

IN THE DISTRICT COURT FOR
THE CHOCTAW NATION OF OKLAHOMA

FILED
CHOCTAW NATION OF OKLAHOMA
DISTRICT COURT CLERK

NOV 08 2022

SUSAN LOZANO
COURT CLERK

BY  DEPUTY

TAMRA JEAN WRIGHT,

Plaintiff,

v.

TAMELA CANNADY, in her individual
capacity

&

JASON HILL, in his individual capacity

&

TODD HALLMARK, in his individual
capacity

Defendants.

Case No. CJ-21-12

Honorable Amy J. Pierce

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

There comes on before this Court Defendants' Motion to Dismiss filed on August 1, 2022. This Court, having reviewed the briefs and having heard oral arguments of the parties, hereby GRANTS Defendants' Motion to Dismiss, as set forth in more detail below:

1. Section 2008 of the Choctaw Nation Code of Civil Procedure requires that a plaintiff must set forth in their petition a "short and plain statement of the claim showing that the pleader is entitled to relief...." *Id.* There is no defined body of case law yet in the Choctaw Nation establishing the standard upon which this Court should review a motion to dismiss. This Court is cognizant that Section 2008 of our code is identical to the State of Oklahoma's 12 Okla.Stat. § 2008, and that Oklahoma courts hold that "a motion to dismiss for failure to state a claim upon which relief may be granted will not be sustained unless it should appear without a doubt that a plaintiff can prove no set of facts in support of the claim for relief." *See May v. Mid-Century Ins. Co.*, 2006 OK 100, ¶ 10, 151 P.3d 132, 136.

2. In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937 (2009), the United States Supreme Court analyzed the standards of dismissal and Fed.R.Civ.P. 8 which requires that a plaintiff's complaint must allege "a short and plain statement of the claim showing that the pleader is entitled to relief." *Id.* The Court established in those cases that Fed.R.Civ.P. 8 does not require detailed factual allegations in a complaint, but it does demand that a plaintiff plead more than "unadorned 'the defendant unlawfully harmed me' accusations" and that a pleading must offer more than mere labels, conclusions, or formulaic recitation of elements of causes of action. *Iqbal* at 678. Thus, Federal courts require that for a party to survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim for relief that is plausible on its face." *Id.* A claim has facial probability when a plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* Under this framework, courts are not required to accept threadbare recitals of all the elements of a cause of action, supported by mere conclusory allegations. *Id.* at 678.

3. This Court is aware that the State of Oklahoma has not adopted the federal pleading standard under *Twombly* and *Iqbal*. See *J.W. v. Indep. School Dist. No. 10 of Dewey County*, 2021 OK CIV APP 34, f. 4. 500 P.3d 649. However, Oklahoma courts have recognized that a motion to dismiss may be granted where "insufficient facts" have been alleged under a cognizable legal theory. See *Chisholm Trail Const., LLC v. Mueggeburg*, 2014 OK CIV APP 108, 352 P.3d 1262.

4. The Court hereby adopts the Federal court standards for Motions to Dismiss, as set forth in *Twombly* and *Iqbal*, as the correct standard to utilize when considering a motion to dismiss. However, even if the Court utilized the State of Oklahoma's standards, Plaintiff's Amended Petition still fails as a matter of law for the reasons set forth herein, where Plaintiff has not alleged

sufficient facts to establish a claim of wrongful termination, where the face of Plaintiff's Petition shows that her claim is barred by the statute of limitations, and where her claim fails as a matter of law.

5. Plaintiff Tamra Jean Wright ("Plaintiff") originally filed Case No. CJ-20-05 in the District Court on March 19, 2020. She named only Choctaw Nation Health Services Authority ("CNHSA") as a Defendant in that matter. Plaintiff alleged that she was employed as a physician assistant with CNHSA from April 1, 2015 to her date of termination on Sept. 7, 2018. Plaintiff asserted that she was wrongfully terminated by Dr. Jason M. Hill ("Dr. Hill"), contrary to the policy of the Choctaw Nation, but she did not name Dr. Hill or any other individual defendant. *See* CJ-20-05 Petition, Para. 2-7. CNHSA filed a Motion to Dismiss on April 14, 2020, but on July 8, 2021, Plaintiff voluntarily dismissed CJ-20-05 "without prejudice" prior to a ruling on the Motion to Dismiss. *See* CJ-20-05 Notice of Dismissal without Prejudice.

6. Plaintiff then filed the instant case, CJ-21-12, in this Court on November 19, 2021. She once again named CNHSA as a defendant, but she additionally named as defendants Tamela Cannady ("Cannady"), Dr. Hill, and Todd Hallmark ("Hallmark"), in both their individual and official capacities). Plaintiff's allegations in the instant matter were similar to those in CJ-20-05, as she again alleged wrongful termination of her employment with CNHSA.

7. On March 14, 2022, Plaintiff filed a "Notice of Dismissal Without Prejudice" in the instant matter as to CNHSA and Cannady, Hill and Hallmark in their *official* capacities. Thus, Plaintiff sued and dismissed CNHSA two times arising out of her alleged wrongful termination.

8. Defendants filed a Limited Entry of Appearance and Motion to Dismiss on February 25, 2022 ("Feb. 25, 2022 Motion to Dismiss"). On May 6, 2022, the Court held a hearing and granted the Feb. 25, 2022 Motion to Dismiss, finding that in light of the Plaintiff's previous

filing of the claims against CNHSA in Case No. CJ-20-05, as well as the dismissal of CNHSA in instant matter, and in light of the futility of any amendment due to CNHSA's sovereign immunity, that CNHSA was dismissed *with prejudice*. See May 9, 2022 Order.

9. With respect to Cannady, Dr. Hill and Hallmark, the Court held that any claims asserted against them in their *official* capacity would be barred by sovereign immunity based upon the allegations on the face of the Petition. However, the Court did allow the Plaintiff to file an amended Petition against Cannady, Dr. Hill and Hallmark in their *individual* capacities. See May 9, 2022 Order. The Court will sometimes hereinafter collectively refer to Cannady, Dr. Hill and Hallmark in their individual capacities as "the Individual Defendants."

10. Plaintiff filed her "Corrected" Amended Petition in the instant case on June 15, 2022, alleging only a claim of "wrongful termination" against Cannady, Dr. Hill and Hallmark in their "*individual* capacities." The Individual Defendants now seek dismissal of those claims.

11. Plaintiff's Amended Petition again alleges she was previously employed by CNHSA as a physician assistant until she was wrongfully terminated on September 7, 2018.¹ See Amended Petition, Para. 33 and Ex. C.

12. Plaintiff's employment agreement was with CNHSA and the Individual Defendants are not a named party to the employment contract agreement. *Id.*

13. The allegations in the Amended Petition against the Individual Defendants can be summarized as follows:

- During Plaintiff's initial employment interview with Dr. Hill and Cannady she was told she would receive training, but failed to receive it during here employment. (Amended Petition, Para. 13 and 29)

¹ Paragraph 33 alleges that Plaintiff was terminated on Sept. 7, 2018, but that HR documented her termination date as October 5, 2018. Either way, Plaintiff's claims are out of time as set forth herein.

- Plaintiff was rebuffed when she told Cannady ideas about how to assist tribal members. (Para. 14).
- In 2016, Plaintiff was rated “does not meet job requirements” (Para. 16).
- Canady told others that Plaintiff was to be terminated because she was “forgetful and asked the nurses too many questions.” (Paraph 19)
- Canady refused Plaintiff’s requests to discuss complaints about Plaintiff’s job performance (Para. 20).
- Plaintiff did not receive consistent supervision and feedback (presumably from the Individual Defendants). (Para. 26).
- Plaintiff makes allegations regarding Canady’s alleged use of grant monies to attend medical conferences and failure to train nurses (Para. 29).
- Plaintiff alleges that Cannady “yelled at her and berated her” for Plaintiff being transferred to the Rubin White Clinic in Poteau (Para. 31-32).
- Plaintiff alleges she was told she was being terminated due to “patient complaints” and from “higher ups” (Para. 33-35).
- Plaintiff alleges that after her termination and after filing her first lawsuit she made a request for IHS records regarding Cannady’s own subsequent termination and learned that there were anonymous letters and complaints about Cannady’s alleged bullying of Choctaws (Para. 43).
- Plaintiff alleges in an entirely conclusory fashion it became clear to her that “wrongdoers went beyond the requirements of the Contract with Plaintiff and have otherwise hidden material information about the reasons and methods of her termination” but provides no details on what she is contending was hidden and how it could purportedly relate to her own termination (Para. 51).
- Plaintiff alleges vaguely only “some sort of animus” by Canady towards her, and that Dr. Hill and Hallmark acted according to Canady’s demands. (Para. 63). She further alleges that a breach of her contract must indicate that Defendants “acted outside the scope of their employment (Para. 67).

14. Additionally, the Plaintiff contends that she did not receive her \$10,000 sign on bonus after one year of employment, as required under her employment contract with CNHSA. (Para. 7). However, as set forth above, CNHSA is dismissed and the Individual Defendants are not a party to her contract.

15. There is no waiver of sovereign immunity in the employment contract between Plaintiff and CNHSA. *See* Ex. C to Amended Petition.

16. Plaintiff did not file any action against the Individual Defendants until she filed this matter on November 19, 2021—more than three years after Plaintiff’s termination in September, 2018.

17. “As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.” *Carl E. Gungoll Expl. Joint Venture v. Kiowa Tribe of Oklahoma*, 1998 OK 128 ¶ 8 (quoting *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1998)).

18. The interest in “preserving the inherent right of self-government in Indian tribes is equally strong when suit brought against individual officers of the tribal organization as when brought against the tribe itself.” *Nero v. Cherokee Nation of Okla.*, 892 F.2d 1457, 1462 (10th Cir.1989). Thus, a plaintiff may not avoid the operation of tribal immunity by merely suing tribal officials. *Native Am. Distrib. v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288, 1292 (10th Cir. 2008).

19. Accordingly, a tribe’s sovereign immunity generally immunizes tribal officials from claims made against them “so long as they are acting within the scope of their official capacities.” *Seneca-Cayuga*, 546 F.3d at 1296.

20. Plaintiff originally asserted claims against the Individual Defendants in their official capacity but is now attempting to assert claims against the Individual Defendants in their “individual” capacities. Sovereign immunity does not extend to tribal officials in their individual capacity. *Lewis v. Clarke*, 137 S. Ct. 1285, 1291 (2017). This Court must analyze and consider the identity of the real party in interest in order to determine what immunities may be available to the named defendant. *Id.* at 1291.

21. It has been noted that “[t]he terms of immunity are clear and absolute Neither clever legal labels nor the pleader’s ingenious strategy choices should be allowed to obscure the true sweep of the law’s command.” *C.f. McCracken v. City of Lawton*, 1982 OK 63, 648 P.2d 18, 19–20. And:

Tribal sovereign immunity generally extends to tribal officials acting within the scope of their official authority. On the other hand, a tribe’s sovereign immunity does not extend to an official when the official is acting as an individual or outside the scope of those powers that have been delegated to him. Thus, the immunity question hinges on the breadth of official power the official enjoys and not whether the official is charged with using that power tortiously or wrongfully.

Burrell v. Armijo, 603 F.3d 825, 832 (10th Cir. 2010) (internal citations and quotation omitted).

22. Thus, to determine whether a defendant is acting within their official or individual capacity, the Court “may not simply rely on the characterization of the parties,” but must determine who is “the real party in interest.” *Id.* at 1290. The Choctaw Nation may be considered the real party in interest if: (1) the defendants are tribal officials acting within the scope of their authority, and (2) the suit implicates how the Nation “governs itself independently.” *Id.* at 1289, 1292; *Brown v. Garcia*, 17 Cal. App. 5th 1198, 1207 (2017) (“Despite plaintiffs’ careful pleading, their action sought to hold defendants liable for their legislative functions and is thus ‘in reality an official capacity suit’ properly subject to sovereign immunity.”)

23. In the instant matter, it is clear that Defendants claims arise solely out of Cannady, Dr. Hill and Hallmark’s roles as employees or officials of CNHSA and goes to the heart of how the CNHSA and the Tribe govern themselves. Plaintiff’s complaints arise out of facts involving alleged actions involving CNHSA hiring (See Amended Pet., Para. 13), CNHSA training (Amended Pet., Para. 29), CNHSA supervision (Amended Pet., Para. 26), CNHSA contractual obligations (Amend. Pet., Para. 12), CNHSA employee duties (Amended Pet. 19-20), and CNHSA

firing protocol (Amended Pet., Para. 33-25).² Thus, the issue that Plaintiff raises, that the Individual Defendants—who work for and on behalf of the CNHSA—potentially tortiously breached a contract implicates the interests of an arm of the Choctaw Nation. Sovereign immunity is clearly implicated.

