

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

CYNTHIA HUFFMAN and EQUAL)
EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiffs,)

vs.)

Case No. 01-3144-CV-S-ODS-ECF

NEW PRIME, INC. d/b/a PRIME, INC.,)
et al.,)

Defendants.)

**ORDER (1) GRANTING DEFENDANT NEW PRIME’S MOTION FOR
JUDGMENT ON THE PLEADINGS ON PLAINTIFF KING’S MHRA CLAIMS;
(2) DISMISSING PLAINTIFF HUFFMAN’S AND PLAINTIFF KING’S INTENTIONAL OR
NEGLIGENT INFLICTION OF MENTAL DISTRESS CLAIMS;
(3) DENYING DEFENDANT NEW PRIME’S RENEWED MOTION FOR JUDGMENT ON
THE PLEADINGS ON PLAINTIFF KING’S MHRA CLAIMS AND INTENTIONAL OR
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS CLAIM AS MOOT, AND
(4) DENYING PLAINTIFFS’ MOTION FOR EXTENSION OF TIME AS MOOT**

Pending are (1) Defendant New Prime’s (“New Prime”) Motion for Judgment on the Pleadings on Plaintiff King’s Missouri Human Rights Act (“MHRA”) Claims and Intentional or Negligent Infliction of Emotional Distress Claims (Doc. # 95); (2) New Prime’s Motion for Judgment on the Pleadings on Plaintiff Huffman’s Intentional or Negligent Infliction of Mental Distress Claim (Doc. # 111); (3) New Prime’s Renewed Motion for Judgment on the Pleadings on Plaintiff King’s MHRA Claims and Intentional or Negligent Infliction of Emotional Distress Claims (Doc. #110); and (4) Plaintiffs’ Motion for Extension fo Time to File Response to Motions for Judgment on the Pleadings (Doc. # 117). For the following reasons, Defendant New Prime’s Motion for Judgment on the Pleadings on Plaintiff King’s MHRA Claims is GRANTED; Plaintiff Huffman’s and Plaintiff King’s Intentional or Negligent Infliction of Mental Distress claims are DISMISSED WITHOUT PREJUDICE; Defendant New Prime’s Renewed Motion for Judgment on the

Pleadings is DENIED as MOOT; and, Plaintiffs' Motion for Extension of Time to File Response to Motions for Judgment on the Pleadings is DENIED AS MOOT.

I. BACKGROUND

On March 29, 2001, Cynthia Huffman ("Huffman") filed her complaint against New Prime and Abel Lormand alleging sexual harassment, sex discrimination, Equal Pay Act violations, fraudulent misrepresentation, false imprisonment, assault and battery. Her suit was consolidated with the Equal Employment Opportunity's ("EEOC") suit against New Prime. On January 24, 2002, the Court permitted Plaintiffs Willa Burke ("Burke") and Virginia King ("King") to intervene in this suit. On June 14, 2002, the Court directed Plaintiffs to amend their complaints to include additional jurisdictional facts. Plaintiffs Huffman and King filed their amended complaints on July 3, 2002, both alleging claims of sexual harassment under Title VII and the MHRA, and intentional or negligent infliction of mental distress.

On June 19, 2002, New Prime filed its Motion for Judgment on the Pleadings on Plaintiff King's MHRA Claims and Intentional or Negligent Infliction of Mental Distress Claim. After Plaintiffs' amended complaints were filed, New Prime filed its Renewed Motion for Judgment on the Pleadings on Plaintiff King's MHRA Claims and Intentional or Negligent Infliction of Mental Distress Claim, and its Motion for Judgment on the Pleadings on Plaintiff Huffman's Intentional or Negligent Infliction of Mental Distress Claim.

II. STANDARD

Judgment on the pleadings is appropriate only where the moving party has clearly established that no material issue of fact remains and the moving party is entitled to judgment as a matter of law. Nat'l Car Rental Sys., Inc. v. Computer Assocs. Int'l, Inc., 991 F.2d 426, 428 (8th Cir. 1993), *cert. denied*, 510 U.S. 861 (quoting Iowa Beef

Processors, Inc. v. Amalgamated Meat Cutters, 627 F.2d 853, 855 (8th Cir. 1980)). We must accept as true all facts pled by the non-moving party and grant all reasonable inferences from the pleadings in favor of the non-moving party. See id.; Fed. R. Civ. P. 12(c).

When considering a motion for judgment on the pleadings the court generally must ignore materials outside the pleadings, but it may consider "some materials that are part of the public record or do not contradict the complaint," as well as materials that are "necessarily embraced by the pleadings." Porous Media Corp. v. Pall Corp., 186 F.3d 1077 (8th Cir. 1999); see Missouri ex rel. Nixon v. Coeur D'Alene Tribe, 164 F.3d 1102, 1107 (8th Cir.), *cert. denied*, 527 U.S. 1039, (1999); Piper Jaffray Cos. v. Nat'l Union Fire Ins. Co., 967 F. Supp. 1148, 1152 (D. Minn. 1997).

