STATE OF VERMONT
WINDSOR COUNTY, SS.

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| JOAN LAWRENCE-STUDEBAKER,<br>Plaintiff | : | WINDSOR SUPERIOR COURT |
| | : | DOCKET NO. S165-94 WrC |
| v. | : | |
| SOCIAL AND REHABILITATION SERVICES OF THE STATE OF VERMONT, JAMES HUCKINS-NOSS, and TERRY McFALL,<br>Defendants | : | |

**ENTRY ORDER RE:**

**MOTION FOR PARTIAL SUMMARY JUDGEMENT**

**CONCERNING COUNTS IV AND VI**



INTRODUCTION

Plaintiff, a former employee of Social and Rehabilitation Services (SRS), alleges that she encountered gender discrimination in the form of sexual harassment and retaliation in violation of the Vermont Fair Employment Practices Act, 21 V.S.A. § 495, *et seq*. Defendants SRS and James Huckins-Noss have moved for partial summary judgment concerning Count IV (outrageous conduct causing emotional distress / negligence), and Count VI (negligent supervision). The court has denied certain aspects of an earlier motion for partial summary judgment, recognizing that plaintiff has submitted a *prima facie* case concerning Count I (gender discrimination) and Count II (retaliation). The court has granted summary judgment in favor of defendants SRS and Huckins-Noss with respect to Count III (claim under 42 U.S.C. § 1983).

Defendants' primary argument concerning Counts IV and VI is

that both SRS and Huckins-Noss enjoy immunity from those tort claims. Plaintiff argues that the claims are not barred by sovereign or official immunity. Both parties submitted memoranda, and supplemental memoranda in response to queries from the court. Defendants SRS and Huckins-Noss submitted a statement of material facts and an affidavit; plaintiff submitted portions of deposition transcripts.

Summary judgment is appropriate if the record shows that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. V.R.C.P. 56(c)(3). The moving party has the burden of proof, and the opposing party must be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue of material fact exists. Price v. Leland, 149 Vt. 518 (1988).

DISCUSSION

The court has reviewed the legal arguments set forth in the parties' memoranda, and attempted to apply them to the facts in this case. In doing so, it has become apparent that there is no clear statement of undisputed facts upon which the court can base a legal ruling. Although Defendants SRS and Huckins-Noss submitted a document entitled "Statement of Material Facts", it is exceedingly brief and does no more than identify SRS as a department of state government, and Defendant Huckins-Noss as an employee in charge of a subdivision of that department. It does not include even any facts contained in the Affidavit filed simultaneously. It does not identify in any way the particular

functions or duties of the state agency or individual employee that are involved in this case so that the court can analyze whether or not such functions or duties are discretionary in nature, thereby justifying Defendants' claimed defenses of sovereign and official immunity. As Defendants themselves point out in their legal arguments, sovereign immunity is not automatic, and the court cannot determine the applicability of the defense without a basic set of undisputed facts that addresses both the facts in support of sovereign immunity applicability and the facts that pertain to the applicability of possible exceptions that may be asserted in this case.

Similarly, the plaintiff has not submitted any statement of facts, either disputed or undisputed, enabling the court to determine whether the parties are in agreement on factual issues but differ only on the applicability of legal theories to the facts, or whether material facts are in dispute that would have an impact on the applicability of the law.

Both parties have cited to factual material developed in discovery, but the set of facts offered by the Defendants in support of their motion does not provide a sufficient basis for a ruling of law. Neither party has complied with the requirements of V.R.C.P. 56(c) in the presentation of factual material to the court, and the result is the exact situation that the 1995 amendments to Rule 56 were designed to address: "The rule seeks to change the present practice under which generalized claims as to whether material facts may be in dispute are frequently

presented on motions for summary judgment." V.R.C.P. 56(c), reporter's notes to 1995 amendment, 1996 supplement at 78. Without undisputed facts, the court is not in a position to rule on the sufficiency of the claims as a matter of law.

There are, in addition, two other problems that complicate the attempt to address defendants' motion. The first problem is the lack of clarity in the legal basis for the plaintiff's claim under Count IV. Paragraph 40 sets forth a claim for outrageous conduct leading to emotional distress, which appears to be a claim for intentional infliction of emotional distress, with an alternate claim for negligence in Paragraph 41. Plaintiff's memorandum in response to the Motion for Summary Judgment treated Count IV as a claim for negligence rather than as one for intentional infliction of emotional distress (Plaintiff's Memorandum in Opposition, filed November 1, 1996, pp 5-11). In response to the court's queries, the plaintiff then sought to justify a claim for intentional infliction of emotional distress. It is unclear whether or not plaintiff is still asserting both claims in the alternative, and whether or not the outrageous conduct claim is based in negligence or the intentional tort of intentional infliction of emotional distress. If so, any motion for summary judgment on behalf of defendants should contain a statement of undisputed facts that is sufficient to enable the court to rule on both claims. The second and related problem is whether or not Count IV contains a claim against defendant Huckins-Noss. This is ambiguous in the manner in which the count

is pleaded, and was not clarified in the memoranda of the plaintiff. Again, sufficient undisputed facts are needed for the court to be able to make rulings as they relate to each defendant before the court can rule as to each defendant.

For the foregoing reasons, defendants' Motion for Summary Judgment is denied. It may be renewed if supported as required by V.R.C.P. 56(c). If so, the attorneys may or may not seek to revise their legal memoranda. Considerable work has already been done on the presentation of legal arguments, and this work is still usable. If the motion is renewed, the attorneys may reference memoranda previously filed or file new memoranda as they choose, but should specify which memoranda they are relying on in support of their positions.

Dated this 22nd day of May, 1997.

Mary Miles Teachout

Mary Miles Teachout,
Presiding Superior Court Judge

FILED

MAY 22 1997

GAIL P. BRADY
WINDSOR COUNTY CLERK