24. Plaintiff has failed to identify any individual interest the Individual Defendants would have in Plaintiff's employment. Plaintiff has named the Individual Defendants only as "stand ins" for the Choctaw Nation. *See Jamul Action Committee v. Simermeyer*, 974 F.3d 984 (9th Cir. 2020).

25. Plaintiff has also alleged no facts, beyond wholly conclusory allegations, from which this Court can properly infer that the Individual Defendants engaged in any actions outside the course and scope of their employment or in bad faith. In order for an employee to act in a way that brings him outside of the scope of his employment, his acts must be "so extreme as to constitute a clearly unlawful usurpation of authority the [employee] does not rightfully possess." *DeCorte v. Robinson*, 1998 OK 87, 969 P.2d 358, 362 (quoting the Florida Supreme Court discussing the same "concept" but regarding a law enforcement employee). It follows from these cases that for a CNHSA employee to be acting outside his scope of employment, she must not only be engaged in actions that do not fall within her job description, but her acts must be "so extreme" and act in a way that is "clearly unlawful."

26. Applying the foregoing law, it is clear Plaintiff failed to allege sufficient facts that Defendants acted outside the scope of their employment. Indeed, each of the allegations asserted

² Plaintiff's recently submitted *Aid to Court* acknowledges that "employees acting in their own discretion to fulfill official duties have the same immunity as the governmental entity." See *Plaintiff's Aid to Court*, Oct. 10, 2022 (citing *Felkins v. Okla. Firefighters Pension & Ret. Sys.*, 2005 OK CIV APP 39. Again, as set forth herein, even taking Plaintiff's allegations as true, the Individual Defendants meet this standard.

by Plaintiff have some nexus to the Individual Defendant's alleged job duties. *See e.g.* Para. 13 (failure to train); Para. 14, 20 and 26 (failure to take Plaintiff's ideas on assisting tribal members, failure to talk about her job performance; failure to provide supervision). The most that Plaintiff has alleged are vague allegations of "bullying" by Cannady or some sort of animus that Cannady had against her. These allegations simply are insufficient to support her claim.

27. Further, Plaintiff pled no facts suggesting that any of Defendants' actions were done in bad faith or malice. Plaintiff seems to implicitly suggest that the alleged breach of her employment contract itself is enough to show bad faith. But much more is needed. Even if the Amended Petition alleged a breach of contract between Plaintiff and Individual Defendants, this is not enough to arise to the level of "extreme" needed to show that Defendant acted outside the scope of his authority. A breach of contract alone is not sufficient to show tortious breach of contract. *See Martin v. Johnson*, 1998 OK 127, ¶ 33, 975 P.2d 889, 897 ("An allegation that a breach of contract occurred and was effectuated by an employee . . . does not, by itself, show a tortious breach of contract.").

28. Because Plaintiff has failed to plead facts sufficient to find it plausible that Defendants acted outside the scope of their authority, and because Defendants are employees of the CNHSA, Plaintiff is bringing this suit against Defendants in their official capacity as Tribal employees. Sovereign immunity is accordingly conferred to Defendants and this suit is barred.

29. Plaintiff's claims fail for the additional reason that they are barred by the applicable Statute of Limitations. Under Choc Civ. Pro. § 95(A), a claim for wrongful termination must be brought within three years of when the cause of action accrues. In the instant matter, Plaintiff alleges she was wrongfully terminated on **September 7, 2018**. She filed the instant suit against the

Individual Defendants on **November 19, 2021**, more than three years after her alleged wrongful termination. These dates appear on the face of the Amended Petition, thus dismissal is appropriate.

30. Plaintiff originally filed a suit for wrongful termination in Case No. CJ-20-05 March 2020, but did not name the Individual Defendants in that suit. Plaintiff did not seek leave to amend to include the Individual Defendants in that suit, but instead chose to dismiss the case without prejudice while a Motion to Dismiss was pending and re-file in the instant case. Choc Civ. Pro. §100 provides that if a plaintiff “fail in such action otherwise than upon the merits” by refile “within one year after the reversal or failure” however this statute does not save Plaintiff’s claims, since she did not originally name the Individual Defendants in CJ-20-05. *See Nusbaum v. Knobbe*, 2001 CIV OK CIV APP 52 (in order for Section 100 to apply refiled action must be against substantially the same parties).

31. Plaintiff argued that her claims against the Individual Defendants should be equitably tolled: (1) because of bad faith on the part of Defendants because they allegedly did not give her any exact reason for her termination and (2) due to the time that the District Court had her case under advisement on the Defendants’ Motion to Dismiss in CJ-20-05. *See* Plaintiff’s Response to Motion to Dismiss, p. 10. Neither of these supports a basis for equitable tolling.