III. DISCUSSION

A. King's MHRA Claims

To comply with the Missouri Human Rights Act ("MHRA"), a claimant must exhaust all administrative remedies by filing a charge of discrimination within 180 days after "the alleged act of discrimination." Gipson v. KAS Snacktime Co., 83 F.3d 225, 228 (8th Cir. 1996) (citing Mo. Rev. Stat. § 213.075(1) (1993)). "If the agency takes no action on the charge, the claimant may sue within ninety days of the agency's right-to-sue letter but 'no later than two years after the alleged cause occurred.'" Id. (quoting Mo. Rev. Stat. § 213.111(1) (1993)). If the claimant fails to meet these deadlines, his or her claim is barred. Id. at 228-29 (citations omitted). Defendant argues that Plaintiff did not file her suit within the time limitations. Plaintiff King concedes that her MHRA claims should be dismissed. Pl. Opp. at 1, ¶2. Therefore, Defendant's Motion for Judgment on the Pleadings on Plaintiff King's MHRA Claims is GRANTED.

B. King and Huffman's Intentional or Negligent Infliction of Mental Distress Claims

Defendant claims that King's and Huffman's Claims of Intentional or Negligent Infliction of Mental Distress are preempted and barred by the Missouri Workers' Compensation Laws. The Missouri Workers' Compensation Law provides, in relevant part, that

[e]very employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident arising out of and in the course of his employment, and shall be released from all other liability therefor whatsoever, whether to the employee or any other person. . . . The rights and remedies herein granted to an employee shall exclude all other rights and remedies of the employee. . . at common law or otherwise, on account of such accidental injury or death, except such rights and remedies as are not provided for by this chapter.

Mo. Rev. Stat. § 287.120.1-2 (1993). The Missouri Supreme Court has held that questions regarding whether "injuries were the product of an accident or of an intentional act by the employer lies within the exclusive jurisdiction of the Labor and Industrial Relations Commission." Killiam v. J & J Installers, Inc., 802 S.W.2d 158, 161 (Mo. 1991); see also Whitmore v. O'Connor Mgmt., Inc., 899 F. Supp. 425, 430 (W.D. Mo. 1995) (holding that the district court did not have jurisdiction over common law tort claims arising out of the course of employment until a determination had been made by the proper tribunal).

Plaintiffs' claims of intentional or negligent infliction of mental distress are common law tort claim arising out of the course of employment. The Labor and Industrial Relations Commission has not determined whether the alleged torts were intentional in nature. Until such a determination is made, the Court does not have jurisdiction over Plaintiff King and Plaintiff Huffman's common law tort claims of intentional or negligent infliction of mental distress. Defendant seeks judgment on the pleadings on Plaintiffs' common law tort claims, but the more appropriate procedural remedy is a dismissal without prejudice so that the appropriate tribunal may resolve these issues. Accordingly,

the Court dismisses without prejudice Plaintiff Huffman's claim of intentional or negligent infliction of mental distress (Count VII) and Plaintiff King's claim of intentional or negligent infliction of mental distress (Count III).

C. Defendant's Renewed Motion for Judgment on the Pleadings on Plaintiff King's MHRA Claims and Intentional or Negligent Infliction of Mental Distress Claims

The Court has ruled Defendant's Motion for Judgment on the Pleadings on Plaintiff King's MHRA Claims and Intentional or Negligent Infliction of Mental Distress Claims. Therefore, Defendant's Renewed Motion for Judgment on the Pleadings is DENIED AS MOOT.

D. Plaintiffs' Motion for Extension of Time

Plaintiffs filed a Motion for Extension of Time to respond to Defendant's Motions for Judgment on Pleadings. Plaintiffs filed their responses. Therefore, Plaintiffs' Motion for Extension of Time is DENIED AS MOOT.

IV. CONCLUSION

For the foregoing reasons, Defendant New Prime's Motion for Judgment on the Pleadings on Plaintiff King's MHRA Claims is GRANTED; Plaintiff Huffman and Plaintiff King's Intentional or Negligent Infliction of Mental Distress claims are DISMISSED WITHOUT PREJUDICE; Defendant New Prime's Renewed Motion for Judgment on the Pleadings is DENIED AS MOOT; and, Plaintiffs' Motion for Extension of Time to File Response to Motions for Judgment on the Pleadings is DENIED AS MOOT.

IT IS SO ORDERED.

DATE: September 13, 2002

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT