

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TERRY RIGGINS,

Plaintiff,

v.

CITY OF ATLANTA and MICHAEL
GEISLER, in his individual capacity.

Defendants.

CIVIL ACTION NO.

1:18-CV-05085-JPB

ORDER

This matter is before the Court on Defendants’ Motion for Summary Judgment [Doc. 31]. This Court finds as follows:

BACKGROUND

Plaintiff Terry Riggins (“Riggins”) was formerly employed with the City of Atlanta’s Department of Watershed Management (“DWM”). [Doc. 9, pp. 4–6; Doc. 9-1, pp. 8–9]. Defendant City of Atlanta (the “City”) is Riggins’s former employer, and Defendant Michael Geisler (“Geisler”) is the City’s former Chief Operating Officer (“COO”). [Doc. 9-1, p. 9].

During 2014, several DWM employees reported concerns regarding potential water contamination to DWM management. [Doc. 9, p. 5]. After DWM allegedly failed to act on the employees’ concerns, several DWM employees attended an Atlanta City Council (the “Council”) meeting held on March 17, 2014,

to notify the Council of their complaints. Id. at 5–6. Riggins was one of the DWM employees in attendance, and she gave remarks about the employees’ water safety concerns. Id. at 6. Riggins notified the Council that after the City’s sewer and clean water departments were merged, employees who worked for the sewer department were reassigned to the clean water department. Id. at 6–7. Riggins alleged that these employees were working on the clean water system using the same gloves, uniforms, tools and machinery that they used to work on the sewer system. Id. at 7. Riggins further alleged that these practices could result in the contamination of the clean water system. Id.

On March 25, 2014, the Council’s Utilities Committee (the “Committee”) held a meeting during which it heard testimony from various individuals regarding the DWM concerns. Id. During this meeting, Geisler testified that DWM employees who spoke about the issues would not face retaliation, and the Committee unanimously adopted a resolution summarizing the allegations of possible water contamination, the employees’ concerns of retaliation and the DWM’s interest in investigating the allegations. Id. at 8.

On June 12, 2014, Riggins was ordered to attend an interview with Attorney Anita Wallace Thomas (the “City’s Investigator”). Id. at 9. During the interview, the City’s Investigator questioned Riggins about the water distribution systems. Id. On August 15, 2014, the City sent Riggins a letter placing her on administrative

leave pending the conclusion of the City’s investigation. Id. at 10–11. The letter included a Notice of Proposed Action (“First Notice of Proposed Action”) that listed termination as the proposed adverse action. Id. On October 23, 2014, the City sent Riggins a second letter rescinding the First Notice of Proposed Action and including a new Notice of Proposed Action (“Second Notice of Proposed Action”). Id. at 12. This notice indicated the proposed adverse action was termination effective November 7, 2014, and stated that the City was terminating Riggins’s employment because she made false statements to the City’s Investigator during the June interview. Id. at 12–13.

On November 3, 2014, the City sent Riggins a Notice of Final Adverse Action. Id. at 13. This notice indicated the final adverse action was termination effective November 11, 2014, and again stated that the City was terminating Riggins’s employment because she made false statements to the City’s Investigator *in June*. Id. at 13–14. Riggins filed an appeal with the City’s Civil Service Board (the “Board”) on November 6, 2014, at which time she requested a hearing on her termination. Id. at 14.

On August 6, 2015, Kristin Wilson became the City’s Interim COO. [Doc. 11-1, p. 10]. Riggins alleges that sometime after Wilson became the Interim COO she learned the true reason for her termination was the statements she made to the

Council *in March*. Id. Riggins filed suit against the City and Geisler in the Superior Court of Fulton County on November 12, 2015. [Doc. 9-1, p. 17].

The Board held an appeal hearing on Riggins’s termination on November 17, 2015, and overturned Riggins’s termination on December 22, 2015. [Doc. 9, p. 16–17]. Riggins, thereafter, voluntarily dismissed her initial suit filed in superior court and, within six months, filed suit in this Court on November 3, 2018. Id. at 1. Riggins filed an Amended Complaint on January 11, 2019, in which she alleges: (1) retaliation in violation of the Georgia Whistleblower Act; (2) denial of a First Amendment right in violation of 42 U.S.C. § 1983; and (3) fraud. Id. at 18, 22, 24. At the motion to dismiss stage, this Court dismissed Riggins’s § 1983 claim. [Doc. 14]. The case is now before the Court on Defendants’ Motion for Summary Judgment on Riggins’s two remaining claims. [Doc. 31].

ANALYSIS

A. Legal Standard

Under Federal Rule of Civil Procedure 56(a), a “court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” A material fact is any fact that “is a legal element of the claim under the applicable substantive law which might affect the outcome of the case.” Allen v. Tyson Foods, Inc., 121 F.3d 642, 646 (11th Cir. 1997). A genuine dispute exists when “the evidence is such

that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Ultimately, “[t]he basic issue before the court on a motion for summary judgment is ‘whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.’” Allen, 121 F.3d at 646 (citation omitted).

The party moving for summary judgment bears the initial burden of showing that no genuine issue exists as to any material fact, “and in deciding whether the movant has met this burden the court must view the movant’s evidence and all factual inferences arising from it in the light most favorable to the nonmoving party.” Id. After the movant satisfies this initial burden, the nonmovant bears the burden of showing specific facts indicating summary judgment is improper because a material issue of fact does exist. Id. However, “[a] mere ‘scintilla’ of evidence supporting the opposing party’s position will not suffice; there must be enough of a showing that the jury could reasonably find for that party.” Walker v. Darby, 911 F.2d 1573, 1577 (11th Cir. 1990) (citation omitted). If the record taken as a whole cannot lead “a rational trier of fact to find for the non-moving party, there is ‘no genuine issue for trial.’” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (citation omitted).

B. Riggins’s Fraud Claim

Riggins brings a claim for fraud against Geisler alleging that after declaring DWM “employees who spoke out about the issues at [DWM] would not face retaliation,” Geisler manufactured a scheme to terminate Riggins and “maliciously, intentionally, knowingly and deceitfully, misrepresented to [Riggins] the true reason[.]” for her termination. [Doc. 9, p. 24]. Geisler argues he is entitled to summary judgment on this claim because Riggins cannot prove “actual malice” to overcome Georgia’s official immunity. [Doc. 10-1, pp. 4–6].

i. Whether Riggins’s fraud claim is barred by official immunity

Under Georgia’s doctrine of official immunity, public officers and employees are offered limited protection from suit in their personal capacity.

Cameron v. Lang, 549 S.E.2d 341, 344 (Ga. 2001). Official

immunity “protects individual public agents from personal liability for discretionary actions taken within the scope of their official authority, and done without wilfulness, malice, or corruption.” Under Georgia law, a public officer or employee may be personally liable only for ministerial acts negligently performed or acts performed with malice or an intent to injure.

Id. (citation omitted). “For Georgia’s official immunity, ‘actual malice’ requires a deliberate intention to do wrong. It requires not only ‘ill will,’ but also the intent to do something wrongful or illegal.” Hudson v. City of Atlanta, Georgia, 685 F. App’x 740, 744–45 (11th Cir. 2017) (citations and punctuation omitted). “Mere proof of ill will, anger, frustration, or irritation is insufficient to establish actual

malice.” Sampson v. Reed, No. 1:12-CV-500-TWT, 2013 WL 1320508, at *7 (N.D. Ga. Mar. 28, 2013), aff’d, 536 F. App’x 989 (11th Cir. 2013).

Geisler contends he is protected by Georgia official immunity unless Riggins can show actual malice, and because there is no evidence of actual malice, Geisler is entitled to summary judgment on this claim. [Doc. 31-1, pp. 7–12]. “To avoid summary judgment, [Riggins] must allege the actual malice necessary to overcome official immunity for discretionary acts.” Hudson, 685 F. App’x at 745 (citation and punctuation omitted). See also Reed v. DeKalb Cnty., 589 S.E.2d 584, 588 (Ga. Ct. App. 2003) (“To avoid summary judgment, [the plaintiff] had to offer some evidence that [defendants] acted with actual malice or deliberate intent to injure her.”).

In response, Riggins argues that she can prove actual malice because “Geisler had first-hand knowledge that [Riggins] had not engaged in any reckless disregard of the truth, demonstrate[d] a lack of professional judgment or [engaged in] misconduct during [her] June 2014 interviews.” [Doc. 34, p. 10]. Riggins, however, points to no evidence in the record to support this contention. She cites Geisler’s deposition, but in his deposition, Geisler specifically states the following: (1) he terminated Riggins for the statements she made to the City’s Investigator in June 2014; and (2) during that interview, Riggins made statements regarding the water supply that she could not verify or identify firsthand, which demonstrated

misconduct and a lack of professional judgment. [Doc. 31-7, p. 28]. These statements do not support Riggins's assertion. Riggins also points to the Board's decision to overturn her termination. [Doc. 34, p. 10]. The Board's independent determination that Riggins did not willfully make false statements to the City's Investigator and its decision to overturn her termination, however, is not evidence of Geisler's state of mind.

Riggins has not provided any evidence that Geisler acted with actual malice or deliberate intent to injure her, and therefore, fails to meet the requirements of Georgia law to show a deliberate intention to do wrong, or actual malice. Consequently, this Court finds Geisler has successfully established that Riggins has not overcome Georgia's official immunity, and he is entitled to summary judgment on this claim.

C. Riggins's Georgia Whistleblower Act Claim

Riggins brings a claim against the City for retaliation in violation of the Georgia Whistleblower Act alleging that the City retaliated against her when it fired her for statements she made to the Council on March 17, 2014. [Doc. 9, pp. 18–22]. The City argues it is entitled to summary judgment on this claim because the claim is time-barred. [Doc. 31-1, pp. 13–16].

The Georgia Whistleblower Act prohibits public employers from “retaliat[ing] against a public employee for disclosing a violation of or

noncompliance with a law, rule, or regulation to either a supervisor or a government agency, unless the disclosure was made with knowledge that the disclosure was false or with reckless disregard for its truth or falsity.” O.C.G.A. § 45-1-4(d)(2). The Act also prohibits public employers from “retaliat[ing] against a public employee for objecting to, or refusing to participate in, any activity, policy, or practice of the public employer that the public employee has reasonable cause to believe is in violation of or noncompliance with a law, rule, or regulation.”

O.C.G.A. § 45-1-4(d)(3).

i. Whether Riggins’s whistleblower claim is barred by the statute of limitations

“A public employee who has been the object of retaliation in violation of this [Act] may institute a civil action in superior court for relief . . . within one year after discovering the retaliation or within three years after the retaliation, whichever is earlier.” O.C.G.A. § 45-1-4(e)(1).

Here, the City contends that Riggins discovered the retaliation when she received her First Notice of Proposed Action on August 15, 2014, if not earlier. [Doc. 31-1, p. 15]. However, she did not file suit in superior court until November 12, 2015. Therefore, the City argues, Riggins’s whistleblower claim is barred by the statute of limitations because she filed suit more than one year after discovering the alleged retaliation. Id.

“Once the defendant has shown the running of the statute of limitation, the burden shifts to the plaintiff to present some evidence that the statute has been tolled.” Allmond v. Young, 723 S.E.2d 691, 694 (2012). In response, Riggins asserts that the First Notice of Proposed Action, and the notices thereafter, failed to provide actual notice of retaliation because the notices stated that she was being terminated for conduct during the June 2014 interview, not for the statements she made in March 2014. [Doc. 34, p. 13]. Riggins argues that because the notices falsely indicated she was being terminated for statements she made to the City’s Investigator in June, they do not constitute notice of adverse action. Id. Riggins alleges that she did not learn the true reason for her termination—the statements made to the Council in March—until after Wilson became the Interim COO on August 6, 2015. Id. at 14. Therefore, she argues, the earliest her claim could have accrued was August 6, 2015, and she filed suit in superior court within a few months of that date. Id.

Riggins essentially argues that the statute of limitations was tolled due to the City’s fraudulent concealment of its true reasons for terminating her employment. Importantly,

Fraud that will toll the statute of limitation requires: (1) actual fraud involving moral turpitude on the part of the defendant; (2) the fraud must conceal the cause of action from the plaintiff, thereby debarring or deterring the knowing of the cause of action; and (3) the plaintiff must have exercised reasonable diligence to discover the cause of

action, notwithstanding the failure to discover within the statute of limitation.

Allmond, 723 S.E.2d at 694.

Riggins, however, has not shown that the City made any attempt to debar or deter her from discovering the above alleged violations; neither has she shown that she made any attempt, in the exercise of reasonable diligence, to discover these alleged violations. See id. On the contrary, it appears from the record that Riggins suspected her termination was retaliatory prior to August 6, 2015, because during the June 12, 2014 interview, Riggins called an attorney and requested legal representation for the rest of the interview. Additionally, on November 6, 2014, she filed an appeal with the Board and requested a hearing on her termination. Riggins's argument consists solely of a restatement of the contentions in the complaint and fails to even discuss the three factors required to show that the statute of limitation should have been tolled. See id. The Court is therefore not persuaded.

Here, the retaliation in question is that Riggins's position was to be terminated. There is no dispute that, on November 3, 2014, Riggins received a Notice of Final Adverse Action stating her position was to be terminated. Therefore, Riggins's "cause of action accrued and the one-year limitation period began to run on [November 3, 2014]." Tuttle v. Georgia Bd. of Regents of Univ. Sys. of Georgia, 756 S.E.2d 585, 588 (2014) (finding that, despite allegations of

fraudulent concealment, the limitation period began to run on the date the employee received notice that his position was being terminated for an allegedly pretextual reason).

Consequently, this Court finds the City has successfully established that the claim is time-barred, and it is entitled to summary judgment on this claim.

CONCLUSION

For the foregoing reasons, this Court **HEREBY GRANTS** Defendants' Motion for Summary Judgment [Doc. 31]. The Clerk is **DIRECTED** to close this case.

SO ORDERED this 29th day of July, 2021.



J. P. BOULEE
United States District Judge