

NO. 05-CI-09390

JEFFERSON CIRCUIT COURT

DIVISION EIGHT (8)

TODD F. EKLOF

PLAINTIFF

v.

OPINION

KENTUCKY FARM BUREAU FEDERATION, et. al.

DEFENDANTS

Procedural History

This matter is before the Court on the motion of the Defendant, Kentucky Farm Bureau Federation ("Federation") for partial summary judgment. The motion was filed on February 11, 2008. The Plaintiff, Todd F. Eklof ("Mr. Eklof") filed his response on April 30, 2008, to which Federation filed its response on May 14, 2008. A Form AOC-280 having been tendered on May 23, 2008, the motion now stands submitted for a ruling.

Legal Standard

A court deciding a motion for summary judgment must view the evidence in the light most favorable to the non-moving party and award summary judgment only where there are no genuine issues of material fact that would make it possible for the non-moving party to prevail at trial. *Steelvest, Inc. v. Scansteel Service, Inc.*, 807 S.W.2d 476 (Ky. 1991). Summary judgment will not be granted where the party opposing the motion presents affirmative evidence

demonstrating that there is a genuine issue of material fact necessitating a trial. *Id.* at 480. The inquiry for the Court should be whether, from the evidence of record, facts exist which would make it possible for the non-moving party to prevail. *Welch v. American Publishing Co.*, 3 S.W.3d 724, 279 (Ky. 1999).

Findings of Fact and Conclusions of Law

Federation argues that, in keeping with the legal and factual conclusions underlying the Court's January 8, 2008, Opinion and Order, Mr. Eklof's constitutional, Fairness Ordinance, Family Medical Leave Act ("FMLA") and breach of contract claims should be likewise be dismissed. The Court agrees, but only in part.

The Court agrees that, insofar as the Kentucky Constitution protects an individual's rights from governmental infringement, and Federation is not a governmental entity, Mr. Eklof may not maintain an action against Federation for discrimination in violation of the Kentucky Constitution. *Grzyb v. Evans*, 700 S.W.2d 399, 402 (Ky. 1985).

The Court finds, however, that Mr. Eklof's claim alleging violation of the Fairness Ordinance is properly before the Court. A person aggrieved by an unlawful practice prohibited by the Louisville/Jefferson County

Metro Government Fairness Ordinance may either file a written complaint with the Human Relations Commission or file a civil action in Jefferson County Circuit Court¹. Louisville Metro Ord. Title IX Chapter 92.06. Mr. Eklof has, and must be permitted to, opt for the latter authorized means of asserting a Fairness Ordinance complaint. He may not, however, proceed on an action separate from, but based on, the public policy announced therein.

Federation argues that it does not meet the requirements of "employer" under the FMLA, as it employed fewer than fifty (50) people at the time of the alleged discriminatory conduct. However, the Court previously concluded that, insofar as Mr. Eklof and other Federation employees performed work for Kentucky Farm Bureau Mutual Insurance Company pursuant to a formal Communications Agreement, Mr. Eklof was jointly employed by both businesses. 29 C.F.R. § 825.106(a). As a result of this joint employment relationship, Federation may in fact satisfy the requirements of an "employer" for purposes of

¹The Court's January 8, 2008 Opinion and Order overlooked the fact that an individual aggrieved by a violation of the Fairness Ordinance may, in the alternative, file a claim in Jefferson Circuit Court. However and insofar as Kentucky Farm Bureau Companies, Kentucky Farm Bureau Mutual Insurance Company, Sam Moore, David Beck, Sally Bridgewater, and Gary Huddleston are not Mr. Eklof's "employer" under the terms of the Fairness Ordinance, the final conclusion (i.e. that Mr. Eklof may not maintain a claim for violation of the Fairness Ordinance against the above listed Defendants) remains unaffected.


the FMLA. If so, then Federation, as Mr. Eklof's primary employer, would be responsible for providing FMLA leave. 29 U.S.C. § 2611; 29 C.F.R. § 825.106(c). What the Court cannot determine from the available record is how many employees Federation had at the time of the alleged discrimination or how many employees were encompassed by the Communications Agreement. Absent this additional information, the Court cannot conclude that Federation does not qualify as an "employer" for purposes of the FMLA.

Finally, the Court finds that, insofar as the employee handbook clearly disavows the creation of any binding contractual obligation, Mr. Eklof may not maintain a breach of contract claim for violation of same.. *Nork v. Fetter Printing Co.*, 738 S.W.2d 824, 827 (Ky. App. 1987).

WHEREFORE, the Court shall enter the attached Order incorporating by reference these findings of fact and conclusions of law

ENTERED IN COURT
DAVID L NICHOLSON, CLERK

BY  7/11/18
DEPUTY CLERK


A.C. MCKAY CHAUVIN, JUDGE

cc: Hon. Sally Hardin Lambert
Hon. Scott D. Spiegel / Hon. Wayne J. Carroll
Hon. Michael Krauser