments: # (1) Exhibit, # (2) Exhibit, # (3) Exhibit, # (4) Exhibit, # (5) Exhibit) (jlk)

2:12-cv-01074-ALM-NMK Notice has been electronically mailed to:

Scott J. Gaugler sjgaugle@franklincountyohio.gov
Jeffrey Charles Rogers jcrogers@franklincountyohio.gov

2:12O-CV-01074-alm-nmk Notice has been electronically delivered by other means to:

Gracie E. McBroom
636 Koebel Avenue
Columbus, Ohio 43207

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
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Case: 2:12-cv-01074-ALM-NMK Doc #: 64 Filed: 02/24/14 Page: 1 of 1 PAGEID #: 1273

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GRACIE E. MCBROOM,

Plaintiff,

Civil Action 2:12-cv-1074
Judge Marbley
Magistrate Judge King

vs.

HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS,

Defendant.

ORDER

Plaintiff's motion for leave to proceed on appeal in forma pauperis, ECF 63, is GRANTED. All judicial officers who render services in this action shall do so as if the costs had been prepaid.

February 24, 2014

"s/" _____
Norah McCann King
United States Magistrate Judge

Case: 2:12-cv-01074-ALM-NMK Doc #: 60 Filed 01/10/14 PAGEID #1255

****AO (Rev. 5/85) Judgment in a Civil Case**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

AMENDED JUDGMENT IN CIVIL CASE

GRACIE E. MCBROOM,

Plaintiff, **Case No. 2:12-cv- 01074**

v. **Judge Algenon L. Marbley**
Magistrate Judge King

HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS

Defendant.

[] **Jury Verdict** This action came before the Court for a trial by Jury. The issues have been tried and the jury has rendered its verdict.

[] **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

[X] **Decision by Court.** This action was decided by the Court without a trial or hearing.

IT IS ORDERED AND ADJUDGED that pursuant to January 10, 2014 Opinion and Order (Doc. 59), the Court GRANTED Defendant's Motion to Dismiss (Doc. 41).

This case is hereby DISMISSED in it's entirety.

Date: January 10, 2014

John Hehman, Clerk

"s/ _____
Betty L. Clark
Deputy Clerk

CM/ECF-U.S. District Court: OHSD
https//ecrf.circ6.dcn/cgi/Dispatch. 26610211052174pl?
Orders on Motions
2:12-cv-ALM-NMK
McBroom v. HR Director Franklin
County Board of Elections
ADR – JURY

U. S. District Court

Southern District of Ohio

Notice of Electronic Filing

The following transaction was entered on 1/10/2014 at 1:52 PM EST and filed on 1/10/2014

Case Name: McBroom v. HR Director Franklin County Board of Elections et al

Case Number: 2:12-cv-01074-ALM-NMK

Filer:

Document Number: 59

Docket Text:

ORDER granting [41] Motion to Dismiss; denying [55] Motion for a status conference; denying [56] Motion for Judgment on the Pleadings; denying [19] Motion for Default; denying [33] Motion opposing summary judgment. This action is hereby DISMISSED. Signed by Algenon L. Marbley on 1/10/2014. (cw)

2:12-cv-01074-ALM-NMK. Notice has been electronically mailed to:

Scott J. Gaugler sjaugle@frankincountyohio.gov
Jeffrey Charles Rogers
jcrogers@franklincountyohio.gov

2:12-cv-01074-ALM-NMK Notice has been delivered by other mean to: Gracie E. McBroom, 636 Koebel Avenue, Columbus, Ohio 43207. The following document(s) are associated with this transaction

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

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[Date=1/10/2014]
[FileNumber=4276811-0]
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ee6d
1098b6144]]

Case 212-cv-01074-ALM-NMK Doc #: 59 Filed: 01/10/14/ Page: 1 0f 10 PAGEID # 1245

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

EASTERN DIVISION

GRACIE E. MCBROOM, **Case No.**
Plaintiff, **2:12-CV-01074**

v. **JUDGE ALGENON L. MARBLEY**
Magistrate Judge King

HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS, et al.

Defendants.

OPINION & ORDER

I. INTRODUCTION

This matter is before the Court on Plaintiff's "Motion for Judgment on the Pleadings or, in the alternative, Motion for Summary Judgment," (Doc. 33 and Defendant's Response and Motion to Dismiss (Doc. 41) Pro Se Plaintiff, Gracie McBroom, brings this action for alleged employment discrimination arising from her work as a Precinct Judge with the Franklin County Board of Elections. Plaintiff ask the Court to deny an anticipated motion for summary judgment, which Defendant subsequently filed, but captioned as a "Motion to Dismiss" (Doc. 41). In addition, Plaintiff moves for default judgment (Doc 19), based on Defendant's late Answer, and for a status conference (Doc. 55). Plaintiff also renews her anticipatory opposition to summary judgment by re-filing a ready-identical Motion (Doc. 56).

For the reasons set forth herein, Plaintiff's Motion for Default Judgment (Doc. 19) is **DENIED.** Plaintiff's

Plaintiff's Motion for Judgment on the Pleadings or, in the alternative, Motion for Summary Judgment on the Pleadings or, in the alternative Motion for Summary Judgment"

Case: 2:12-CV-01074-ALM-nmk doc #: 59 Filed 01/10/13 Page 2 of 10 PAGEID #1246

(33 & 56) is **DENIED** and Defendant's Response and Motion to Dismiss (Doc. 41 is **GRANTED.** Plaintiff filed this action on November 21, 2012 against Attorney Scott J. Gaugler and the HR Director for the Franklin County Board of Elections. (Doc. 5). On the same day, the Magistrate Judge issued a Report and Recommendation, recommending dismissal of the claims against Defendant Gaugler (Doc. 7). Which the Court adopted on December 4, 2012 (Doc. 10).

When Defendant HR Director failed to answer in the allotted 45 days, the Magistrate Judge on February 14, 2013, ordered Defendant to report on the status of the case (Doc. 12). Defendant did so, on February 28 (Doc. 13), and moved the next day for an extension of time in file his Answer (Doc. 14). The Court granted this extension (Doc. 15), and Defendant filed his Answer on March 4 (Doc. 16). Nevertheless, Plaintiff moved for default judgment on March 13 (Doc. 19). That Motion remains pending before the Court.

On May 15, 2013, after several unsuccessful attempts to force the recusal of the Magistrate Judge, Plaintiff filed the pendant "Motion for Judgment on the Pleading or, in the alternative, Motion for Summary Judgment" (Doc. 33). That Motion anticipates that Defendant will file a motion for summary judgment, and argues that it should be denied. It does not argue for judgment on the pleadings, nor does it argue for summary judgment in Plaintiff's favor. On June 6, Defendant responded, and moved for summary judgment (Doc 4).

Subsequently, Plaintiff filed the following motions: to produce documents (Doc. 45); to amend her motion for default judgment (Doc. 46); for sanctions (Doc. 47;) to compel (Doc. 48); to produce documents (Doc. 49); for

leave to file a late response to Defendant's Motion to Dismiss (Doc. 50); to amend (Doc. 51); and "for annulment of judgment" on Defendant's motion to dismiss (Doc. 52). The Court denied all of these Motions on August 9, 2013 (Doc. 53).

Case: 2:12-cv-01074-ALM-NMK Doc. # 59 Filed: 01/10/14 Page: 3 of 10 PAGEID # 1247

In response to the Magistrate Judge's denial of her various motions, Plaintiff moved for a status conference, on August 22 (Doc. 55. Plaintiff then repeated her opposition to summary judgment; by filing a document nearly identical to her original Motion on August 23 (Doc 56). The motion for status conference, as well as the renewed Motion (to extent it differs from the original) also remains pending before the Court.

III STATEMENT OF FACTS

Plaintiff brings her claim for workplace discrimination under U.S.C. §2000e-5(f) (1). Plaintiff has worked as a voting official for Defendant since 1981, including as a precinct judge in 1992 and 1993. (Complaint, Doc. 5, at 10).
Plaintiff was demoted from her precinct judge role for the 1994 election. (Id. At 10-11). In response, Plaintiff filed a civil rights complaint, which was dismissed by the Court of Pleas on September 29,, 1995, and the dismissal was affirmed by the Court of Appeals on June 20, 1996 (Id. At 11).

After this incident, Plaintiff continued to work with the Board of Elections, and served as a judge in 2000 and 2002, and a roster judge in 2003, and presiding judge in 2004 and 2006) (Doc. 5-1 at 3). Plaintiff also worked in the 2010 and 2011 elections (Doc 5 at 5).

With case, Plaintiff alleges that on December 23, 2011, Mary Hackett, the Precinct Election Official Manager, and Deborah Cotner. Precinct Election Official Coordinator,

argues that Hawkins is "far less" qualified than Plaintiff, and that Plaintiff was removed because of her "race and color "(Id.3). Plaintiff acknowledges that Defendant informed her that she had failed her performance tests and that Defendant "wanted someone with [a] better skill set than Plaintiff," but Plaintiff disputes that she has failed any required test, and argues that her work in the 2010 and 20ll elections demonstrates her capability. (Id) Plaintiff asserts that she was never informed of any problem with her skills or performance.

