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March 28, 2018

VIA ECF

Scott L. Poff, Clerk of Court
U.S. District Court for the
Southern District of Georgia (Savannah)
PO Box 8286
Savannah, GA 31412

Re: Evans v. Georgia Dep't of Behavioral Health and Developmental Disabilities, 4:15-cv-00103-JRH-GRS

Dear Clerk Poff,

Plaintiff Jameka K. Evans respectfully submits the attached case as supplemental authority for the Court's consideration on Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint [Dkt 53]. The Eleventh Circuit recently bolstered the point Plaintiff made in its Opposition to said motion: that courts should allow amendments to name the proper defendant. [Dkt. 58, p. 7, n.3]; *Woldeab v. Dekalb Cty. Bd. of Educ.*, No. 16-16018, --- F.3d ----2018 WL 1404083 (11th Cir. March 21, 2018). In *Woldeab*, as here, the plaintiff named a defendant that was "not an entity capable of being sued," and the Eleventh Circuit held it was reversible error to dismiss the case, because the plaintiff should have been given "the opportunity to amend to name the proper defendant before the court dismissed with prejudice." *Woldeab*, 2018 WL 1404083, at **1-2.

Neither the Federal Rules of Civil Procedure, nor this Court's Rules authorize or prohibit the submission of supplemental authorities, but many court recognize and endorse the practice. *E.g.*, *Sanchez v. Launch Tech. Workforce Sols., LLC*, No. 1:17-CV-01904-ELR, 2018 WL 942963, at *1 (N.D. Ga. Feb. 14, 2018) ("the filing of persuasive authority issued after briefing is, of course, a well-established practice that is helpful to the Court") (citation omitted); *Mendoza v. Microsoft, Inc.*, 1 F. Supp. 3d 533, 541 (W.D. Tex. 2014) ("[A] notice of supplemental authority [is] commonly used in the federal court system.... To suggest that a party may not file such a notice and inform the Court of subsequent authority is nonsensical") (citation omitted); *Hornor, Townsend & Kent, Inc. v. Hamilton*, CIV.A.1:01 CV 2979 J, 2004 WL 2284503, at *11 (N.D. Ga. Sept. 30, 2004) ("[F]iling notices of supplemental authorities that come to a party's attention after briefing is complete is a well-established

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practice . . . [and] such practice is helpful to the Court, which of course always endeavors to apply current authority in resolving the issues before it.").

Respectfully submitted,

/s/

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cc: Counsel of Record (via ECF)

2018 WL 1404083
Only the Westlaw citation is currently available.
United States Court of Appeals, Eleventh Circuit.

Damene W. WOLDEAB, Plaintiff–Appellant,
v.
DEKALB COUNTY BOARD OF EDUCATION,
Defendant–Appellee.

No. 16-16018
|
(March 21, 2018)

Synopsis

Background: Employee, who was Ethiopian male proceeding pro se, brought action against County Board of Education, alleging national origin discrimination, retaliation, and harassment in violation of Title VII. The United States District Court for the Northern District of Georgia granted Board's motion to dismiss. Employee appealed.

[Holding:] The Court of Appeals, Wilson, Circuit Judge, held that district court abused its discretion by dismissing pro se complaint with prejudice.

Vacated and remanded.

West Headnotes (6)

[1] **Federal Courts**
Pleading

The Court of Appeals reviews a District Court's decision to deny leave to amend for abuse of discretion. Fed. R. Civ. P. 15.

Cases that cite this headnote

[2] **Federal Civil Procedure**
Discretion of Court

A district court's discretion to deny leave to amend a complaint is severely restricted by the federal procedural rule regarding amendment, which stresses that courts should freely give leave to amend when justice so requires. Fed. R. Civ. P. 15.

Cases that cite this headnote

[3] **Federal Civil Procedure**
Pleading over

Where a more carefully drafted complaint might state a claim, a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice. Fed. R. Civ. P. 15.

Cases that cite this headnote

[4] **Federal Civil Procedure**
Time for amendment

Rule requiring that a plaintiff must be given at least one chance to amend the complaint where a more carefully drafted complaint might state a claim applies even when the plaintiff does not seek leave to amend the complaint until after final judgment. Fed. R. Civ. P. 15.

Cases that cite this headnote

[5] **Federal Civil Procedure**
Pleading over

A district court need not grant leave to amend before dismissing a complaint when either (1) the district court has a clear indication that the plaintiff does not want to amend his complaint, or (2) a more carefully drafted complaint could not state a claim. Fed. R. Civ. P. 15.

Cases that cite this headnote

[6] **Federal Civil Procedure**
Pleading over

District court abused its discretion by dismissing pro se plaintiff's Title VII employment discrimination complaint against County Board of Education with prejudice, since plaintiff did not refuse to amend; complaint was dismissed based on determination that Board could not be sued, plaintiff objected by arguing "I contest that Board of Education should not be accountable," and more carefully drafted complaint naming school district as defendant and including more specific allegations might state a Title VII claim. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; Fed. R. Civ. P. 15.

Cases that cite this headnote

Appeal from the United States District Court for the Northern District of Georgia, D.C. Docket No. 1:16-cv-01030-CAP

Attorneys and Law Firms

Jane D. Vincent, Bondurant Mixson & Elmore, LLP, Atlanta, GA, for Plaintiff–Appellant.

Damene W. Woldeab, Norcross, GA, Pro Se.

Neeru Gupta, Anita Kumar Balasubramanian, Nelson Mullins Riley & Scarborough, LLP, Atlanta, GA, for Defendant–Appellee.

Before WILSON and BLACK, Circuit Judges, and SCHLESINGER,* Judge.

* Honorable Harvey E. Schlesinger, United States District Judge for the Middle District of Florida, sitting by designation.

Opinion

WILSON, Circuit Judge:

***1** Damene Woldeab, an Ethiopian male, appeals the district court's grant of the DeKalb County Board of Education's (Board) motion to dismiss his action alleging national origin discrimination, retaliation, and harassment in violation of Title VII. In his counseled appellate brief, Woldeab argues that the district court erred by dismissing his pro se complaint with prejudice. He contends that his failure to name the DeKalb County School District (School District) as the defendant rather than the Board was a curable defect,[1] and that the district court should have given him an opportunity to amend his complaint to name the proper defendant. The Board responds that the district court was not required to give Woldeab an opportunity to amend his complaint sua sponte because Woldeab disagreed that the complaint should be amended, and it further argues that any amendment would be futile. After review, and with the benefit of oral argument, we vacate the dismissal and remand with instructions to give Woldeab an opportunity to file an amended complaint.

1 In his counseled brief, Woldeab does not argue that the Board is a proper defendant.

I.

A magistrate judge recommended the Board's motion to dismiss be granted because the Board is not a legal entity capable of being sued. *See Cook v. Colquitt Cty. Bd. of Educ.*, 261 Ga. 841, 412 S.E.2d 828, 828 (1992). Alternatively, the report and recommendation (R&R) stated that even if Woldeab substituted a defendant with the capacity to be sued, the magistrate judge would still recommend his complaint be dismissed for failure to state a claim. Woldeab, proceeding pro se, objected on the basis that he believed the Board should be held accountable for its actions. He also objected to, *inter alia*, the R&R's recommendation his complaint be dismissed for failure to state a claim.

The district court agreed with the magistrate judge's determination that a county board of education in Georgia cannot be sued, and therefore the Board could not be sued. While the district court stated it "adopts the report and recommendation as the opinion and order of this court," it went on to clarify which of the grounds considered by the magistrate judge it was endorsing, stating "[b]ecause the magistrate judge properly ruled that the DeKalb County Board of Education is not an entity capable of being sued, the court will not address the plaintiffs remaining

objections. The remaining objections are DISMISSED as MOOT." Woldeab appealed, pro se, to this Court. Counsel was appointed when this case was set for oral argument and counsel filed a replacement brief.

II.

[1] [2] [3] [4] [5]We review a district court's decision to deny leave to amend for abuse of discretion. *Santiago v. Wood*, 904 F.2d 673, 675 (11th Cir. 1990). A district court's discretion to deny leave to amend a complaint is "severely restricted" by Fed. R. Civ. P. 15, which stresses that courts should freely give leave to amend "when justice so requires." *Thomas v. Town of Davie*, 847 F.2d 771, 773 (11th Cir. 1988). "Where a more carefully drafted complaint might state a claim, a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice." *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991), *overruled in part by Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 & n.1 (11th Cir. 2002) (en banc) (overruling *Bank* as to counseled plaintiffs, but deciding "nothing about a party proceeding pro se"). This rule applies even when the plaintiff does not seek leave to amend the complaint until after final judgment. *Id.* But a district court need not grant leave to amend when either (1) "the district court has a clear indication that the plaintiff does not want to amend his complaint," or (2) "a more carefully drafted complaint could not state a claim." *Id.*

***2** [6]Here, the district court abused its discretion in dismissing Woldeab's case with prejudice because he never "clearly indicated" he did not want to amend, and because a more carefully crafted complaint might be able to state a claim. The Board argues Woldeab indicated his unwillingness to amend his complaint by failing to respond to the motion to dismiss and by failing to amend after the R&R. However, Woldeab was not required to accept the Board's argument in its motion to dismiss as true. *See Santiago*, 904 F.2d at 676 (stating that a plaintiff is not required to consider an opponent's arguments as properly stating the law). And although the R&R found that the Board could not be sued, Woldeab's objection to the R&R demonstrates his confusion as a pro se plaintiff "unschooled in the intricacies of Title VII pleading." *Id.* at 675. Woldeab construed the R&R as saying no one is accountable for the actions alleged, as he argued: "Does it mean [the] Local Board of Education is not accountable for the action the board makes which is recommending hiring, firing and intimidating teachers? *Who is accountable* ...? I contest the Board of Education should be accountable." This is not a refusal to amend.

Further, the deficiencies in Woldeab's complaint might be curable. Neither the magistrate judge nor the district court held that repleading the factual allegations behind the June 2014 Title VII claims would be futile. While the magistrate judge did find that amending to include the proper defendant would not save the complaint, this says nothing of whether Woldeab might be able to make out a plausible claim if given the opportunity to replead the factual allegations. And we have held that where "[m]ore specific allegations ... would have remedied the pleading problems found by the district court," the court was required to give a pro se plaintiff the opportunity to amend his complaint. *Thomas*, 847 F.2d at 773. Because a more carefully drafted complaint, which includes more specific allegations against the correct defendant, *might* state a Title VII claim, Woldeab's complaint does not fit into the futility exception to *Bank*.[2]

[2] We note Woldeab concedes any allegations based on adverse employment actions that may have occurred prior to January 1, 2014, and were not timely filed in the district court. [Gray Brief at 12]. However, because a discrimination claim based on his June 25, 2014 termination has been properly exhausted, administrative exhaustion cannot provide the basis for futility regarding that claim.

The district court should have advised Woldeab, proceeding pro se, of his complaint's deficiency and given him the opportunity to amend to name the proper defendant before the court dismissed with prejudice. Accordingly, we VACATE the dismissal of Woldeab's complaint and REMAND with instructions to give Woldeab an opportunity to file an amended complaint.

VACATED and REMANDED.

All Citations

--- F.3d ----, 2018 WL 1404083

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