

FILED
SIXTH JUDICIAL CIRCUIT

JUL 22 2013

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

23

W. M. Callaway
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

JANE DOE-1,)
)
 Plaintiff,)
)
 -vs-)
)
 JON A. JAMISON, ST. JOSEPH-OGDEN)
 CHSD #305 BOARD OF DIRECTORS,)
 CHAD UPHOFF, BRIAN BROOKS and)
 JAMES M. ACKLIN)
)
 Defendants,)

NO.: 2012 L 83

DEMANDS TRIAL BY JURY

DEFENDANTS ST. JOSEPH-OGDEN CHSD # 305 BOARD OF EDUCATION, CHAD UPHOFF, BRIAN BROOKS, AND JAMES M. ACKLIN'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO ADD NEW DEFENDANTS, TO ADD RESPONDENT IN DISCOVERY, AND TO FILE SECOND AMENDED COMPLAINT

Defendants, ST. JOSEPH-OGDEN CHSD #305 BOARD OF EDUCATION (hereinafter "District"), CHAD UPHOFF, BRIAN BROOKS, JAMES M. ACKLIN (hereinafter "District Defendants") and former Respondent in Discovery, VICTOR ZIMMERMAN ("Zimmerman"), by their attorneys, Jeffrey S. Taylor and Michael S. Hopkins of Spesia & Ayers, for their RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO ADD NEW DEFENDANTS, TO ADD RESPONDENT IN DISCOVERY, AND TO FILE SECOND AMENDED COMPLAINT ("Plaintiff's Motion" or "her Motion") state as follows:

ARGUMENT

Plaintiff filed her Motion and a separate Memorandum of Law on June 13, 2013 seeking to add two new defendants, including former Respondent in Discovery Victor Zimmerman, to each count already pled against the District Defendants. (Plt.'s Mem. ¶¶ II. A. and B; Plt.'s Mot. Second Amd Comp.)

Her Second Amended Complaint also seeks to add new counts against the District, District Defendants, and Zimmerman.

These counts include Count XXII, for "Gender Related Violence, 740 ILCS 82/" [sic], against Uphoff, Zimmerman, Brooks, Acklin, and Terri Rein (who Plaintiff also seeks to add as a Defendant); and Count XXIII, a *Respondeat Superior* claim against the District based on Count XXII. Notably, Count XXIII would expose the District to liability based on claims against a new defendant, Terri Rein¹. (Plt.'s Mot. Second Amd Comp., 36-38.)

Plaintiff also seeks to add Jonathon Foreman as a Respondent in Discovery.

Importantly, information disclosed during this case establish that Plaintiff is currently 20 years of age and was over 19 years of age when her initial complaint was filed in this cause,² upon allegations of conduct that occurred when she was a minor.

Plaintiff's Motion, with respect to the District, District Defendants and Zimmerman, should be denied for the reasons stated below.

A. Counts XVII and XVIII Are Untimely and Plaintiff's Motion Should Be Denied

Plaintiff adds Counts XVII and XVIII pursuant to the Gender Violence Act, 740 ILCS 82/1 et. seq. (Plt.'s Mot. Second Amd Comp., 36-38.) These counts are untimely. Specifically, Plaintiff alleges the current District Defendants, as well as Zimmerman and Terri Rein, were employed by the District. (Plt.'s Mot. Second Amd Comp., 2-3.) Therefore, they, as well as the District, are subject to the one year statute of limitations for units of local government and governmental employees. 745 ILCS 10/8-101(a).

¹ Counsel preparing this Response brief do not represent Terri Rein at the present time. However, they do represent the District, which is sued under *Respondeat Superior* for claims proposed to be made against Rein. Therefore, Counsel argues against leave to add Rein as a defendant on the District's behalf.

² While Defendants do not believe stating the Plaintiff's birth date would violate the Protective Order in this case, the date is nonetheless omitted in an abundance of caution.

Because Plaintiff was over 19 years of age when her complaint was filed for conduct alleged to have occurred when she was a minor (Plt.'s Mot. Second Amd Comp., 7-21.), the statute had clearly run on these new claims at the time Plaintiff's original Complaint was filed, and the claims could not have been brought against the District, District Defendants, Zimmerman, or Rein, irrespective of 735 ILCS 5/2-616(a). Therefore, Plaintiff should not be granted leave to add these claims in an amended complaint.

B. Plaintiff Provides No Support for the Limitations Argument She Invokes to Support Amending Complaint

Plaintiff argues that she is entitled to add Zimmerman and Rein as a defendants pursuant to 735 ILCS 5/2-616(a) (and Jonathan Foreman³ as Respondent in Discovery) because "[t]he limitations period has not run yet for any of the claims made in Plaintiff's Proposed Amended Complaint." (Plt.'s Mem. 2.) However, Plaintiff has not provided any authority that would establish a statutory period other than that provided in the Tort Immunity Act as noted in Paragraph "A" above. Therefore, as Plaintiff has identified no statutory or other legal authority for her assertion that the limitations period has not run in this case, her motion to file a Second Amended Complaint should be denied.


Finally, Defendants do not intend by filing this Response to limit any arguments they may have against the claims raised should this Court grant Plaintiff's request to file her Second Amended Complaint at Law.

WHEREFORE, Defendants ST. JOSEPH-OGDEN CHSD #305 BOARD OF EDUCATION, CHAD UPHOFF, BRIAN BROOKS, JAMES M. ACKLIN and former Respondent in Discovery, VICTOR ZIMMERMAN, request that this Honorable Court deny PLAINTIFF'S MOTION FOR LEAVE TO ADD NEW DEFENDANTS, TO ADD

³ Counsel preparing this Response do not represent Jonathan Foreman at the present time.

RESPONDENT IN DISCOVERY, AND TO FILE SECOND AMENDED COMPLAINT, and
for any other relief this Court deems just and necessary.

SPESIA & AYERS

A large, stylized handwritten signature in black ink, appearing to be 'J. Taylor', is written over a horizontal line.

BY:

Attorneys for Defendants St. Joseph-Ogden
CHSD #305 Board of Directors, Chad
Uphoff, Brian Brooks and James M. Acklin
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