(Id. At 8). In addition, Plaintiff alleges that she was replaced as precinct judge "in retaliation for" her 1995 civil right complaint (ID. At 9).

Case: 2:12-cv-01074-ALM-NMK Doc #: 59 Filed: 01/10/14 Page: 4 0f 10 PAGEID # 1248

In support of her allegations, Plaintiff asserts that she was unaware that Ms. Hawkins was being prepared as her replacement, even as she trained Ms. Hawkins in the responsibilities of a presiding judge. (Doc. 5-1 at 3-4, 7). Plaintiff argues that Ms. Hawkins was unqualified for the position of presiding judge, and that she only could have been given the job by means of improper racial preference. (ID. AT 8).

Plaintiff also takes issue with the performance problems cited by her supervisors at the Election Board. During the 2011 election, certain Elections Board officials reported that Plaintiff was late to arrive to the polling site on the day of the 2011 elections (Id. At 4). Plaintiff disputes that she was late, and argues that this could not have been the case, since the back-up procedure intended to be followed if the presiding judge is later were never put into action (Id). Plaintiff also recounts that elections official complained of her sleeping on the job, which she denies (Id. At 5). Several other accounts state that Plaintiff had a "difficult time" working as a presiding judge, and that she seemed overwhelmed and unable to manage the polling station (Id. At 10-13). On the other hand, Plaintiff cites several Election workers who reported no issues with her performance (Id. at 8-9).

On January 10, 2013, Plaintiff filed a complaint with the Ohio Civil Rights Commission ("OCRC) alleging substantially the same facts as described here (Doc. 5 at 5; Doc. 5-1 at 14).

Plaintiff also filed charges with the United States Equal Opportunity Employment Commission ("EEOC") (Doc. 5-1 at 14). The EEOC declined to proceed on the grounds that no employee relationship existed between Plaintiff and Defendant (Doc. 5 at 4). Plaintiff received her EEOC "right to sue" letter on September 4, 2012 (Id.).

Plaintiff filed suit on November 20, 2012, asserting claims for civil rights violations. Plaintiff seeks reinstatement, new supervisors and back pay. See also request $7,000,000 in punitive and compensatory damages (Doc. 5 at 3).

IV. LEGAL STANDARD

Federal Rule of Civil Procedure 56 provides, in relevant part, that summary judgment is appropriate "if pleadings depositions, answers to interrogatories, and admission on file, together with the affidavits, if any

show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. " A fact is deemed material only if it "might affect the outcome
of the lawsuit under the governing substantive law." *Wiley v. United States*, 20F.3d 222, 224 (6th Cir. 1994) citing *Anderson v. Liberty Lobby , Inc.*, 477 U.S. 242, 247-48. (1986)) The nonmoving party must then present "significant probative evidence" to show that "there is [more than] some metaphysical doubt as to the material fats." *Moore v. Phillip Morris Cos. In.* 8 f.3d 335, 339-40 (6th Cir. 1993). The suggestion of a mere possibility of a factual dispute is insufficient to defeat a motion for summary judgment. See Mitchell v. Toledo Hospital, 964 F.2d 577, 582 (6th Cir. 1992).

Citing *Gregg v. Allen-Bradley Co.*, 801 F.2d 859, 863 (6th Cir. 1986. Summary judgment is inappropriate, however, "if the dispute is about a material fact that is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the non-moving party." Anderson, 477 U. S. at 248.

The necessary inquiry for this Court is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Patton v. Bearden 8 F3d 343, 346 (6th Cir. 1993) (quoting Anderson, 477 U.S. at 251-52). In evaluating such a motion, the evidence must be viewed in the light most favorable to the nonmoving party. See *United States v. Diebold, In.*, and 369 U.S. 654, 655 (1962).

The mere existence of a scintilla of evidence in support of the opposing party's position will be insufficient to survive the motion; there must be evidence on which the jury could reasonably find for the opposing party. See *Anderson, 477 U.S.* at 251; Copeland v. Machulis, 57 F.3d 476, 479 (6th Cir. 1995).

Case: 2-12-cv-01074-AIM-NMK Doc #: Filed: 01/10/14Page: 6 of 10 PAGEID #: 1250

V. LAW AND ANALYSIS

Plaintiff's "Motion for Judgment on the Pleadings or, in the alternative, Motion for Summary Judgment" (Doc. 33) ("Plaintiff's Motion"), which by its caption appears to seek judgment on the pleadings under Fed. R. Civ. P. 12 ©, or summary judgment in favor of Plaintiff under Fed. R. Civ. P. 56, in fact argues only that summary judgment in favor of Defendant should be denied. Thus, while Plaintiff recites the language of Rule 56, and references various Ohio cases regarding summary judgment (see Doc. 33 at 2-5), Plaintiff argues only that Defendant . . . is not entitled to summary judgment Defendant should be denied. Thus, while

Plaintiff recites the language of Rule 56, and references various Ohio cases regarding summary judgment (see Doc. 33 at 2-5).

That .Defendant . . . is not entitled to summary judgment because . . . there exist several genuine issues of material fact" (Id. at 6).

Anticipating that Defendant would move for summary judgment, Plaintiff filed her Motion to argue preemptively, that summary judgment would be inappropriate. Plaintiff asserts that she has established her prima facie case by showing that she is a member of a protected class, that she was treated differently than another person who is not a Member of that class, that is, Robena Hawkins, the Caucasian individual who took over Plaintiff's role after her demotion. (Id at 15-17).

In support of this position Plaintiff argues that she was treated differently that Ms. Hawkins, because she had train Ms. Hawkins how to fulfill her position as presiding judge, and thus Ms. Hawkins is unqualified for the job from which Plaintiff was removed. (Id. at 17-18). Plaintiff further insists that the "Inconsistencies" between the various statements submitted to the OCRC are "an attempt by Defendant to cover up a violation of Title VII." (Id. at 18). Thus, Plaintiff concludes that Defendant is not entitled to summary judgment. (Id. at 19).

Defendant's "Motion to Dismiss" (Doc. 41) was filed three months later, and argues in favor of summary judgment. Plaintiff did not respond to or otherwise oppose this Motion, apart from her earlier pre-motion opposition. Defendant argues that summary judgment is appropriate because: (1) Plaintiff was not an employee of the Franklin County Board of Elections, thus rendering 45 U.S.C. § 2000 et seq. inapplicable; (2) Defendant did not engage in any discriminatory practices; and (3) Defendant is not "sui juris' and lacks the capacity to be sued.

Defendant first argues that Plaintiff was not an employee of the Franklin County Board of Elections. Instead, Defendant asserts that Plaintiff was a "Precinct

Election Official' appointed under O.R.C. §3501.22 for the "sole purpose of helping administer the primary and general elections during the year in which she is appointed." (Doc. 41 at 4). Defendant reasons that because federal employment discrimination statutes protect only employees, not independent contractors, Plaintiff is not protected, and her suit must be dismissed. (Id. At 5).

It is well settled that only employees, and not "independent Contractors," are protected by Title VII. *Brintley St. Mary Mercy Hosp.*, No. 12-2616, 2013 WL 6038227, at *2 (6th Cir. Nov. 15, 2013); *Shah v. Deaconess Hosp.*, 355 F.3d 496, 499 (6th Cir. 2004). Section 2000 e(f), Title 42 United States Code, helpfully defines "employee" as "an individual employed by an employer." In the Sixth Circuit, an employment relationship is defined, in practice, by a fact intensive balancing test which assesses numerous factors including:

The Ohio Civil rights statutes, O.R.C. §4112 et seq., similarly requires employee, not independent contractor status, and follows the same multi-factor analysis used in this Circuit. See Berge v. Columbus Cmty. Cable Access, 736 N.E.2d 517, 530 (Ohio App. 1999) (requiring employer relationship under O.R.C. § 4112); Perron v. Hood Indus., No. L-06-1396, 2007-Ohio-4478, ¶ 32 (Ohio Ct. App. Aug. 31, 2007) (applying Sixth Circuit (case law and Darden factors to determine employee vs. independent contractor status).

[1] the hiring party's right to control the manner and means by which the product is accomplished; [2] the skill required by the hired part; [3] the duration of the relationship between the parties; [4] the hiring party's right to assign additional projects, [5] the hired party's discretion over when and how to work; [6] the method of payment; [7] the hired party's role in hiring an paying assistants; [8] whether the work is part of the hiring party's regular business; [0] the hired party's benefits, and [10] tax treatment of the hired party's compensation

Case: 2:12-cv-01074-ALM-NMK Doc #: 59 Filed: 01/10/14 Page: 8 of 10 PAGED #: 1252

Simpson v. Ernst & Young, 100 F.3d 436 (6th Cir. 1996) (citing Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323-24 (1992))); see also Guinn v. Mount Carmel Health, No. 2:09-CV-226, 2013 WL 4605711, at *8 (S.D. Ohio Aug. 29, 2014).

