

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-12286
Non-Argument Calendar

D.C. Docket No. 8:19-cv-02865-CEH-AAS

ANTONIA SOPHIE RICHMOND,

Plaintiff-Appellant,

versus

POLK COUNTY HEALTH DEPARTMENT,
a.k.a. Florida Health Department,
JOY JACKSON,
LEROY DUX,
TAMMY DURDEN,
LISANDRA SANCHEZ-CRESPO,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(March 2, 2021)

Before MARTIN, ROSENBAUM, and BRANCH, Circuit Judges.

PER CURIAM:

Antonia Richmond, proceeding pro se, appeals the district court's sua sponte dismissal of her complaint against the Polk County Health Department and various individual defendants for failure to state a claim. After careful consideration, we affirm.

I.

Richmond filed a pro se complaint alleging: (1) unpaid wages and retaliation under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 215(a) and 216(b); (2) race and gender discrimination in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e-3(a); and (3) retaliation under the Florida Whistleblower’s Act (“FWA”), Fla. Stat. § 112.3187 et seq. She also sought leave to proceed in forma pauperis (“IFP”).

The magistrate judge took the IFP motion under advisement, outlined deficiencies in the pleadings, and permitted Richmond an opportunity to file an amended complaint. Richmond thereafter submitted a first and then a second amended complaint. The magistrate judge again outlined deficiencies in the second amended complaint and permitted Richmond to file another amended complaint. Richmond did so. Upon review of the third amended complaint, the magistrate judge issued a report and recommendation (“R&R”) that recommended

dismissal of the complaint for failure to state a claim and denial of the IFP motion. Despite being informed of the time period for filing objections to the R&R and the consequences for failing to do so, Richmond did not object to the R&R.

The district court adopted the R&R and dismissed the third amended complaint. Richmond appealed.

II.

This Court ordinarily reviews a district court's sua sponte dismissal for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii). Henley v. Payne, 945 F.3d 1320, 1331 (11th Cir. 2019). However, where a party fails to object to a magistrate judge's R&R in accordance with the provisions of 28 U.S.C. § 636(b)(1), that party "waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object." 11th Cir. R. 3-1. In the absence of a proper objection, we may review for plain error, but only "if necessary in the interests of justice." Id.

Because Richmond did not object to the magistrate judge's R&R despite being warned of the consequences for failing to do so, she has waived any challenge to the district court's judgment, which fully adopted the factual findings and legal conclusions therein. Nevertheless, we review the dismissal for plain error, and find none. Richmond failed to plead a necessary element of the FLSA

claim, and she did not demonstrate that she exhausted her administrative remedies or sued within the statute of limitations for the Title VII and FWA claims.

We therefore affirm the district court's dismissal of her third amended complaint for failure to state a claim.

AFFIRMED.