

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

GERALD LYNN BOSTOCK,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	NO: 1:16-cv-01460-ELR-WEJ
CLAYTON COUNTY,)	
)	
Defendant.)	

**PLAINTIFF’S MOTION FOR LEAVE TO FILE THIRD AMENDED
COMPLAINT**

Plaintiff Gerald Bostock, pursuant to Fed. R. Civ. P. 15(a)(2) respectfully moves for leave to file a Third Amended Complaint in this case. The proposed amendments seek to add an additional claim for retaliation based on recent events and, although Plaintiff contends it is not necessary as a matter of law, to clarify that Plaintiff brings both single motive and mixed motive claims under Title VII. A copy of the proposed Third Amended Complaint is attached hereto as Exhibit A.

WHEREFORE, Plaintiff respectfully requests that this Court grant this motion and that Plaintiff’s Third Amended Complaint be filed. For the Court’s convenience, a Proposed Order is attached hereto as Exhibit B.

Respectfully submitted this 23rd day of November, 2020.

/s/ Thomas J. Mew, IV

Thomas J. Mew, IV

Georgia Bar No. 503447

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GERALD LYNN BOSTOCK,)

Plaintiff,)

v.)

CLAYTON COUNTY,)

Defendant.)

**CIVIL ACTION
NO: 1:16-cv-01460-ELR-WEJ**

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing has been prepared in Times New Roman 14 font, as approved by the Court in LR 5.1B.

/s/ Thomas J. Mew
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CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2020, I electronically the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all counsel of record.

BUCKLEY BEAL, LLP

By: /s/ Thomas J. Mew
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

GERALD LYNN BOSTOCK,)	
)	
Plaintiff,)	CIVIL ACTION
)	File No. 1:16-CV-1460
v.)	
)	JURY TRIAL DEMANDED
CLAYTON COUNTY)	
)	
Defendant.)	

THIRD AMENDED COMPLAINT

Plaintiff Gerald Lynn Bostock (“Plaintiff”) files this Third Amended Complaint against Defendant Clayton County (“Defendant”) for violations of Title VII of the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000e *et seq.* (“Title VII”).

PARTIES

1.

At all times relevant to this action, Defendant employed Plaintiff.

2.

Plaintiff submits himself to the jurisdiction of this Court.

3.

Defendant is a political division of the state of Georgia and is subject to the

jurisdiction and venue of this Court.

4.

Defendant may be served with process by delivering a copy of Summons and Complaint to Jeffrey E. Turner, Chairman, Clayton County Administration 112 Smith Street, Jonesboro, GA 30236 for service of process.

5.

Defendant is an “employer” as defined by Title VII.

6.

Plaintiff asserts a mixed motive and single motive discrimination claim under Title VII and a claim for retaliation in violation of Title VII.

ADMINISTRATIVE

7.

Mr. Bostock timely filed a charge for sex and sexual orientation discrimination with the Equal Employment Opportunity Commission.

8.

Mr. Bostock filed this lawsuit within 90 days of the receipt of his Notice of Right to Sue.

9.

Mr. Bostock's Title VII retaliation claim arises from events occurring after he filed this lawsuit. The retaliation claim arises out of his earlier charge of discrimination, which is properly before the Court. The Court has ancillary jurisdiction over the retaliation claim because it grows out of an administrative charge that is properly before the Court.

JURISDICTION AND VENUE

10.

Jurisdiction of this Court is proper pursuant to 28 U.S.C. § 1331 (federal question).

11.

Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b)(1) because Defendant resides within the Northern District of Georgia.

12.

Venue is also proper in this district and division pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to this Complaint occurred within the Northern District of Georgia.

STATEMENT OF FACTS

13.

Plaintiff began working for the Defendant on or about January 13, 2003.

14.

Plaintiff is a gay male.

15.

Plaintiff was employed by Defendant as the Child Welfare Services Coordinator assigned to the Juvenile Court of Clayton County. Plaintiff was charged with the primary responsibility of Clayton County CASA (Court Appointed Special Advocate).

16.

During the over ten (10) years Plaintiff was employed by the Defendant, he received good performance evaluations and the program received accolades. Clayton County CASA was awarded the Established Program Award of Excellence by Georgia CASA in 2007. Plaintiff was recognized by National CASA for program expansion and served on the National CASA Standards and Policy committee in or around 2011-2012 .

17.

Beginning in January 2013, Plaintiff became involved with a gay recreational softball league called the Hotlanta Softball League.

18.

Plaintiff actively promoted the Clayton County CASA organization to the softball league as a source of volunteer opportunities for league members.

19.

In the months after Plaintiff joined the Hotlanta Softball League, Plaintiff's participation in the league and his sexual orientation and identity were, on information and belief, openly criticized by one or more persons who had significant influence on the decisionmaking of the Defendant.

20.

In or around April 2013, Defendant advised Plaintiff that it was conducting an internal audit on program funds Plaintiff managed.

21.

Plaintiff did not engage in any improper conduct with regard to program funds under his custody or control.

22.

Defendant initiated the audit as a pretext for discrimination against Plaintiff

based on his sexual orientation and failure to conform to a gender stereotype.

23.

On information and belief, in May 2013 during a meeting on or about the time the County terminated Plaintiff, Clayton County Juvenile Court Judge Steven Teske made disparaging comments about Plaintiff, sexual orientation and identity and participation in the league, and his recruiting volunteers at a “gay bar” to a member of the Friends of Clayton County CASA Advisory Board and stated that Plaintiff would be fired.

24.

On or about June 3, 2013, Defendant terminated Plaintiff’s employment. At the time Defendant terminated Plaintiff, Chief Juvenile Court Judge Steven Teske summoned the media and publicly gave false and pretextual reasons for Plaintiff’s termination which damaged his reputation and were calculated to humiliate him. Defendant stated that Plaintiff was terminated for Conduct Unbecoming of a Clayton County Employee. That purported reason, however, was a pretext for discrimination against Plaintiff based on his sex and/or sexual orientation.

25.

Plaintiff originally filed his complaint, pro se, on May 5, 2016. After Plaintiff retained counsel, he filed an Amended Complaint on August 2, 2016 and a Second

Amended Complaint on September 12, 2016.

26.

Plaintiff engaged in protected activity by filing an EEOC charge and by filing a lawsuit under Title VII.

27.

On July 21, 2017, the Court granted Defendant's motion to dismiss Plaintiff's Second Amended Complaint. The Eleventh Circuit affirmed the dismissal.

28.

On June 15, 2020, the United States Supreme Court reversed the Eleventh Circuit and remanded this case. *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020).

29.

In a June 17, 2020 article published in the Fulton County Daily Report, just two days after the Supreme Court issued its decision, Clayton County Chief Juvenile Court Judge Steven C. Teske ("Teske") stated about Plaintiff: "I don't appreciate him not telling the whole truth, ... he couldn't have gotten there if he had revealed the whole truth. Because he didn't reveal the whole truth, he got there."

30.

In the same article, Teske stated that Plaintiff's firing "was about mismanagement of court fees. Some of those funds intended to recruit CASA volunteers improperly went to the softball team." Teske made similar comments in an article published on June 19, 2020 in the Atlanta Journal-Constitution.

31.

Teske's comments were a pretext for the County's discriminatory termination of Plaintiff, were false, disparaging, and calculated to further injure Plaintiff's reputation.

32.

Teske's comments were made in retaliation for Plaintiff's engaging in protected activity.

33.

Plaintiff suffered an adverse action due to the County's retaliatory action, through its agent and employee Teske, which caused Plaintiff significant risk of humiliation, damage to reputation, and a concomitant harm to future employment prospects.

34.

Teske's actions in terminating Plaintiff and repeatedly publicly accusing him of wrongdoing have caused Plaintiff profound emotional distress, humiliation and anguish.

COUNT I
Sex Discrimination in Violation of
Title VII of The Civil Rights Act of 1964, as Amended

35.

Plaintiff incorporates by reference the preceding Paragraphs as if fully restated herein.

36.

Plaintiff is a gay male.

37.

Plaintiff is an "employee" as defined by Title VII, 42 U.S.C. § 2000e *et seq.*

38.

Defendant is an "employer" as defined by Title VII, 42 U.S.C. § 2000e *et seq.*

39.

Having worked in his position previously, Plaintiff was qualified for the position of Child Welfare Services Coordinator.

40.