In this case, the factors outlined by the Sixth Circuit counsel strongly in favor of an independent contractor relationship: (1) election procedures are governed by Ohio law, independent contractor relationship: (1) Election procedures are governed by Ohio law, which spells out the manner of appointment, and duties, of election officials see O.R.C. § 3501 et seq.; (2) the skills required by election officials are detailed in O.R.C. § et seq.; (3) the duration of the appointment is for a short, fixed period, lasting typically only one year, see id. ("The term of such precinct officers shall be for one year"); (4) election officials cannot be assigned additional projects, as they are appointed for a specific purpose, and not to act as general agents; (5) the board of elections has no discretion over how and when election officials work, as their duties set forth by statute; (6) election officials are paid by vouchers of the county board of elections upon warrants of the county auditor, O.R.C. § 3501 § 3501.17(A) ;(7) election officials are not empowered to hire or pay assistants; (8) the work performed by election officials is part of the hiring party's regular business; (9) election officials do not receive any

benefits or retirement contributions; and (10) election officials are treated as independent contractors for taxation purposes, and given form IRS 1099 (see Affidavit of Dana Walch, Doc, 41 at 15-16).

Because the factors weigh almost uniformly in favor of an independent contractor relationship, the Court concludes that, as a matter of law, Plaintiff was not an employee of the Franklin County Board of Elections, and thus her claims under Title VII, and the related Ohio civil rights laws, fail. For these reasons, Defendants' Motion (Doc. 41) is hereby **GRANTED.** Plaintiff Motions (Doc. 33, 56 are hereby **DENIED.**

VI. OTHER PENDING MOTIONS

Several other motions remain pending for this Court which are ripe for resolution. Plaintiff's Motion for Default Judgment (Doc. 19) asks the Court to enter default judgment against Defendant, based on Defendant's failure to answer within 45 days. Whatever the implicit merits of this motion, the Court has already addressed Defendant's untimeliness: on February 2013, the Court ordered the Defendant to report on the status of the case within 14 days (Doc. 12) which Defendant did on February 28 (Doc. 13).

The Defendant moved for additional time to answer (Doc 14), which the court granted (Doc. 15). The Defendant then answered on March 4, 2013, within the new time period granted by the Court (Doc. 16). Accordingly, there is no basis to grant a motion for default judgment. See *Walton v. Rogers*, No. 88-3307, 860 F.2d 1081, at *1 (6th Cir. Oct. 19, 1988) ("Default judgments are disfavored, and there must be strict compliance with the legal prerequisites establishing the court's power to render the judgment"); Eitel v. McCool, 782 F.2d 1470, 1472 (9th Cir. 1986) ("Our starting point is the general rule that default judgments are ordinarily disfavored. Cases should be decided upon their merits whenever reasonably possible."). Plaintiff's Motion for Default Judgment (Doc. 19 is therefore **DENIED.**

In addition, Plaintiff asks for a status conference (Doc. 55) "in order o discuss the many fundamental errors of [Magistrate] Judge King in this case." Without commenting on the merits of Magistrate Judge King's orders, the Court finds that a status conference is unnecessary tin order to resolve the pending motions in this case. Plaintiff's Motion is hereby **DENIED.**

VII. CONCLUSION

For the reasons stated above, Plaintiff's Motion for Default Judgment (Doc. 19) is hereby **DENIED.** Plaintiff's Motion opposing summary judgment (Doc. 3)3) and her renewed Motion for same (Doc. 56) are hereby **DENIED.** Defendant's Motion to Dismiss (Doc. 41) is hereby **GRANTED**. Plaintiff's motion for a status conference (Doc. 55) is hereby **DENIED.** This case is hereby **DISMISSED.**

See Appendixes I: 2 thru 4.

IT IS SO ORDERED.

"s/ _____

ALGENON L. MARBLEY. JUDGE

UNITED STATES DISTRICT JUDGE

DATED: January 10, 2014

Case: 2:12-cv-01074-ALM-NMK Doc #: 15 Filed: 03/04/13 Page: 1 of 1 PAGEID 625

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

GRACIE E. MCBROOM,
Plaintiff, **Civil Action 2:12-cv-1074**

Judge Marbley
Magistrate Judge King

vs.

HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS
Defendant.

ORDER

Upon motion, Doc. No 14, defendant HR Director Franklin County Board of Election is **GRANTED** leave to file an answer instanter.

The Clerk is **DIRECTED** to file the Answer, which is attached to the motion.

"s/ _____
Norah McCann King
United States Magistrate Judge

March 4, 2013

Case: 2-12-cv-01074-ALM-NMK Doc #: 20 Filed: 03/13/13 Page: 1 of 1 PAGEID #: 653

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

GRACIE E. MCBROOM,

Plaintiff, Civil Action 2:12-cv-1074

Judge Marbley

vs. Judge King

HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS

Defendant.

ORDER

Plaintiff, who is proceeding in forma pauperis without the assistance of Counsel, has filed a response to defendant's Answer. The Federal Rules of Civil Procedure do not, however, permit a response to an answer. See Fed. R. P. 7(a).

Accordingly, Plaintiff's Answer to Defendant's Answer of Defendant Franklin County Board of Elections to Plaintiff's Complaint, Doc. No. 18, is **ORDERED STRICKEN** from the record.

/"s"/

Norah McCann King
United States Magistrate Judge

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

www.oshd.uscourt gov

John P. Hehman, Clerk of Court

Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202
513-564-1400

Federal Building
200 West Second Street
Dayton OH 45402
937-512-1400

July 8, 2013

Re: **McBroom vs HR Director Franklin County Board of Elections et al**

Dear Ms. McBroom:

Enclosed please find the document you requested per our phone conversation. The document was #41 on the docket.
The Response in Opposition re 33 MOTION Defendant Franklin County Memorandum Contra and Motion to Dismiss filed by Defendant HR Franklin County Board of Elections, which was filed by Scott Gaugler on 6/10/2013.

Sincerely,

"s/ _____

Jessica Rector, Deputy Clerk

Orders on Motions

2-12-CV-01074-ALM-NMK

McBroom v. HR Director Franklin

County Board of Election et al

CASE CLOSED on 01/10/2014

ADR. , APPEAL, JURY

U.S. District Court

Southern District of Ohio

Notice of Electronic Filing

The following transaction was entered on 4/4/2012 at 2:10 PM EDT was filed on 4/4/2014

Case Name: McBroom v. HR Director Franklin County Board of Elections et al

Case Number: 2:12-CV-01074-AlM-NMK

Filer:

WARNING: CASE CLOSED on 01/10/2014

Document Number: 65

Docket Text:

ORDER denying [61] Motion for Reconsideration, signed by Judge Algenon L. Marbley on 4/4/2014. (cw)

2:12-cv-01074-ALM-NMK Notice has been electronically mailed to:

Scott J. Gaugler sjgaugle@franklincountyohio.gov

Jeffrey Charles Rogers

jcrogers@franklincountyohio.gov **App. 22 2:12-cv-01074-ALM-NMK Notice has been delivered by other means to:**

Gracie E. McBroom

636 Koebel Avenue

Columbus, OH 43207

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1040326259 [Date=4/4/2014] [File Number=43743 0[63e1c174594b3587d733806ca8dec7419f0e11e09d3deaa04bf058900450850967

F1886d4f9f89b5df03173a2eaed6db4011a98686abfc5393e736af31a0b57]]

Case: 2-12-cv-01074-ALM-NMK Doc #: 65 Filed: 04/04/14 Page: 1 of 2 PAGEID #: 1274

IN THE UNITED STATES DISRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

GRACIE E. MCBROOM,
Plaintiff, **Case:No. 2:12-CV-01074**

v. **JUDGE ALGENON L. MARBLEY**

HR DIRECTOR FRANKLIN COUNTY
Magistrate Judge King
BOARD OF ELECTIONS, et al.,
Defendant,

OPINION & ORDER

This matter is before the Court on Pro se Plaintiff Gracie E. McBroom's Motion for Reconsideration (Doc. 61).

Plaintiff requests that the Court reconsider its Opinion and Order of January 10, 2014, granting Defendants' Motion to Dismiss.[1] (Id, at 2), Plaintiff does not offer any reasoning or argument why the Court should grant such a motion.

Under Fed. R. Civ. P. 59(e), a district court will reconsider a prior decision "if the moving party demonstrates: (1) a clear error of law; (2) newly discovered evidence that was not previously available to the parties; or (3) an intervening change in controlling law." Owner Operator Indep. Drivers Ass'n, Inc. v. Arctic Express, Inc. 288 F. Supp. 2d 895, 900 (S.D. Ohio 2003); see also Gen. Corp., Inc. v. Am. Int'l Underwriters, 178 F.3d 804, 834 (6th

Cir. 1999) (a judgment may also be altered or amended when necessary "to prevent manifest injustice"). A motion under Rule 59€, however, is "not an opportunity to reargue a case." *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146, F.3d 367, 374 (6th Cir. 1998). Rule 59(e) may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n. 5 (2008) (quotation omitted).

