

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ADRIAN PAUL McCLAREN,)	
)	
)	
Plaintiff,)	Case No. 08-2806
)	
v.)	
)	
KEYSTONE MEMPHIS, LLC d/b/a)	
COMPASS INTERVENTION CENTER,)	
)	
)	
Defendant.)	

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

Before the Court is Defendant Keystone Memphis, LLC's ("Keystone") May 20, 2009, Motion to Dismiss Plaintiff Adrian Paul McClaren's First Amended Complaint alleging that Keystone, acting through Compass Intervention Center ("Compass"), fired McClaren in violation of the clear public policy of the State of Tennessee. McClaren has filed a memorandum opposing Keystone's Motion. Taking all facts alleged by McClaren as true, the Court finds that McClaren's First Amended Complaint does not state a cause of action under Tennessee law and, therefore, GRANTS Defendant's Motion to Dismiss.

I. Factual Background

McClaren, a resident of Olive Branch, Mississippi, worked as a marriage and family therapist at Compass' Memphis,

Tennessee, center from April 8, 2002, until the events giving rise to the present suit. (Compl. ¶ 8.)¹ During that time, McClaren's personal vehicle displayed two license plates that depicted the Confederate Battle Flag. On the front of the vehicle was a novelty tag displaying solely the Confederate Battle Flag. (Id. ¶ 9.) McClaren displayed a state-issued Mississippi license plate on the rear of his vehicle. Rather than the standard-issue Mississippi plate, McClaren chose to display the specialty plate honoring the Sons of Confederate Veterans ("SCV").² (Id.; see also id. Ex. A, available at http://www.mstc.state.ms.us/mvl/tag_img/SonsofConfederateVet.jpg (last visited Dec. 16, 2009).) The SCV plate depicts a small Confederate Battle Flag as part of the SCV's emblem. It also displays the state flag of Mississippi, which incorporates the Confederate Battle Flag in its upper-left corner. (Compl. Ex. A.)

McClaren did not receive any negative response to his two license plates until Dr. Mark Monroe, Compass' clinical director, asked McClaren to remove the front license plate from

¹ All citations are to the First Amended Complaint. (See Dkt. No. 13.) McClaren does not plead that Compass employed him for a specific contractual time period, and Compass admits that McClaren was an at-will employee. (Id.; Defendant's Memorandum in Support of Its Motion to Dismiss at 6-9.) ("Def's. Memo")

² The SCV specialty plate is one of many such plates issued by the State of Mississippi and available to its drivers for an additional fee. Other such plates are devoted to wildlife conservation, military service, the State's universities and colleges, and boxing. See Tag List, <http://www.mstc.state.ms.us/mvl/taglist.html> (last visited Dec. 16, 2009).

his vehicle in the spring of 2006. (Id. ¶ 11.) McClaren "politely declined." (Id.) No further negative comments about McClaren's license plates were made until Nashon McPherson became chief executive officer of Compass. On September 28, 2007, McPherson asked Plaintiff to park his vehicle so that the front novelty plate, bearing the Confederate Battle Flag, would not be visible. (Id. ¶ 14.) Plaintiff again refused; and on October 1, 2007, McPherson sent Plaintiff a written warning for refusing to conceal his front license plate. (Id. ¶ 16 & Ex. D.) The notice informed Plaintiff that failure to follow the directive could result in further punishment, including termination. (Id.)

The next day, October 2, 2007, Plaintiff parked his vehicle "head in" so that the front plate would no longer be visible to anyone walking through the parking lot. (Id. ¶ 18.) Plaintiff informed McPherson of his willingness to cooperate, and McPherson visited Plaintiff's car in the parking lot to confirm that Plaintiff had complied with McPherson's request. McPherson discovered, however, that Plaintiff's state-issued rear license plate also contained the Confederate Battle Flag. McPherson once again issued a written warning to Plaintiff. (Id. ¶¶ 19-21.) Although from October 2 to October 8, 2007, Plaintiff continued to park his car so that the front license plate was not visible, McPherson continued to issue written reprimands.

(Id. ¶ 22.) When Plaintiff asked McPherson why he continued to receive disciplinary notices after changing the way he parked, McPherson suggested that Plaintiff “do something” about his rear, state-issued license plate. (Id. ¶ 25.)

Plaintiff had his final meeting with McPherson on October 8, 2007. McPherson asked Plaintiff if he “had changed his mind regarding the plates.” (Id. ¶ 31.) Plaintiff responded that he would continue to park his car so that the front plate would be hidden, but Plaintiff declined to remove or replace his rear SCV specialty license plate. (Id.) McPherson consequently terminated Plaintiff. (Id. ¶ 33.) Plaintiff unsuccessfully attempted to appeal his termination through Compass’ internal review process. (Id. Ex. J.) The State of Tennessee, however, granted Plaintiff’s application for unemployment benefits after finding that “[t]he employer has not provided sufficient evidence to prove that [McClaren’s] actions constitute work-related misconduct.” (Id. Ex. I.)

II. Jurisdiction and Choice of Law

Plaintiff, a Mississippi resident, filed suit to contest his termination on October 7, 2008, in the Circuit Court for Shelby County, Tennessee. McClaren asserts that Compass terminated him in violation of the clear public policy of Tennessee requiring all automobiles to have and display a state-issued license plate. See Tenn. Code Ann. § 55-4-110(a).

Defendant, a Tennessee-based corporation, removed this action to federal court on November 11, 2008, based on this Court's diversity jurisdiction. See 28 U.S.C. § 1332(a)(1). Plaintiff filed his First Amended Complaint on April 20, 2009, seeking damages in excess of \$75,000, after which Defendant filed the present Motion to Dismiss. (Amended Compl. at 9.)

In diversity actions, the substantive law of the state in which the federal court sits governs, including the forum state's choice of law provisions. Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938); Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496 (1941); Cole v. Miletic, 133 F.3d 433, 437 (6th Cir. 1998). Plaintiff's wrongful termination claim sounds in tort. See Weber v. Moses, 938 S.W.2d 387, 393 (Tenn. 1996). Tennessee has adopted the Restatement's approach to resolve conflict-of-law issues arising in tort. See Hataway v. McKinley, 830 S.W.2d 53, 59 (Tenn. 1992) (adopting the Restatement (Second) of Conflicts of Laws as the governing standard). Under this approach, the law of the state with the most significant relationship to the injury will govern. Id. The parties here properly assume that Tennessee law governs this action, which is a claim by an employee against the Tennessee place-of-business where he worked. See id. (noting that the place where the injury occurred, the place where the

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