Defendant discriminated against Plaintiff in the terms and conditions of Plaintiff's employment when it terminated Plaintiff's employment.

41.

Plaintiff's sexual orientation was a "motivating factor" in Defendant's decision to terminate his employment, even if there are legitimate non-discriminatory reasons that also motivated these actions.

42.

As a direct and proximate result of the Defendant's actions, Plaintiff has suffered damages including emotional distress, inconvenience, loss of income and benefits, humiliation, and other indignities.

43.

Plaintiff is entitled to an award of back pay and benefits, compensatory damages, reinstatement or front pay, attorney's fees, and all other appropriate damages, remedies, and other relief available under Title VII and all federal statutes providing remedies for violations of Title VII.

44.

Defendant acted intentionally and maliciously with respect to Plaintiff, entitling Plaintiff to recover punitive damages against Defendant.

45.

Additionally, or in the alternative, Defendant undertook its unlawful conduct recklessly with respect to Plaintiff and his federally protected rights, entitling Plaintiff to recover punitive damages against Defendant.

COUNT II
Retaliation in Violation of
Title VII of The Civil Rights Act of 1964, as Amended

46.

Plaintiff incorporates by reference the preceding Paragraphs as if fully restated herein.

47.

Plaintiff is an “employee” as defined by Title VII, 42 U.S.C. § 2000e *et seq.*

48.

Defendant is an “employer” as defined by Title VII, 42 U.S.C. § 2000e *et seq.*

49.

Plaintiff engaged in a protected activity by filing an EEOC charge and by

filing a lawsuit under Title VII.

50.

In a June 17, 2020 article published in the Fulton County Daily Report, just two days after the Supreme Court issued its decision, Teske stated about Plaintiff: “I don't appreciate him not telling the whole truth, ... he couldn't have gotten there if he had revealed the whole truth. Because he didn't reveal the whole truth, he got there.”

51.

In the same article, Teske stated that Plaintiff's firing “was about mismanagement of court fees. Some of those funds intended to recruit CASA volunteers improperly went to the softball team.” Teske made similar comments in an article published on June 19, 2020 in the Atlanta Journal-Constitution.

52.

Teske's comments in the June 17, 2020 article were made in retaliation for Plaintiff's engaging in protected activity.

53.

Plaintiff suffered an adverse action due to the County's retaliatory action, through its agent and employee Teske, which caused Plaintiff significant risk of humiliation, damage to reputation, and a concomitant harm to future employment prospects.

54.

As a direct and proximate result of the Defendant's actions, Plaintiff has suffered damages including emotional distress, inconvenience, loss of income and benefits, humiliation, and other indignities.

55.

Plaintiff is entitled to an award of back pay and benefits, compensatory damages, reinstatement or front pay, attorney's fees, and all other appropriate damages, remedies, and other relief available under Title VII and all federal statutes providing remedies for violations of Title VII.

56.

Defendant acted intentionally and maliciously with respect to Plaintiff, entitling Plaintiff to recover punitive damages against Defendant.

57.

Additionally, or in the alternative, Defendant undertook its unlawful conduct recklessly with respect to Plaintiff and his federally protected rights, entitling Plaintiff to recover punitive damages against Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands a TRIAL BY JURY and requests the following relief:

- a. a declaratory judgment that Defendant violated Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e *et seq.*;
- b. a permanent injunction, prohibiting Defendant from engaging in unlawful employment practices in violation of Title VII;
- c. full back pay from the date of Plaintiff's termination, taking into account all raises to which Plaintiff would have been entitled but for his unlawful termination, and all fringe and pension benefits of employment, with prejudgment interest thereon;
- d. reinstatement to Plaintiffs' former position with Defendant at the same pay grade, or in the alternative, front pay to compensate Plaintiff for lost future wages, benefits and pension;
- e. compensatory damages in an amount to be determined by the enlightened conscience of the jury, for Plaintiff's emotional distress, suffering, inconvenience, mental anguish, loss of enjoyment of life and special damages;
- f. punitive damages;
- g. attorneys' fees and costs; and

h. all other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Thomas J. Mew, IV

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Counsel for Plaintiff

**UNITED STATES DISTRICT COURT
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GERALD LYNN BOSTOCK,)
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 Plaintiff,) CIVIL ACTION
) File No. 1:16-CV-01460-ELR-WEJ
)
 v.)
)
 CLAYTON COUNTY,)
)
 Defendant.)