---

1 As explained in the Court's Opinion and Order Defendants' Motion (Doc. 41), while captioned "Motion to Dismiss Plaintiff's Complaint " in fact argues, substantively, for summary judgment. (See Doc. 59 at 7). The Court accordingly decided Defendants' Motion in light of its substance, no its title.

Case: 2:12-ocv-01074-ALM-NMK Doc #: 65 Filed: 04/04/14 Page: 2 of 2 PAGEID 1275

Generally, a manifest injustice or a clear error of law requires "unique circumstances," such as complete failure to address an issue or claim. *McWhorter v. ELSEA, Inc.*, No. 2:00-CV-473 2006 WL 3483964, at *2 (S.D. Ohio Nov. 30, 2006) (citing *Collison v. Int'l Chem. Workers Union, Local* 217, 34 F.3d 233, 236 (34th Cir. 1994)).

The grant or denial of a Rule 59€ motion "is within the informed discretion of the district court." Huff v. Metro. Life Ins. Co., 675 F.3d 119, 122 (6th Cir. 1982). Significantly, "justice does not require that the district court [grant reconsideration] on an issue that would not alter the district Court's prior decision." Rodriguez v. Tennessee Laborers Health & Welfare Fund, 89 F. App'x 949, 959-60 6th Cir. 2004).

In this case, Plaintiff directs the Court to no clear error of law, newly discovered evidence, or change it controlling law; nor does Plaintiff explain how reconsideration is necessary to prevent a manifest injustice. Accordingly, Plaintiff's Motion for Reconsideration (Doc. 61 is **DENIED.**

IT IS SO ORDERED.

"s/"
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: April 4, 2014

As of April 27, 2015 3:15 PM EDT

MCBROOM V. HR DIR. FRANKLIN COUNTY Bd. Of ELECTIONS

United States District Court for the
Southern District of Ohio,
Eastern Division

January 10, 2014, Decided; January 10, 2014, Filed Case No. 2:12-CV-01074

Reporter
2014 U.S. Dist. LEXIS 3422; 2014 WL 116369

GRACIE E. MCBROOM, Plaintiff, v. HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS, et al.,
Defendants.

Prior History: McBroom v. HR Dir. Franklin County Bd. Of Elections, 2013 U.S Dist. LEXIS 116495 (S.D. Ohio,
(Aug. 9, 2013).

Core Terms

Elections, summary judgment, election official argues, hired, party's precinct, summary judgment motion, status Conference, contractor, Pleadings motions, default judgment Presiding judge, county board, motion for default appointed. **Counsel:** [*] Gracie E. McBroom, Plaintiff, Pro Se Columbus, OH. For HR Director Franklin County Board of Elections, Defendant: Jeffrey Charles Rogers, LEAD ATTORNEY, Franklin County Prosecutor's Office, Columbus, OH; Scott J. Gaugler, Franklin County Prosecutor's Office, Civil Division Columbus, OH.

Judges: ALGENON L. MARBLEY, UNITED STATES DISTRICT JUDGE: Magistrate Judge King.

Opinion by: ALGENON L. MARBLEY

OPINION

OPINION & ORDER

II. INTRODUCTION

This matter is before the Court on Plaintiff's "Motion for Judgment on the Pleadings or, in the alternative, Motion for Summary Judgment" (Doc. 33) and Defendant's Response and Motion to Dismiss (Doc. 41). Pro Se Plaintiff, Gracie McBroom, brings this action for alleged employment discrimination, arising from her work as a Precinct Judge with the Franklin County Board of Elections. Plaintiff asks the Court to deny an anticipated motion for summary judgment, which Defendant subsequently filed, but captioned as a "Motion to Dismiss" (Doc 41). In addition, Plaintiff moves for default judgment (Doc 19), based on Defendant's late Answer, and for a status conference (Doc. 55). Plaintiff also renews her anticipatory opposition to summary judgment by re-filing a nearly-identical Motion (Doc. [*2] 56).

For the reasons set forth herein, Plaintiff's Motion for Default Judgment (Dec. 19) is **DENIED.** Plaintiff's Motion for status conference (Doc. 55 is **DENIED.** Plaintiff's "Motion for Judgment on the Pleadings or, in the alternative, Motion for Summary Judgment" (Doc. 33 & 56 is **DENIED,** and Defendant's Response and Motion to dismiss (Doc. 41) is **GRANTED.**

II. PROCEDURAL POSTURE

Plaintiff filed this action on November 21, 2012, against Attorney Scott J. Gaugler and the H.R. Director for the Franklin County Board of Elections (Doc 5).

On the same day, the Magistrate Judge issued a Report and Recommendation, recommending dismissal of the claims against Defendant Gaugler (Doc. 7), which the Court adopted on December 4, 2012 (Doc. 10).

When Defendant H.R. Director failed to answer in the allotted 45 days, the Magistrate Judge, on February 14, 2013, ordered Defendant to report on the status of the case

2014 U.S. Dist. LEXIS 3422, *3

(Doc. 12) Defendant did so, on February 28 (Doc. 13), and moved the next day for an extension of time to file his Answer (Doc. 14). The Court granted this extension (Doc. 15), and Defendant filed his Answer on March 4 (Doc. 16). Nevertheless, Plaintiff moved for default judgment on March [*3] (Doc. 19). That Motion remains pending before the Court.

On May 15, 2013, after several unsuccessful attempts to force the recusal of the Magistrate Judge, Plaintiff filed the pendant "Motion for Judgment on the Pleadings or, in the alternative, Motion for Summary Judgment (Doc. 33). That motion anticipates that Defendant will file a motion for summary judgment, and argues that it should be denied. It does not argue for judgment on the pleadings, nor does it argue for summary judgment in Plaintiff's favor. On June 6, Defendant responded, and moved for summary judgment (Doc. 41).

Subsequently, Plaintiff filed the following motions: to produce documents (Doc. 45); to amend her motion for default judgment (Doc. 46); for sanctions (Doc. 47); to compel (Doc. 48); to produce documents (Doc 49); for leave to file a late response to Defendant's Motion to Dismiss (Doc. 50); to amend (Doc. 51); and "for annulment of judgment" on Defendant's motion to dismiss (Doc. 52). The Court denied all of these Motions on August 9, 2013 (Doc. 53).

In response to the Magistrate Judge's denial of her various motions, Plaintiff moved for a status conference, on August 22 (Doc. 55). Plaintiff then repeated [*4] her Opposition to Summary judgment, by filing a document nearly identical to her original Motion, on August 23 (Doc. 56). The motion for status conference, as well as the renewed Motion (to the extent it differs from the original) also remains pending before the Court.

III. STATEMENT OF FACTS

Plaintiff brings her claim for workplace discrimination under 42 U.S.C. § 2000e-5(f)(1). Plaintiff has worked as a voting official for Defendant since 1981, including as a precinct judge in 1992 and 1993. (Complaint, Doc. 5, at 10). In 1994, Plaintiff was demoted from her precinct judge role for the 1994 election. (Id. At 10-11). In response, Plaintiff filed a civil rights complaint, which was dismissed by the Court of Common Pleas on September 29, 1995, and the dismissal was affirmed by the Court of Appeals on June 20, 1996 (Id. at 11). After this incident, Plaintiff continued to work with the Board of Elections and served as a judge in 2000 and 2002, a roster judge in 2003, and presiding judge in 2004 and 2006. (Doc. 5-1 at 3). Plaintiff also worked in the 2010 and 2011 elections.

(Doc. 5 at 5). With regard to the instant case, Plaintiff alleges that, on December 22, 2011, Mary Hackett, the Precinct [*5] Election Official Manager, and Deborah Cotner, Precinct Election Official Coordinator, removed Plaintiff as precinct judge and replaced her with Hawkins,

a white woman. (Id. at 2-3). Plaintiff argues that Ms. Hawkins is "far less" qualified than Plaintiff, and that Plaintiff was removed because of her "race and color." (Id. at 3). Plaintiff acknowledges that Defendant informed her that she had failed her performance tests and that Defendant "wanted someone with [a] better skill set than Plaintiff, " but Plaintiff disputes that she has failed any required test and argues that her work in the 2010 and 2011 elections demonstrates her capability. (Id.). Plaintiff asserts that she was never informed of any problem with her skills or performance. (Id. at 8). In addition, Plaintiff alleges that she was replaced as precinct judge "in retaliation for" her 1995 civil rights complaint. (Id. at 9).

