

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

DEBORAH L. SMITH,)
)
 Plaintiff,)
)
 v.)
)
 JACQUELINE P. THOMAS, in her)
 individual and official capacities, and))
)
 CITY OF POPLAR BLUFF, MISSOURI,)
 Doing Business As POPLAR)
 BLUFF PUBLIC LIBRARY,)
)
 Defendants.)

JURY TRIAL DEMANDED

Case No.

COMPLAINT

Plaintiff Deborah L. Smith, for her complaint against Jackie Thomas and the City of Poplar Bluff, Missouri, doing business as Poplar Bluff Public Library alleges:

INTRODUCTION

1. This is an action for monetary damages brought pursuant to 42 U.S.C. § 2000(e), *et seq.*, and under the laws of the state of Missouri against the City of Poplar Bluff, Missouri, and pursuant to 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution against Jackie Thomas in her individual and official capacities.

2. Plaintiff Deborah L. Smith alleges that Defendant City of Poplar Bluff in the course of its operation of Poplar Bluff Public Library intentionally discriminated against her based on her religious beliefs, retaliated against her in response to her opposition to religious discrimination, and wrongfully discharged her. Plaintiff also alleges that Defendant Jackie Thomas, while operating under color of state law, violated her right to free exercise of religion.

JURISDICTION AND VENUE

3. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over Plaintiff's cause of action arising under the Constitution of the United States and 42 U.S.C. § 1983. Jurisdiction over Plaintiff's claims brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, for employment discrimination exists by virtue of 42 U.S.C. § 2000e-5. This Court has supplemental jurisdiction over Plaintiff's causes of action arising under the Missouri state law pursuant to 28 U.S.C. § 1367.

4. Venue lies in the United States District Court for the Eastern District of Missouri because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Butler County, Missouri. 28 U.S.C. § 1391(b)(2).

5. Divisional venue is in the Southeastern Division because the events leading to the claim for relief arose in Butler County. E.D.Mo. L.R. 2.07(A)(3), (B)(2).

PARTIES

6. Plaintiff Deborah L. Smith ("Plaintiff") is an adult resident of Butler County, Missouri. She was employed by the City of Poplar Bluff to work at the Poplar Bluff Public Library as a part-time Library Assistant Level II from on or about August 18, 2006, to on or about September 6, 2007.

7. Defendant Jacqueline P. Thomas ("Defendant Thomas") is the library director of the Poplar Bluff Public Library. She is a resident of Butler County. She is sued in her individual and official capacities. All actions taken by her as alleged in this complaint were taken under color of law.

8. Defendant City of Poplar Bluff, Missouri (“Defendant City of Poplar Bluff”) is a municipality in the State of Missouri providing, *inter alia.*, library services to the general public. The Poplar Bluff Public Library is a department or agency of Defendant City of Poplar Bluff

9. Defendant City of Poplar Bluff is an employer as defined by 42 U.S.C. § 2000e(b) and Mo Rev. Stat. § 213.010(7). Defendant City of Poplar Bluff employed 15 or more employees at all times that it employed Plaintiff.

BACKGROUND

10. Plaintiff was employed by Defendant City of Poplar Bluff as a part-time Library Assistant Level II from on or about August 18, 2006, to on or about September 6, 2007. Her duties included working at the check-out express, answering telephones, maintaining the “holds” shelf, and organizing page/shelver assignments. She performed her duties as a Library Assistant adequately and met or exceeded Defendant City of Poplar Bluff’s expectations throughout her employment.

11. Plaintiff is a member of a Southern Baptist church. Her sincerely held religious beliefs prevent her from being involved in the promotion of worship of the occult.

12. On or about June 8, 2007, Defendant City of Poplar Bluff announced that it would be holding a “Harry Potter Night” on July 20, 2007, to promote the July 21, 2007, release of *Harry Potter and the Deathly Hallows*, a novel by J.K. Rowling. The event was directed toward children and held outside the library’s normal operating hours.

13. Plaintiff explained to her immediate supervisor, Ashley Young (“Young”) that she could not participate in Harry Potter Night because such promotion violated her sincerely held religious beliefs against the worship of the occult and the promotion of such worship, particularly where the promotion is directed toward children.

14. Young assured Plaintiff that her inability to participate in Harry Potter Night because of her religious beliefs would not be a problem because other employees were available to work at the event. Young told Plaintiff that she would not be required to attend Harry Potter Night.

15. After assuring Plaintiff that she would not have to attend Harry Potter Night, Young spoke with Defendant Thomas, the library director, to advise her of Plaintiff's objection.

16. Despite Young's assurances to Plaintiff, Defendant Thomas required Plaintiff to talk directly to her about her objections to Harry Potter night.