[PROPOSED] ORDER

Having reviewed Plaintiff's Motion For Leave to File Third Amended Complaint and for good cause shown, Plaintiff's Motion is hereby GRANTED. The Clerk is directed to enter the Plaintiff's Third Amended Complaint and the same is deemed filed.

SO ORDERED this _____ day of _____, 2020.

Hon. Walter E. Johnson
United States Magistrate Judge
Northern District of Georgia

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CLAYTON COUNTY,)	
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**PLAINTIFF’S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE
TO FILE THIRD AMENDED COMPLAINT**

Plaintiff Gerald Bostock has moved for leave to file a Third Amended Complaint in this case. The proposed amendments seek to add a claim for retaliation based on recent events and, although Plaintiff contends it is not necessary as a matter of law, to clarify that Plaintiff brings both single motive and mixed motive claims under Title VII.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff originally filed his complaint, *pro se*, on May 5, 2016. (Doc. 1.) After Plaintiff retained counsel, he filed an Amended Complaint on August 2, 2016 and a Second Amended Complaint on September 12, 2016. (Doc. 10.)

Defendant moved to dismiss Plaintiff’s Second Amended Complaint. (Doc. 13). On July 21, 2017, the Court granted Defendant’s motion to dismiss (Doc. 24.)

The Eleventh Circuit affirmed the dismissal. *Bostock v. Clayton Cty. Bd. of Commissioners*, 723 F. App'x 964 (11th Cir. 2018), cert. granted sub nom. *Bostock v. Clayton Cty., Ga.*, 139 S. Ct. 1599, 203 L. Ed. 2d 754 (2019), and rev'd and remanded sub nom. *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020).

The United States Supreme Court reversed the Eleventh Circuit and remanded this case. *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020). The Eleventh Circuit issued the mandate on September 25, 2020 (doc. 25) remanding the case back to this Court. Defendant filed its answer on October 21, 2020 (Doc. 40.)

ARGUMENT AND CITATION OF AUTHORITY

Good cause exists under Fed. R. Civ. P. 15(a)(2) to allow Plaintiff to amend his Complaint. Rule 15(a)(2) provides “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.”

Although “[t]he decision whether to grant leave to amend is committed to the sound discretion of the trial court,” the “policy of Rule 15(a) in liberally permitting amendments to facilitate determination of claims on the merits circumscribes the exercise of the trial court’s discretion; thus, [u]nless there is a

substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial.” *Espey v. Wainwright*, 734 F.2d 748, 750 (11th Cir. 1984) (internal quotations omitted); *see also Shipner v. Eastern Air Lines, Inc.*, 868 F.2d 406-07 (11th Cir. 1989) (same). Amendments are to be freely allowed, “unless the rights of the adverse party would be unduly prejudiced.” *Thompson v. New York Life Ins. Co.*, 644 F.2d 439, 444 (5th Cir. Unit B May, 1981). “In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be ‘freely given.’” *Foman v. Davis*, 371 U.S. 178, 178 (1962).

In this case, the amendments Plaintiff seeks will not prejudice the Defendant since (1) the basis of the retaliation claim arose after the Supreme Court issued its decision in this case and (2) the clarification that Plaintiff’s asserts both single and mixed-motive claims is fully consistent with Title VII and Plaintiff contends it is not necessary as a matter of law and is done out of an abundance of caution.

Further Plaintiff is not acting with bad faith or dilatory motive. Plaintiff has moved to amend within a reasonable time following remand and in compliance

with the deadline for amending under either the Joint Preliminary Planning Report or the Court's Scheduling Order. Indeed, discovery has only just commenced and the facts giving rise to the retaliation claim in the proposed Amended Complaint only recently occurred. Thus, the proposed amendments will not cause any delay or require amending the Scheduling Order. Plaintiff is making this motion so as to bring all issues before the Court timely and allow for a full and expeditious resolution of all issues in the case.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order allowing him to amend his complaint and that Plaintiff's Third Amended Complaint be filed.

Respectfully submitted this 23rd day of November, 2020.

/s/ Thomas J. Mew, IV

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/s/ Thomas J. Mew
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