In support of her allegations, Plaintiff asserts that she was unaware that Ms. Hawkins was being prepared as her replacement, even as she trained Ms. Hawkins in the responsibilities of a presiding judge. (Doc. 5-1 at 3-4, 7). Plaintiff argues that Ms. Hawkins was unqualified for the position of [*6] presiding judge, and that she only could have been given the job by means of improper racial preference. (Id. at 8).

Plaintiff also takes issue with the performance problems cited by her supervisors at the Election Board. During the 2011 elections, certain Elections Board officials reported that Plaintiff was late to arrive to the polling site on the day of 2011 elections. (*Id.* At 4).

Plaintiff disputes that she was late and argues that this could not have been the case, since the back-up procedures intended to be followed if the presiding judge is late were never put into action. (Id.). Plaintiff also recounts that elections officials complained of her sleeping on the job, which she denies. (Id. at 5). Several other accounts state that Plaintiff had a "difficult time" working as presiding judge, and that she seemed overwhelmed – and unable to manage the polling station. (Id. at 10-13). On the other hand, Plaintiff cites several Election workers who reported no issues with her performance. (Id. at 8-9).

On January 10, 2013, Plaintiff filed a complaint with the Ohio Civil Rights Commission ("OCRC") alleging substantially the same facts as described here. (Doc. 5 at 5; Doc 5-1 at [*7] 14). Plaintiff also filed charges with the United States Equal Opportunity Employment Commission ("EEOC"). (Doc. 5-1 at 14). The EEOC declined to proceed, on the grounds that no employee relationship existed between Plaintiff and Defendant. (Doc. 5 at 4). Plaintiff received her "EEOC" right to sue" letter on September 4, 2012. (Id). Plaintiff filed suit on November 20, 2012 asserting claims for civil rights violations. Plaintiff seeks reinstatement, new supervisors, and back pay. He also requests $7,000,000 in punitive and compensatory damages. (Doc. 5 at 3).

IV. LEGAL STANDARD

2014 U.S. Dist. LEXIS 3422, *7

Federal Rule of Civil Procedure 56 provides, in relevant part, that summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there I no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." A fact is deemed material only if it "might affect the outcome of the lawsuit under the governing substantive law."

Wiley v. United States, 20 F3d 222, 224 (6th Cir. 1994) (**citing** Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 24748, 106 S. Ct. 2505, 91 L. Ed.2d 202, (1986)). The nonmoving party must [*8] then present "significant probative evidence" to show that "there is [more than] metaphysical doubt as to the material facts." Moore v.Phillip Morris Cos., Inc. 8 F.3d 335, 339-40 (6th Cir. 1993).
The suggestion of a mere possibility of a factual dispute is insufficient to defeat a motion for summary judgment. See Mitchell v.. Toledo Hospital, 964 F.2d 577, 582 (6th Cir. 1992 (**citing** Gregg v. Allen – Bradley Co., 801 F. 2d 859, 863 (6th Cir. 1986)). Summary judgment is inappropriate, however, "if the dispute is about a material fact that is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the non-moving party." Anderson, 477 U.S. at 248.

The necessary inquiry for this Court is "whether 'the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Patton v. Bearden, 8 F.3d 343, 346 (6th Cir. 1993) (**quoting** Anderson, 477 US. at 251- 52). In evaluating such a motion, the evidence must be viewed in the light most favorable to the nonmoving party. See United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S. 993, 8 L Ed. 2d 176 (1962). The mere existence of a scintilla of [*9] evidence in support of the opposing party's position will be insufficient to survive the motion; there must be evidence on which the jury could reasonably find for the opposing party. See Anderson, 477 U.S. at 251; Copeland v. Machulis, 57 F.3d 476, 479 (6th Cir. 1995.

V. LAW AND ANALYSIS

Plaintiff's "Motion for Judgment on the Pleadings or, in the alternative, Motion for Summary Judgment' (Doc. 33) ("Plaintiff's Motion"), which by its caption appears to seek judgment on the pleadings under Fed. R. Civ. P. 12(c), or

summary judgment in favor of Plaintiff under Fed. R. Civ. P. 56, in fact argues only that summary judgment in favor of Defendant should be denied. Thus, while Plaintiff recites the language of Rule 56, and references various Ohio Cases regarding summary judgment (see Doc. 33 at 2-5), Plaintiff argues only that Defendant . . . is not entitled to summary judgment because . . . there exist several genuine issues of material fact" (Id. At 6).

2014 U.S. Dist. LEXIS 34422, *7

Anticipation that Defendant would move for summary judgment. Plaintiff filed her Motion to argue, preemptively, that summary judgment would be inappropriate. Plaintiff asserts that she has established her prima facie case by showing that [*10] she is a member of a protected class, and that she was treated differently than another person who is not a member of that class, that is, Robena Hawkins, the Caucasian individual who took over Plaintiff's role after her demotion (Id. At 15-17). In support of this position, Plaintiff argues that she was treated differently that Ms. Hawkins, because she had to train Ms. Hawkins how to fulfill her position as presiding judge, and thus Ms. Hawkins is unqualified for the job from which Plaintiff was removed. (Id. At 17-18). Plaintiff further insists that the "inconsistencies" between the various statements submitted to the OCRC are "an attempt by Defendant to cover up a violation of Title VII." (Id at 18). Thus, Plaintiff concludes that Defendant is not entitled to summary judgment. (Id. At 19).

Defendant's "Motion to Dismiss" (Doc. 41) was filed three months later, and argues in favor of summary judgment. Plaintiff did not respond to or otherwise oppose this Motion, apart from her earlier pre-motion opposition. Defendant argues that summary judgment is appropriate because(1)

Plaintiff was not an employee of the Franklin County Board of Election, thus rendering 42 U.S.C. § 2000 et seq. applicable; (2) Defendant did not engage in any discriminatory practices; and (3) Defendant is not "sui juris" and lacks the capacity to be sued.

Defendant first argues that Plaintiff was not an employee of the Franklin County Board of Elections. Instead, Defendant asserts that Plaintiff was a "Precinct Election Official" appointed under O.R.C. § 3501.22 for the "sole purpose of helping administer the primary and general elections during the year in which she is appointed." (Doc. 41 at 4). Defendant reasons that because federal employment discrimination statutes protect only employees, not independent contractors, Plaintiff is not protected and her suit must be dismissed. (Id. at 5).

It is well settled that only employee, and not "independent contractors," are protected by Title VII. [1] Brintley v. St. Mary Mercy Hosp. No. 12-2616, 545 Fed Appx. 484, 2013 U.S. App. LEXIS 23144, 20213 WL 6038227, AT *2 (6th Nov. 15, 2013) Shah. Deaconess Hosp.Hosp.355 F. 3d 496, 499 (6th Cir. 2004). Section 2000e (f), Title 42, United States Code, helpfully defines "employee" as an individual employed by an employer." In the Sixth Circuit, an employment relationship is defined, in practice, by a fact-intensive balancing test which assesses numerous [*12] factors, including: [1] the hiring party's right to control the manner and means by which the product is accomplished; [2] the skill required by the hired party; [3] the duration of the relationship between the parties [4] the hiring party's right to assign addition how to work; [5] the hired party's discretion over when and how to work; [6] the method of payment; [7] the hired party's role in hiring and paying assistants; [8] whether the work is part of the hiring party's regular business; [9] the hired party's employee Benefits' and [10] tax treatment of the hired Party's compensation. Simpson v. Emst & Young, 100 F.3d 436, 443 (6th Cir.1996 (**citing** Nationwide Mut. Ins. Co. v. Darden, 503, U.S. 318, 323-24, 112 S. Ct. 1344, 117 L.

Ed. 2d 581 (1992); **see also** Guinn v. Mount Carmel Health No. 2:09-CV-226, 2013 U.S. Dist. LEXIS 123983, 2013 WL 4605711, at * 8 (S.S. Ohio Aug. 29, 2013).

In his case, the factors outlined by the Sixth Circuit counsel strongly in favor of an independent relationship: (1) election procedures are governed by Ohio law, which spells out the manner of appointment, and duties of election officials, see O.R.C. § 3501 et seq.; (2) the skills required by election officials are detailed in O.R.C. § 3501.22; (3) the duration of the appointment is for a short fixed period lasing typically only one year; see id. ("The term of such precinct officers shall be for one year."); (4) election officials cannot assigned additional projects; as they are appointed for a specific purpose, and not to act as general agents; (5) the board of elections has no discretion over how and when election official work, as their duties are set forth by statute; (6) election officials are paid by vouchers of the county board of election, upon warrants as of county auditor, O.R.C. § 3501.17 (A); (7) election officials are not empowered to hire

1 The Ohio Civil rights statue, O.R.C. § 4112 et seq, similarly requires employee, not independent contractor status, and follows the same multi-factor analysis used in this Circuit. See Berge v. Columbus Cmty. Cable Access, 136 Ohio App. 3d 281736 N.E. 2d 517, 530 (Ohio App. 1999 (requiring employer-employee relationship under O.R.C. § 4112)); Perron v. Hood Indus., Inc., No. L-06-1396, 2007Ohio -4478. ¶ 32 (Ohio Ct. A. Aug. 31, 2007) [*13] applying sixth Circuit case law and Darden factors to determine employee vs. independent contractor status).

or pay assistant; (the work performed by election officials is part of the hiring party's regular [*14] business; (9) election officials do not receive any benefits or retirement contributions; and (10) election officials are treated as independent contractors for taxation purposes, and given form IRS 1099 (see Affidavit of Dana Welch, Doc. 41 at 15-16).

