

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

STANLEY M. DIGGS,)	
)	
)	
Plaintiff,)	CIVIL ACTION
)	
v.)	No. 20-2330-KHV
)	
UNITED PARCEL SERVICE, INC.,)	
)	
)	
Defendant.)	
)	

MEMORANDUM AND ORDER

On May 6, 2020, in the Tenth Judicial District Court of the State of Kansas, Stanley M. Diggs filed suit against United Parcel Service, Inc. alleging wrongful termination and retaliatory discharge. On July 1, 2020, defendant removed the case to federal court based on diversity jurisdiction. Notice of Removal (Doc. #1). This matter is before the Court on Defendant's Motion To Dismiss (Doc. #5) filed July 1, 2020. Defendant's motion is unopposed. For reasons stated below, the Court sustains the motion.

Factual And Procedural Background

I. Plaintiff's Petition

Plaintiff's petition alleges as follows:

Plaintiff is a resident of Overland Park, Kansas. He is African-American and over the age of 40. For over 30 years, until defendant wrongfully terminated his employment, plaintiff worked at a UPS store in Lenexa, Kansas. Defendant terminated his employment based on age, race, medical history, his report of illegal activity on company property and his complaint about a safety violation.

In addition, defendant treated plaintiff differently than similarly situated colleagues. For example, when he reported illegal activity taking place on company property by an employee with whom plaintiff had previously had a relationship, defendant treated him differently than other employees who had engaged in similar relationships.

Defendant's termination of plaintiff's employment violates "clearly established public policy as well as its own internal policies."

As a result of defendant's wrongful discharge, plaintiff sustained \$575,000 in lost future salary, \$123,840 in lost future medical benefits and attorney fees.

II. Motion To Dismiss

On July 1, 2020, defendant filed a motion to dismiss plaintiff's petition on several grounds. First, defendant asserts that the Court should dismiss plaintiff's petition under either Rule 12(b)(1) for lack of jurisdiction or 12(b)(6) for failure to state a claim. Defendant argues that plaintiff failed to allege that he timely filed a charge with the Equal Employment Opportunity Commission or the Kansas Human Rights Commission and thus he has not exhausted administrative remedies and the deadline for doing so has passed. Second, defendant asserts that to the extent plaintiff asserts a claim of wrongful termination in violation of public policy, the Court should dismiss it under Rule 12(b)(6) because he did not identify any public policy that defendant allegedly violated. Finally, defendant asserts that the Court should dismiss plaintiff's petition for insufficient service of process under Rule 12(b)(5) because plaintiff did not serve defendant with a summons and improperly mailed the petition to the wrong entity (i.e. UPS Ground Freight, Inc.).

Analysis

Under D. Kan. Rule 6.1(d)(2), plaintiff had until July 22, 2020 to file a response to defendant's motion to dismiss. Pursuant to D. Kan. Rule 7.4, if a party fails to file a timely

response, “the court will consider and decide the motion as an uncontested motion. Ordinarily, the court will grant the motion without further notice.”

As of August 10, 2020, plaintiff has not filed a response. The Court will therefore sustain defendant’s motion as unopposed. In addition, the Court has reviewed the record and finds that judgment is appropriate under Rule 12(b)(6) and Rule 12(b)(5), Fed. R. Civ. P., for substantially the reasons stated in defendant’s Memorandum In Support Of Defendant’s Motion To Dismiss (Doc. #6) filed July 1, 2020.

IT IS THEREFORE ORDERED that Defendant’s Motion To Dismiss (Doc. #5) filed July 1, 2020 is **SUSTAINED**.

Dated this 10th day of August, 2020 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge