UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Brittany R. Tovar,

Plaintiff,

v.

Essentia Health,
Innovis Health, LLC,
dba Essentia Health West, and
HealthPartners, Inc.,

Defendants.

Court File No. 16-cv-00100 (RHK/LIB)

REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO ALTER OR AMEND THE JUDGMENT TO DISMISS COUNT THREE WITH PREJUDICE

Introduction

The underlying legal issues in this matter of first impression are complex. Fortunately, however, the pending motion is not. Although it may appear otherwise from the language in the response brief submitted by Defendant HealthPartners, Inc. ("HealthPartners") (ECF 28), Plaintiff and HealthPartners are actually in agreement regarding the Rule 59 requests submitted to the Court.

Like Plaintiff, HealthPartners Seeks a Dismissal With Prejudice Against HealthPartners, and Plaintiff Does Not Oppose Health Partner's Additional Rule 59 Request Related to HPAI

Plaintiff has requested that the Court issue judgment on Count Three with prejudice. (ECF 24.) HealthPartners (although captioning its response brief as one "in opposition") actually seeks the same. (ECF 28 at 2.) Both parties agree that the Section 1557 count against HealthPartners, Count Three, should be dismissed with prejudice, so that Plaintiff can proceed with an appeal of the Court's Order.

HealthPartners seeks, additionally, an order from the Court "requiring Plaintiff to amend her Complaint to add HPAI as a defendant within 10 days, so that the Amended Complaint can be dismissed and the Eighth Circuit can take up Plaintiff's arguments in a single appeal." (ECF 28 at 2.) HealthPartners apparently believed that Plaintiff would oppose this suggestion. But Plaintiff does not oppose it. If this Court finds it appropriate to grant Plaintiff leave to amend her Complaint to add HPAI as a defendant at this particular juncture, on a Rule 59 motion, Plaintiff will gladly do so and then proceed on appeal under the Amended Complaint.

To Clarify: Both Plaintiff and Defendant HealthPartners, Inc. Seek to Resolve the Matters Raised by Plaintiff's Complaint in a Single Lawsuit

In its opposition brief, Defendant suggests that Plaintiff intends to bring separate suits against HealthPartners and HPAI as an "improper litigation tactic." (ECF 28 at 2.) This is not so. Plaintiff has no intent of litigating separate lawsuits against HealthPartners and HPAI. Plaintiff does not want "a second bite at the apple" or want piecemeal, separate lawsuits.

HealthPartners's confusion as to this point may have arisen due to a misunderstanding of counsel's "meet and confer" communications. If so, Plaintiff's counsel apologize to the Court and HealthPartners for not being clearer in their communications.

HealthPartners's confusion may also have arisen out of a misunderstanding regarding the reasons that Plaintiff has not already sought leave to amend her Complaint to add HPAI. To reiterate: A desire to litigate piecemeal lawsuits has played no role in Plaintiff's reasoning. Rather, the question is one of timing – when can or should the Complaint be amended to add HPAI?

Plaintiff did not seek to amend her Complaint during the Motion to Dismiss proceedings because she did not believe that HealthPartners's Motion to Dismiss, as argued by HealthPartners, rested on distinctions between HealthPartners and HPAI.[1] Stated otherwise: if the issues raised by HealthPartners in its Motion to Dismiss were valid, Plaintiff did not believe they could be cured by adding HPAI as a defendant.

Similarly, Plaintiff believes that it would be possible to for the appellate court to review the Court's Order on the existing Complaint and that the separate issues relating to the relationship between HealthPartners and HPAI could only be resolved after discovery, post appeal and remand. But the primary reason Plaintiff did not seek leave to amend at this juncture was a much simpler matter of procedure, namely, that she was uncertain regarding the appropriateness of a motion to amend the Complaint to add a party brought as a Rule 59 motion. As stated above, however, if this Court finds it appropriate for Plaintiff to amend her Complaint at this juncture, Plaintiff has no objection and will comply.

Conclusion

Based on the foregoing, Plaintiff respectfully requests that the Court grant her Rule 59 motion, as modified by the suggestion of Defendant HealthPartners, Inc.: Plaintiff

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[1] Plaintiff does not dispute the possibility that there are distinctions between the two entities that would impact the application of Section 1557 to each; likewise, the relationship between the two entities many impact their liability, such that HealthPartners alone, HPAI alone, or both could be liable under Section 1557. However, Plaintiff believes that these issues are separate from the issues raised by HealthPartners in its Motion to Dismiss and that these separate issues can only be resolved after discovery. As such, they could be analogized to integrated entity analysis under Title VII. *Cf. Davis v. Ricketts*, 765 F.3d 823, 826 (8th Cir. 2014) (describing application of integrated enterprise analysis after conclusion of discovery); *see also EEOC v. Jeff Wyler Eastgate, Inc.*, 2006 U.S. Dist. LEXIS 72344, *8-12 (S.D. Ohio Jan. 9, 2006) (noting necessity of discovery before the court can assess integrated enterprise issues).

requests that the Court grant her leave to amend her Complaint to add HPAI as a defendant as to the Section 1557 count, and that the Court then reissue its order, dismissing her Section 1557 count with prejudice against both HealthPartners and HPAI.

Dated: June 20, 2016

Respectfully submitted,

GENDER JUSTICE

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LR 7.1(f)(2) WORD COUNT COMPLIANCE CERTIFICATE

I, Jill Gaulding, certify that the Reply in Support of Plaintiff's Motion to Alter or Amend the Judgment to Dismiss Count Three With Prejudice complies with D. Minn. Local Rule 7.1(f)(1).

Specifically, I certify that, this memorandum was prepared using Microsoft Word 2010, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count.

I further certify that the above-referenced Memorandum contains 905 words.

Dated: June 20, 2016

Respectfully submitted,

GENDER JUSTICE

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