Because the factors weight almost uniformly in favor of an independent contractor relationship, the Court concludes that, as a matter of law, Plaintiff was not an employee of the Franklin County Board of Elections, and thus her claims under Title VII, and the related Ohio civil rights laws, fail. For these reasons, Defendants' Motion (Doc. 41) is hereby **GRANTED.** Plaintiffs Motions (Doc. 33, 56) are hereby **DENIED**.

IV. OTHER PENDING MOTIONS

Several other motions remain pending for this Court which are ripe for resolution. Plaintiff's Motion for Default Judgment (19) asks the Court to enter default judgment against Defendant, based on Defendant's failure to answer within 45 days. Whatever the implicit merits on this motion, the Court has already addressed Defendant's untimeliness: on February 14, 2013, the Court ordered the Defendant to report on the status of Court ordered the Defendant to report on the status of the case within 14 days (Doc. 12), which Defendant did on February 28 (Doc. [*15] 13). The Defendant moved for additional time to answer (Doc. 14), which the Court granted (Doc. 15). The Defendant then answered on March 4, 2013, within the new time period granted by the Court (Doc. 16). Accordingly, there is no basis to grant a motion for default judgment. *See* Walton v. Rogers, 860 F.2d 1081, at *1 (6th Cir. 1988) ("Default judgments are disfavored, and there must be strict compliance with the legal perquisites establishing the court's power to render the judgment"); *Eitel v McCooll*, 782 F.2d 1470, 1472 (9th Cir. 1986) ("Our starting point is the general rule that

default judgments are ordinary disfavored. Cases should be decided upon their merits whenever reasonably possible."). Plaintiff Motion for Default Judgment (Doc. 19) is therefore **DENIED.**

In addition, Plaintiff asks for status conference (Doc. 55) "in order to discuss the many fundamental errors of [Magistrate] Judge King in this case." Without commenting on the merits of Magistrate Judge King's order, the Court finds that a status conference is unnecessary in order to resolve the pending motions in this case. Plaintiff's Motion is hereby **DENIED.**

VI. CONCLUSION

For the reasons (Doc. 19) is hereby **DENIED.** Plaintiff's Motion opposing summary judgment (Doc. 56) are hereby **DENIED.** Defendant's Motion to Dismiss (Doc. 41) is hereby **GRANTED.** Plaintiff's motion for a status conference (Doc. 55 is hereby **DENIED.** This case is hereby **DISMISSED.**

IT IS SO ORDERED.

s"/_____

ALGENON L. MARBLEY

UNITED STATES DISTRICT JUDGE

DATED: January 10, 2014

As of: April 27, 2015 3:15 PM EDT

McBroom v. HR Director Franklin County Board of Elections

U. S. District Court for the Southern District of Ohio, Eastern Division

August 9, 2013 2014, Decided; August 9, 2013, Filed

Reporter

2013 U.S. Dist. LEXIS 116495; 2013 WL **40552833**

GRACIE E. MCBROOM, Plaintiff, vs. HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS Defendant.

Subsequent History: Motion denied by, Summary judgment denied by, Dismissed by McBroom v. HR Franklin County Bd. of Elections, 2014 U.S. Dist. LEXIS 3422 (S.D. Ohio, January 10, 2014

Prior History: McBroom v. HR Dir. Franklin County Bd. of Elections, 2013 U.S. Dist. LEXIS 39475 (S.D. Ohio, Mar. 18, 2013)

Core Terms

Interrogatories, pages, discovery, appears, defense Motion

Counsel: [*1] Gracie E. McBroom, Plaintiff, Pro Se, Columbus, OH.

For HR Director Franklin County Board of Elections Defendant: Jeffrey Charles Rogers, LEAD ATTORNEY Franklin County Prosecutor's Office, Civil Division, Columbus, OH.

Judges: Norah McCann King, United States Magistrate Judge. Judge Marbley

Opinion by: Norah McCann King

OPINION

OPINION AND ORDER

Plaintiff, who is proceeding in forma pauperis without the assistance of counsel, has filed a Request to Produce and Inspect Documents Pursuant to FRCP 34, Doc. No. 45. Plaintiff's filing appears to be her initial discovery request. Although Plaintiff's initial discovery request must be sent to defense counsel, they should not be filed with the Court. Plaintiff's Request to Produce and inspect Documents Pursuant to FRCP 34, Doc. No. 45, is therefore **ORDERED STRICKEN FROM THE RECORD.**

This matter is now before the n a document filed by Plaintiff captioned Motion to Amend, Doc. No. No. 46. It appears that the motion seeks to amend either Doc. No. 19 or Doc. No. 33, but it is entirely unclear to the Court what Plaintiff intends by this filing. Accordingly, to the extent that Plaintiff's filing, D46, [*2] requests some action by the Court that motion is DENIED.

This matter is also before the Court on Plaintiff' motion for sanctions under Fed. R. Civ. P. 26(c), Doc. No. 47. Plaintiff's motion for sanctions seeks an order "punish[ing] the Defendant for failing to abide by the Discovery Rules in their [sic] Answer of Plaintiff's First Set of Interrogatories to Defendant." Id. at p. 1. Plaintiff argues that Defendant's responses to her first set of interrogatories are "slanted, ambiguities." Id. Plaintiff's motion does not, however, provide any information about the interrogatories,

nor does it include a copy of the interrogatories or Defendant's responses thereto. Plaintiff complains that Defendant objected to the interrogatories as "overly broad, impermissibly vague, unduly burdensome and seek[ing] information that may be protected by the attorney client privilege or attorney work product," however, the motion does not contain sufficient information for the Court to determine if Defendant's responses are actually deficient in any way. Accordingly, Plaintiff's motion for sanctions, Doc 47 is **DENIED.**

This matter is also before the court for consideration of Plaintiff's Motion to Compel, [3*] Doc. No. 48. Plaintiff's Motion to compel response to interrogatories sent to Defendant on May 15, 2013. Id. at pp. 1-2. Defendant has not filed a response to this Motion to Compel.

Rule 37 of the Federal Rules of Civil Procedure authorizes a motion to compel discovery when a party fails to provide a proper response to interrogatories. Rule 37(a) expressly provides that a "party seeking discovery may move for an order compelling an answer, designation, production , or inspection. This motion may be made if . . . a party fails to answer an interrogatory submitted under Rule 33[.]" Fed R. Civ. P. 37(a)(3)(B).. However, a party moving to compel discovery responses must certify that she "has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action." Fed. R. Civ. P. 37(a)(1). See also S.D. Ohio Civ. R. 37.2.

In the case presently before the Court, Plaintiff has not certified, or even argued, that she made a good faith attempt to confer with Defendant in an effort to resolve this dispute prior to filing the Motion to Compel. Plaintiff's Motion to Compel, Doc. No. 48 is therefore **DENIED.**

The Court also [*4] notes that certain pages of Doc. No. 48-
1 contain personal identifying information. The Clerk is **DIRECTED** place pages 3 and 9 of Doc. No. 48-1 under seal. Also before the Court is Plaintiff's motion titled Request to produce and Inspect Documents Pursuant to FRCP 34, Doc. No. 49. In that filing, Plaintiff refers to a phone call and an in-person conversation between her an Defendant's counsel. The motion does not, however, ask the Court to take any action. To the extent that this filing, Doc. No. 49, requests some action by the Court, that motion is **DENIED.**

Plaintiff has filed a motion for judgment on the pleadings, Doc. No. 33. Defendant has filed a response to that motion which is also, apparently, intended to serve as a motion to dismiss. Defendant Franklin County's Memorandum Contra and Motion to Dismiss Plaintiff's Complaint filed November 20, 2012, 41. The Clerk is **DIRECTED** to indicate pm the docket that Doc. No. 41 is both a response to Plaintiff's motion for judgment on the pleadings. Doc. No. 33, and a motion to dismiss the Complaint. **Plaintiff may have until August 30, 2013 to reply in support of her motion for judgment on the pleadings an Defendant may have until [*5] August 30, 2013 to reply in support of this motion to dismiss.**

Plaintiff's remaining motions, 50, 51,, 52, appear to be related to Defendant's motion to file a late response to Defendant's motion to dismiss and a response to Defendant's motion. To that extent, Plaintiff's motion, 50 is **GRANTED.**

The Clerk is **DIRECTED** to indicate on the docket that Doc. No. 50 is both a motion to file a late response to Defendant's motion to dismiss and a response to Defendant' motion to dismiss. To the extent that the motion, Doc. No 50, seeks other, unspecified, action by the Court, it is **DENIED.**

Plaintiff's motion, Doc. No. 52 appears to relate to a contain portions of her prior motion. Doc No. 50. However, the filing appears to be incomplete and it is entirely unclear what Plaintiff intends by this filing. To the extent that the filing seeks action by the Court, Plaintiff's motion, 52, is **DENIED.** Plaintiff's motion to amend, Doc. No. 51, seeks to amend Doc. No. 52 to replace certain pages with pages attached to the motion. The motion does not, however, attach any additional pages and it is in any event unclear which [*6] pages of Doc. No. 52 Plaintiff intends to replace. Plaintiff's motion, 51 is therefore **DENIED.** Finally, the Court notes that certain pages of Doc. No. 50-1 contain personal identifying information. The Clerk is **DIRECTED** to place pages 12, 14, and 18 of Doc No. 50-1 under seal.

The Clerk is **DIRECTED** to remove Doc. Nos. 45, 46, 47, 48, 49, 50, 52 from the Court's pending motions list.

Plaintiff has filed a motion for default judgment, Doc. No. 19, which appears to be unopposed and which remains pending.

August 9, 2013

s/

Norah McCann King

United States Magistrate Judge

As of: April 27, 2015 3:15 PM EDT

MCBROOM V. HR DIR. FRANKLIN COUNTY BD OF ELECTIONS

United States District Court for the Southern Dist. of Ohio, Eastern Division

March 18, 2013, Decided; March 21, 2013 Filed

Civil A2:12-cv-1074

Reporter

2013 U.S. Dist. LEXIS 39475

GRACIE E. MCBROOM, Plaintiff, vs. HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS, Defendant.

Subsequent History: Motions ruled upon by McBroom v. HR Dir. Franklin County Bd of Elections 2013 U.S. Dist. LEXIS 116495 (S.D. Ohio, Dec. 4, 2012)

Core Terms

Recusal, bias, Default, judicial ruling

Counsel: {*1} Gracie E. McBroom, Plaintiff, Pro Se Columbus, OH.

For HR Director Franklin County Board of Elections Defendant: Jeffrey Charles Rogers, LEAD ATTORNEY, Scott J. Gaugler, Franklin County Prosecutor's Office, Columbus, OH.

Judges: Norah McCann King, United States Magistrate Judge. Judge Marbley.

Opinion by: Norah McCann King

OPINION ORDER

2013 U.S. Dist. LEXIS 39475

Plaintiff, who is proceeding in forma pauperis without the assistance of counsel has filed a Motion for Recusal, Doc. No. 21. Plaintiff bases her motion on the Court's "refusal[al] to act on the Default Judgment by already arriving at an unfair conclusion about Plaintiff's case" and

Defendant Franklin County of Elections to Plaintiff's Complaint, Doc. No. 18. See Motion for Recusal, pp. 2-3.

Federal law requires a federal judicial officer to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The bias or prejudice that mandates recusal, however, must be wrongful or inappropriate, i.e., either relying on knowledge acquired outside the proceedings or displaying deep-seated and unequivocal antagonism that would render fair judgment impossible. Liteky v. United States, 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994) [*2] In this regard, judicial rulings alone almost never constitute a basis for recusal. Id. United States v. Grinnell Corp., 384 U.S. 563, 583, 86 S. Ct. 1698, 16 L. Ed. 2d 778 (1966).

First, Plaintiff's argument that the Court has failed "to act on the Default Judgment" is without merit. Plaintiff's motion for default judgment, Doc. No. 19, was filed on March 13, 2013. That motion is not fully briefed, see S.D. Ohio Civ. R. 7.2(a)(2) (permitting a memorandum in opposition to be served within twenty-one (21) days from the date of service of a motion), and a delay in ruling on the motion does not suggest any bias on behalf of the Court.

Second, Plaintiff's argument is based on a judicial ruling that simply does not manifest bias against any party in this action. The Court ordered Plaintiff's Answer to Defendant's Answer of Board of Elections to Plaintiff's Complaint, Doc. No. 18, stricken from the record because the "[t]he Federal Rules of Civil Procedure do not . . . permit a response to an answer." Order Doc. No. 20 (citing Fed. R. Civ. P. 7(a)). The Court's reference and application of the Federal Rules of Civil Procedure do not suggest any bias on behalf of the Court.

Accordingly, as it relates [*3] to the undersigned, Plaintiff's Motion for Recusal, 21 is **DENIED.**

March 18, 2013

s/ Norah McCann King

As of: April 27, 2015 3:15 PM EDT

MCBROOM V. HR DIR. FRANKLIN COUNTY BD. OF ELECTIONS

United States District for the Southern of Ohio, Southern Division

December 4, 2012, Filed

CASE NO. 2:12-CV-1074

Reporter

2012 U.S. Dist. LEXIS 171827

GRACIE E. MCBROOM, Plaintiff v. HR DIRECTOR FRANKLIN COUNTY BOARD OF ELECTIONS, Defendant.

Subsequent History: Motion denied by McBroom v. HR Dir. Franklin County Bd. of Elections, 2013, U.S. Dist. LEXIS 39475 (S.D. Ohio, Mar. 18, 2013

Prior History: McBroom v. HR Dir. Franklin Bd. of Elections, 2012 U.S. Dist. LEXIS 166353 (S.D Ohio Nov. 21, 2012)

Core Terms

Recommendation, de novo

Counsel: [*1] Gracie E. McBroom, Plaintiff, Pro Se, Columbus, OH.

Judges: Algenon L. Marbley, United States District Judge. MAGISTRATE JUDGE KING.

Opinion by: "s/" _____

Algenon L. Marbley

OPINION

ORDER

Plaintiff asserts claims of race discrimination under Title VII of the Civil Rights Act of 1964 U.S.C. § 2000e-5, and infliction of emotional distress. On November 21, 2012, the United States Magistrate Judge recommended that the claims against Defendant Assistant Prosecuting Attorney Scott J. Gaugler, who represented respondent in the proceedings before the Ohio Civil Rights Commission, be dismissed Order and Report and Recommendation, Doc. No. 7. This matter is now before the Court on Plaintiff's objections. Objection Doc. No. 9. The Court will consider the matter de novo. See U.S.C. §636(b); Fed. R. Civ. P.72(b).

In recommending the dismissal of the claims against Defendant Gaugler, the Magistrate Judge noted that Plaintiff did not allege an employment relationship between her and this Defendant and that, indeed, the Complaint contains no allegations whatsoever against this Defendant. Plaintiff's objections do not address the reasoning of the Magistrate Judge. Rather, Plaintiff – who is proceeding without the assistance of counsel [*2] –argues only that certain portions of the decision of the Ohio Commission are inadmissible in this action.

Because Plaintiff's Objection, Doc. 9, does not challenge the recommendation of the Magistrate Judge, the Report and Recommendation, Doc. No. 7, is **ADOPTED AND AFFIRMED.**

The claims against defendant Gaugler are DISMISSED. [1]

/s/ _____

Algenon L. Marbley

United States District Judge

APPENDIX C

IN THE COURT OF APPEALS OF OHIO TENTH APPELLATE DISTRICT

Gracie McBroom,

Plaintiff-Appellant, **No. 96APE01-53**
(REGULAR CALENDAR)

v.

Franklin County Board of Elections,
Defendant-Appellee.

MEMORANDUM DECISION
Rendered on June 20, 1996

Gracie McBroom, Pro Se.
Michael Miller, Prosecuting Attorney, and Harland Hale

APPEAL from the Franklin County Court of Common Pleas

DESHLER, J.

Plaintiff-appellant, Gracie McBroom, appeals from a decision of the Franklin County Court of Common Pleas dismissing her action against defendant-appellee, Franklin County Board of Election ("Board of Elections"), for failure to state a claim under –Civ.R. 12(B)(6).

Appellant was employed for many years by the Board of Elections as a poll-worker. For some thirteen years prior to the November election of 1994, appellant worked as a presiding judge at a polling place. Appellant's complaint which initiated this action in the court of common pleas states that she was "demoted" by the Board of Elections

from presiding judge to judge assisting an incapacitated voter, in this event her husband, to fill out an absentee ballot. Appellant's complaint states that the rules of the Board of Election allow poll- workers to assist disabled or incapacitated followed to ensure the propriety of the vote cast. Appellant sought compensatory and punitive damages in the amount of $2.1 million for her "demotion" at the hands of the Board of Elections, based upon "character assassination, humiliation, severe emotional stress and lost [sic] in pay."

The Board of Elections moved to dismiss appellant's complaint under Civ.R. (B) (6), asserting that appellant had failed to state a claim for which relief could be granted because she had no constitutional, statutory or common-law right to be appointed as a presiding judge, rather than a judge, by the Board of Elections. The trial court granted the Board of Elections' motion, pointing out that precinct judges are appointed by the Board of Elections on an annual basis under R.C. 3501.22, which paces no obligation upon the Board of Elections to re-appoint prior year appointees to these positions. The trial court noted that, since appellant had no legal entitlement to appointment as a presiding judge, or even a judge, under R.C. 3501.22, she had failed to set forth an actionable claim against the Board of Elections, and the complaint must be dismissed.

Appellant has timely appealed and states the following "Question Presented," which we shall treat as an assignment of error for purposes of App .R. 16 (A) (3): "The Board of Elections has not demoted any white persons working in the capacity of a Presiding Judge for assisting Afro-American incapacitated Voters. Why would the Board of Elections single out one Afro-American to Demotion from a Presiding Judge for assisting an Afro-American incapacitated voter?"

In order for a court to dismiss a complaint for failure to state a claim upon which relief could be granted, it must appear "beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." O'Brien v. University Comm. Tenants relief." O'Brien Union, Inc. (1975), 42 Ohio St.2d 242, 245.

"[I]n construing a complaint upon a motion to dismiss for failure to state a claim, we must presume that all factual allegations of the complaint are true and make all reasonable inference in favor of the nonmoving party. Mitchell v. Lawson Milk Co. (1988), 40 Ohio St.3d 192.

Appointment of precinct judges and presiding judges is governed by R.C. 3501.22, which at the time in question provided as follows:

We agree with the conclusion of the trial court that the broad latitude provided Board of Elections in making appointments of precinct judges precludes any claim by Appellant that she was in any way entitled to reappointment to another annual term as presiding judge; **moreover, at the time in question, R.C. 3501.22 made no mention at all of any distinct appointment procedure for the position of presiding judge, although the 1995 amendment to this statute does provide for this position.**

Although appellant's assignment of error and argument raises issues pertaining to an employment discrimination claim under the provision of R.C. 4112.02 and 4112.99, based upon an adverse job action motivated by impermissible reasons of race or handicap, this theory was not pleaded in appellant's

complaint in the trial court and thus shall not be considered in connection with this appeal. We further note that the dismissal by the trial court is without prejudice to refilling and both wrongful termination and employment discrimination claims may be raised upon refilling of a more effectively worded complaint addressing these issues.

In accordance with the foregoing, we find that the trial court did not err in dismissing appellant's complaint for failure to state a claim under Civ.R. 12(B)(6). Therefore, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BOWMAN and CLOSE, JJ., Concur

APPENDIX D

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION/OHIO CIVIL RIGHTS COMMISSION

Franklin County Board of Elections
RESPONDENT

EEOC may be contacted at the following address(s):

Equal Employment Opportunity Commission
Cleveland Field Office – 532
AJCFB – 532
1240 East Ninth Street
Cleveland, OH 44199
(216) 522-2001

or

Equal Employment Opportunity Commission
525 Vine Street, #810
Cincinnati, Ohio 45202-3122
(513) 684-2851
FAX (513) 852-3357

PERSON FILING CHARGE
Gracie E. McBroom

THIS PERSON (Check One)
[X] CLAIMS TO BE AGGRIEVED
[ ] IS FILING ON BEHALF OF ANOTHER
DATE OF ALLEGED VIOLATION
Earliest 12/22/11
PLACED OF ALLEGED VIOLATIONCity, State, County
Columbus, OH Franklin
EEOC CHARGE NUMBER
FEPA CHARGE NUMBER
COL 71 (39104) 01122012

NOTICE OF CHARGE OF DISCRIMINATION IN
JURISDICTIONS WHERE AN FEP AGENCY WILL
INITIALLY PROGRESS

(See EEOC "Rules and Regulations" for additional information)

YOU ARE HEREBY NOTIFIED THAT A CHARGE OF EMPLOYMENT DISCRIMINATION UNDER [X] Title VII of the Civil Rights Act of 1964
HAS BEEN RECEIVED By
[X] The Ohio Civil Rights Commission (OCRC) and sent to the EEOC for dual filing purposes. (FEP Agency)

EEOC has jurisdiction after the expiration of any deferral requirement (Title VII or ADA charge) to investigate this charge. EEOC may refrain from beginning an investigation and await the issuance of OCRC's findings and orders. These final findings and orders will be given weight by EEOC in making its own determination as to whether or not reasonable cause exists to believe that the allegations made in the charge are true.

You are encouraged to cooperate fully with OCRC. All facts and evidence provided by you to OCRC in the course of its proceedings will be considered by EEOC when it reviews the OCRC's final findings and orders. In many instances, the EEOC will take no further action, thereby avoiding the necessity of an investigation by both agencies. This likelihood is increased by your active cooperation with OCRC.

[X] As a party to the charge, you may request that EEOC review the final decision and order of OCRC. For such a request to be honored, you must notify EEOC in writing within 15 days of your receipt of the OCRC's final decision and order. If OCRC or EEOC processes the charge, the Record keeping and Non-Retaliation provides of the statutes as explained in the "EEOC Rules and Regulations" apply.

For further correspondence of this matter, please use the charge number(s) shown.

[X] Enclosure: Copy of Charge

BASIS OF DISCRIMINATION
[X] RACE

DATE January 11, 2012 Typed Name/Title of Authorized OCRC Official

s/_____
Marcy Valenzuela
Director

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Indianapolis District Office
101 West Ohio Street
Suite 1900
Indianapolis, IN 46204
(317) 226-7212
TDD: 1-800-669-6820
FAX (317) 226-7953
1-800-669-4000

Respondent: FRANKLIN COUNTY BOARD OF ELECTIONS
EEOC Charge No: 22A-2012-01034
FEPA Charge No.: COL71 (39104)

March 21, 2012

Gracie E. McBroom
636 Koebel Aveneue
Columbus, Ohio 43207

Dear Ms. McBroom:

You recently filed a charge of employment discrimination against the above-named respondent with the Ohio Civil Rights Commission. The charge was dual-filed with the EEOC, when you filed it with the agency, in order to preserve your right to sue under Federal law. The agency has sent a copy of the charge to us and it has been assigned the above "EEOC Charge No." Please use this number whenever you contact this office. A copy of the charge or notice of the charge will be sent to the respondent within 10 days of our receipt of the chare in this office.

The charge was filed under one or more of the following laws.:

[X] Title VII of the Civil Rights Act of 1964 (Title VII).

Please cooperate with the agency named above as they process this charge. The EEOC will not act on the charge until the agency completes its proceedings. Their final findings and orders may be adopted by the EEOC.

They will investigate and resolve the charge under their statute. Under section 1601.76 of our regulations, you may ask us to perform a Substantial Weight Review of their final finding. To obtain this review, a written request must be made to this office within 15 days of receipt of the agency's final finding in the case. Otherwise, we will generally adopt the agency's finding.

The paragraph(s) checked below apply to this case:

[X] Under Title VII, the ADA and GINA, the EEOC must issue a Notice of Right to Sue, either at your request or after we act on the agency's finding, before you may file private suit under those laws.

[ ] You may file a private suit to enforce your rights under the ADEA. An ADEA lawsuit may be filed at any time 60 days after the charge is filed. The filing date for this chare was. . There is no need to wait for EEOC or the agency to complete action before filing suit. However, please note the right to sue will expire 90 days after you receive notice from EEOC that we have completed action on the charge.

[ ] While Title VII requires the EEOC to issue a Notice of Right to Sue to Sue before you may under that law, an EPA lawsuit may be brought immediately without waiting for EEOC or the agency to complete action on the charge. EPA suits must be brought within two years (three years in cases of willful violations) or any alleged underpayment. The earliest alleged date of violation cited in this charge was:..

While your charge is pending, please notify us of any change in your address, or where you can be reached if you have any prolonged absence from home. Your cooperation in this matter is essential.

Sincerely,
s/ _____
Webster N. Smith
District Director
(317) 226-6144

Office Hours: Monday – Friday, 8:30 a.m. – 5:00 p.m.
www.eeoc.gov

Enclosure(s)
Copy of Charge of Discrimination

EEOC Form 161 (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Gracie E. McBroom
636 Koebel Avenue
Columbus, Ohio 43207

From: Indianapolis District Office
101 West Ohio St
Suite 1900
Indianapolis, IN 46204

☐ On behalf of person(s) aggrieved whose Identity is CONFIDENTIAL (29 CFR § 1601.7

EEOC Charge No.
22A-2012-01034

EEOC Representative Telephone No.
Ethel M. Harmon, (317) 226-6144
State & Local Program Manager

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC, in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.

☐ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☒ Other (briefly state) No Employer/employee Relationship

NOTICE OF SUIT RIGHTS

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act. This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of the receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that back pay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

s/ _____

Webster N. Smith,
District Director

Sep – 4 2012
(Date Mailed)

Enclosures(s)

cc: HR Director
Franklin County Board of Elections
280 East Broad Street
Room 100
Columbus, OH 43215