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

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| MADELINE DEL PORTILLO and BRIDGET COBB, | : | |
| Plaintiffs, | : | CIVIL ACTION NO. |
| vs. | : | 1:17-CV-4398-CC-AJB |
| DEKALB MEDICAL CENTER, INC. | : | |
| Defendant. | : | |

**ORDER**

The above-styled action is before the Court on the United States Magistrate Judge's Final Report and Recommendation (the "R&R") [Doc. No. 81] issued by Chief Magistrate Judge Alan J. Baverman. In the R&R, Chief Magistrate Judge Baverman recommends that the Court grant Defendant's Motion for Summary Judgment [Doc. No. 49]. In addition to reviewing the R&R, the Court has received and reviewed Plaintiffs' Objections to the R&R [Doc. No. 83], Defendant's Motion to Strike Plaintiffs' Objections [Doc. No. 84], Plaintiffs' Response in Opposition to Defendant's Motion to Strike Plaintiffs' Objections [Doc. No. 87], and Defendant's Response to Plaintiffs' Objections [Doc. No. 85].

As an initial matter, the Court denies Defendant's Motion to Strike Plaintiffs' Objections. Defendant DeKalb Medical Center, Inc. ("Defendant") moves the Court to strike the objections filed by Plaintiffs Madeline del Portillo and Bridget

Cobb ("Plaintiffs") on the ground that the filing runs afoul of the requirement that briefs be no longer than 25 pages and on the additional ground that the objections are neither specific nor proper. While the Court agrees with Defendant that Plaintiffs improperly used 36 footnotes to circumvent the Court's page limitation rule, this is not a sufficient reason for the Court to disregard Plaintiffs' objections. The Court could direct Plaintiffs to re-file their objections and impose a limitation on the use of footnotes. However, Defendant has already responded to Plaintiffs' objections as filed. Requiring Plaintiffs to file their objections anew would be inefficient and a waste of resources. The Court likewise finds that Plaintiffs' objections are sufficiently specific to enable a meaningful de novo review by this Court. Therefore, the Court denies Defendant's Motion to Strike Plaintiffs' Objections.

Because Plaintiffs' objections are due to be considered on the merits, the Court next addresses the standard that governs this Court's review of the R&R and Plaintiffs' objections. After reviewing a magistrate judge's findings and recommendations submitted pursuant to 28 U.S.C. § 636(b)(1)(B), a district judge may accept, reject, or modify the findings or recommendations. 28 U.S.C. § 636(b)(1). A party challenging a report and recommendation must "file . . . written objections which shall specifically identify the portions of the proposed findings and recommendation to which objection is made and the specific basis for

objection." Macort v. Prem, Inc., 208 F. App'x 781, 783 (11th Cir. 2006) (citation and internal quotation marks omitted); see also Fed. R. Civ. P. 72(b)(2). A district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." Jeffrey S. v. State Bd. of Educ. of Ga., 896 F.2d 507, 512 (11th Cir. 1990) (citation omitted). The district judge must "give fresh consideration to those issues to which specific objection has been made by a party." Id. "Frivolous, conclusive, or general objections need not be considered by the district court." Marsden v. Moore, 847 F.2d 1536, 1548 (11th Cir. 1988) (citation omitted). Those portions of a report and recommendation to which an objection has not been made are reviewed for plain error. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983).

Having conducted a thorough, de novo review of those portions of the R&R to which Plaintiff objects and having reviewed all relevant parts of the record as well as the applicable law, the Court concludes that Defendant's Motion for Summary Judgment is due to be granted, notwithstanding Plaintiff's objections, and adopts the R&R with one modification. Chief Magistrate Judge Baverman concluded "that summary judgment is warranted on the tortious-interference claims due to the 'non-stranger' privilege; that the retaliation claims are subject to summary judgment because Dr. del Portillo abandoned her retaliation claims and Dr. Cobb failed to properly exhaust her administrative remedies; and that

summary judgment should be granted on the remaining Title VII claims because Plaintiffs failed to present evidence supporting their claims in a manner substantially compliant with the Local Rules and Orders of this Court and thus amenable to judicial review." (R&R at 46-47.) Following this Court's review of the parties' briefs, the evidence of record, and the transcript of the hearing conducted by Chief Magistrate Judge Baverman, this Court independently concludes that all of Plaintiff's claims are due to be resolved in the manner recommended by Chief Magistrate Judge Baverman and for the reasons he articulated, except for Plaintiffs' Title VII claims.

Chief Magistrate Judge Baverman recommended that summary judgment be granted on Plaintiffs' Title VII claims primarily based on Plaintiffs' procedural errors – a failure to file a response that complies with the Court's Local Rules and Orders of the Court. While the procedural deficiencies of Plaintiffs' summary judgment submissions certainly impacted the substantive review of Plaintiffs' claims, Chief Magistrate Judge Baverman essentially treated Defendant's Motion for Summary Judgment as unopposed with respect to the Title VII claims and recommended that summary judgment be granted on that basis. However, "[e]ven when a summary judgment motion is . . . unopposed, the district court still must consider the merits of the motion." Philadelphia Indem Ins. Co. v. Manitou Constr., Inc., 115 F. Supp. 3d 1378, 1383 (N.D. Ga. 2015) (citing Dunlap v.

Transamerica Occidental Life Ins. Co., 858 F.2d 629, 632 (11th Cir.1988)). "Accordingly, the court must review the evidentiary materials submitted in support of the motion and 'determine whether they establish the absence of a genuine issue of material fact.'" Id. (quoting U.S. v. One Piece of Real Prop., 363 F.3d 1099, 1102 (11th Cir. 2004) and Jaroma v. Massey, 873 F.2d 17, 20 (1st Cir. 1989)). In a footnote, Chief Magistrate Judge Baverman did undertake a review of the merits of Plaintiffs' Title VII claims, based on the evidence presented. He articulated detailed and persuasive reasons regarding why Plaintiffs' Title VII claims fail as a matter of law. However, to the extent that the R&R might be construed as recommending that summary judgment be granted on the Title VII claims solely for procedural reasons, this Court clarifies, based on its de novo review, that summary judgment also is due to be granted on these claims because there is no genuine issue as to any material fact and Defendant is entitled to judgment as a matter of law.

Based on the foregoing, the Court **ADOPTS** the R&R, as modified, and **GRANTS** Defendant's Motion for Summary Judgment [Doc. No. 49]. Defendant's Motion to Strike Plaintiffs' Objections [Doc. No. 84] is **DENIED**.

SO ORDERED this 3rd day of September, 2021.

*s/ CLARENCE COOPER*
CLARENCE COOPER
SENIOR UNITED STATES DISTRICT JUDGE