17. Plaintiff explained to Defendant Thomas that her religious beliefs prevented her from promoting worship of the occult and that she could not participate in Harry Potter Night because doing so would be promoting witchcraft to children.

18. Defendant Thomas informed Plaintiff that she would be required to help with Harry Potter Night in a behind-the-scenes role, but in a way that Plaintiff's church community would not know she had participated. Defendant Thomas told Plaintiff that hiding her participation from other church members should be sufficient to overcome any religious objection.

19. Defendant Thomas belittled Plaintiff's sincerely held religious beliefs and threatened to discipline Plaintiff if she did not participate in Harry Potter Night. Defendant Thomas' treatment of Plaintiff demonstrated discriminatory animus.

20. Plaintiff stated that she was willing to work in the library and perform her normal duties during the days leading up to Harry Potter Night, but she vehemently objected to participating in Harry Potter Night in any role, since doing so would violate her religious beliefs.

21. Defendant Thomas asked Plaintiff whether her religious beliefs were so strong that she would allow herself to be suspended. Plaintiff answered in the affirmative.

22. Plaintiff refused to participate in Harry Potter Night because any participation in the event, including behind-the-scenes work the evening of the event, would have violated her sincerely held religious belief that she should not promote worship of the occult.

23. When schedules were issued on July 13, 2007, Plaintiff learned that she had been suspended without pay for 10 days.

24. Plaintiff was suspended without pay from July 14, 2007 to July 23, 2007.

25. Plaintiff returned to work on July 24, 2007.

26. After Plaintiff returned to work, Defendant Thomas reduced Plaintiff's assigned work hours.

27. Defendant Thomas also assigned Plaintiff to perform on a daily basis physically demanding page/shelver duties specifically excluded from the regular duties of a Library Assistant Level II employee, including shelving, retrieving, and carrying books. Plaintiff had to perform some of these duties outside on hot, sunny days.

28. By reassigning Plaintiff's duties, Defendant Thomas effectively demoted Plaintiff from a Library Assistant Level II employee to a page/shelver.

29. Plaintiff suffered stress and medical complications as a result of to the suspension, reduced hours, and increasingly laborious tasks assigned to her by Defendant Thomas.

30. Because of these complications, Plaintiff's physician repeatedly advised her to resign. Plaintiff continued working at the library because she hoped that her working conditions and assignments would improve.

31. Plaintiff passed out at work while performing physically demanding page/shelver duties and has since been unable to return to work.

32. Defendants created working conditions that were so intolerable that Plaintiff could not return to work.

33. Plaintiff Smith resigned her position on or about September 6, 2008, at the insistence of her physician.

34. Defendants' actions constitute constructive discharge.

35. At the time that Plaintiff's hours were reduced and her work tasks were changed, other library employees were not assigned fewer hours or assigned to perform more laborious tasks.

36. Defendant City of Poplar Bluff is responsible for the actions taken by Defendant Thomas in the course of her employment.

37. As a direct and proximate result of the acts of Defendants Thomas and City of Poplar Bluff, Plaintiff suffered the following injuries and damages:

- a. Loss of income;
- b. Loss of back pay;
- c. Loss of front pay;
- d. Pain and suffering;
- e. Emotional distress;
- f. Humiliation;
- g. Embarrassment; and
- h. Violation of her constitutional rights under the First and Fourteenth

Amendments to free exercise of religion.

38. Plaintiff filed a charge with the Equal Employment Opportunity Commission (“EEOC”) on or about November 2, 2007. It was dual filed with the Missouri Commission on Human Rights (“MCHR”) on or about November 7, 2007. The charge was filed within 180 days of the alleged acts of discrimination, satisfying 42 U.S.C. § 2000e-5(e)(1) and Mo. Rev. Stat. § 213.075.1. A copy of the charge is attached as Exhibit A.

39. The EEOC closed its investigation and issued a Notice of Right to Sue on March 6, 2008. This Complaint has been filed within 90 days of March 6, 2008, satisfying 42 U.S.C. § 2000e-5(f)(1). A copy of the right-to-sue letter is attached as Exhibit B.

40. The MCHR issued a Notices of Right to Sue on April 8, 2008, and April 30, 2008. This Complaint has been filed within 90 days of the MCHR’s notification letters and within 2 years of the alleged discrimination, satisfying Mo. Rev. Stat. § 213.111.1. Copies of the right-to-sue letters are attached as Exhibits C and D.

COUNT I

Religious Discrimination in Violation of 42 U.S.C. § 2000e et seq. Against City of Poplar Bluff

41. Plaintiff re-alleges and incorporates by reference ¶¶ 1-40.

42. Defendants intentionally discriminated against Plaintiff based on her religion and failed to accommodate her religious beliefs in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*

43. Plaintiff has a bona fide religious belief stemming from her Christian identity and membership in a Southern Baptist church that she sincerely believes prohibits her from being involved in promotion of the worship of the occult, especially to children.

44. Plaintiff's religious beliefs conflicted with Defendants' requirement that Plaintiff participate in Harry Potter Night, and Plaintiff informed her immediate supervisor and the library director of this conflict.

45. After Plaintiff informed Defendant Thomas of her bona fide religious beliefs, Defendants discriminated against her by belittling her religious beliefs, threatening to discipline her, suspending her without pay, decreasing her hours, and assigning her to physically demanding tasks outside of her job description.

46. Defendant City of Poplar Bluff refused to accommodate Plaintiff's religious objections and continued to require Plaintiff's participation in Harry Potter Night after being made aware of her objections.

47. Defendants would not have suffered an undue hardship by excusing Plaintiff from participation in Harry Potter Night because other employees were available to work at the event.

48. Defendants actions toward Plaintiff constitute adverse employment actions.

49. Defendant Thomas's actions were taken in her role as an employee of Defendant City of Poplar Bluff and in the scope of her employment.

COUNT II

Retaliation in Violation of 42 U.S.C. § 2000e et seq. Against City of Poplar Bluff

50. Plaintiff re-alleges and incorporates by reference ¶¶ 1-49.

51. Defendants retaliated against Plaintiff in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*

52. Plaintiff engaged in activity protected under Title VII by opposing Defendants' acts of religious discrimination involved in requiring her to participate in Harry Potter Night against her religious beliefs.

53. After Plaintiff opposed Defendants' religious discrimination, Defendant Thomas belittled Plaintiff's religious beliefs, threatened to discipline her, suspended her for 10 days without pay, decreased her hours, and assigned her to perform physically challenging tasks that were dangerous to her health.

54. These adverse actions were a direct result of Plaintiff's opposition to Defendant City of Poplar Bluff's religious discrimination.

COUNT III

Religious Discrimination in Violation of Mo. Rev. Stat. § 213.055 Against City of Poplar Bluff

55. Plaintiff re-alleges and incorporates by reference ¶¶ 1-40, 48, and 49.

56. Defendant City of Poplar Bluff intentionally discriminated against Plaintiff based on her religion in violation of the Missouri Human Rights Act, Mo Rev. Stat. § 213.055.1.

COUNT IV

Retaliation in Violation of Mo. Rev. Stat. § 213.070(2) Against City of Poplar Bluff

57. Plaintiff re-alleges and incorporates by reference ¶¶ 1-40, 48, 49, 55, and 56.

58. Defendant City of Poplar Bluff retaliated against Plaintiff in violation of the Missouri Human Rights Act, Mo. Rev. Stat § 213.070(2).

59. Plaintiff complained to Defendant Thomas that Defendant City of Poplar Bluff discriminated against her based on her religion by requiring her to participate in Harry Potter Night against her religious beliefs.

60. Defendant City of Poplar Bluff took adverse action against Plaintiff by belittling her religious beliefs, threatening to discipline her, suspending her for 10 days without pay, reducing her hours, and reassigning her to physically demanding tasks beyond the scope of her regular job description.

61. These adverse actions were a direct result of Plaintiff's opposition to Defendant City of Poplar Bluff's religious discrimination.

COUNT V

Wrongful Discharge Against City of Poplar Bluff

62. Plaintiff re-alleges and incorporates by reference ¶¶ 1-61.

63. Defendant City of Poplar Bluff wrongfully discharged Plaintiff by constructively discharging her in violation of a clear mandate of public policy.

64. Defendant City of Poplar Bluff altered the terms and conditions of Plaintiff's employment by reducing her hours and assigning her to perform physically challenging tasks, rendering her working conditions intolerable.

65. Missouri has a clearly stated public policy against discrimination in employment on the basis of religion. Defendant City of Poplar Bluff violated this public policy by constructively discharging Plaintiff because of her religious beliefs.

COUNT VI

42 U.S.C. § 1983 Against Defendant Thomas

66. Plaintiff re-alleges and incorporates by reference ¶¶ 1-65.

67. The actions taken by Defendant Thomas violated Plaintiff's constitutional right to free exercise of religion.

68. Defendant Thomas's actions described herein were taken under color of law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

- A. Enter judgment in favor of Plaintiff and against Defendants;
- B. Award Plaintiff compensatory and punitive damages against Defendants;

- C. Award Plaintiff's counsel reasonable attorneys' fees and costs;
- D. Grant to Plaintiff such other and further relief as may be just and proper

under the circumstances, including but not limited to appropriate injunctive relief upon proper motion.

Respectfully submitted,

s/ Anthony E. Rothert
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