32. Equitable tolling may prevent the running of statute of limitations where an employee is unaware of a cause of action and the employer’s misleading conduct is responsible for the employee’s unawareness of his cause of action. *See e.g. Fleck v. State ex rel Okla Dept. of Corrections*, 888 P.2d 532; *Edmonds-Radford v. Southwest Airlines. Co.*, 17 F.4th 975 (10th Cir. 2021)(equitable tolling is appropriate where the employer has committed active deception, lulling a plaintiff into inaction).

33. In the instant case, the Court does not find Plaintiff's claims were equitably tolled. Plaintiff was terminated in September of 2018 and brought her first lawsuit in March of 2020. She alleges in the Amended Petition that after her termination, she contacted HR to ask about copies of complaints against her, which she did not receive, and that she never received a copy of any CNHSA policies and procedures. *See* Amend. Pet., Para. 36-40. She decided to dismiss her first lawsuit against CNHSA in July of 2021 and did not seek any information regarding any public records from IHS until August of 2021. *Id.* at Para. 45. Plaintiff claims she did not learn about Cannady's termination until "summer and fall," presumably in 2021. *Id.* Plaintiff alleges once she got the information from an HIS records request she made, the records contained complaints about Ms. Cannady's alleged bullying of Choctaws. *Id.* at Para. 49. However, no allegation in the Amended Complaint ties Ms. Cannady's termination back to Plaintiff's termination. In other words, there is nothing that Plaintiff has alleged in the Amended Complaint that was hidden by CNHSA that could possibly relate to Plaintiff's termination or her employment. At most, Plaintiff has alleged that there were anonymous complaints Cannady was a "bully" but she fails to relate this back to anything to do with her own alleged wrongful termination.

34. Additionally, the delay by the District Court in ruling on her motion to dismiss in her original case, CJ-20-05, is not grounds for tolling the statute of limitations in this case. *See Williams v. Sims*, 390 F.3d 958 (7th Cir. 2004)(district court's three year delay in ruling on motion does not equitably toll statute of limitations).

35. Finally, Defendants also argue that the case should be dismissed because the Amended Petition fails to state a claim upon which relief can be granted. This Court agrees. The cause of action "wrongful termination in breach of contract," asserted against the Individual Defendants not exist. Most likely, Plaintiff intended to bring a tortious breach of contract action

or a tortious interference claim, but she did not do so. Breach of a contract simply does not give rise to a tort in every instance, and the Plaintiff has not alleged any cognizable claim against the Individual Defendants. *See e.g. Tyree v. Cornman*, 2019 OK CIV APP 66, 453 P.3d 497 (A breach of contract does not give rise to a tort claim in every case). Plaintiff has simply not explained how the Individual Defendants could have “wrongfully breached” her contract with the CNHSA, nor would the law support such a claim as plead.


36. Plaintiff correctly asserts in her response to Defendants’ motion to dismiss that *Doyle v. Kelley* affirmed the notion that “every contract carries an implicit and mutual covenant by the parties to act toward each other in good faith.” 1990 OK 119, ¶ 4, 801 P.2d 717 (emphasis added). However, as noted herein, Individual Defendants are not parties to the alleged contract between Plaintiff and CNHSA. Rather, Plaintiff alleged in the Petition that a contract was formed between the CNHSA and Plaintiff. Defendants could not have breached any implied covenant of a contract where they were not parties. This being the only discernable claim that Plaintiff makes, she fails to state a claim.

CONCLUSION

Pursuant to the doctrine of sovereign immunity the Court **GRANTS** Defendants’ Motion to Dismiss.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this Court **GRANTS** Defendants’ Motion to Dismiss. Pursuant to this Court’s Order, Plaintiff’s claims are dismissed with prejudice to refile and Plaintiff, previously granted leave to amend, is denied further attempts to amend this suit as such an attempt would be futile in light of the foregoing analysis.

ORDERED this 9th day of November, 2022.



THE HONORABLE AMY J. PIERCE
JUDGE OF THE DISTRICT COURT

CERTIFICATE OF DELIVERY

I hereby certify that on the 8th day of November, 2022, I mailed by first class U.S mail with appropriate postage affixed, electronically mailed or faxed thereon the foregoing document to:

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Choctaw Nation Judiciary Clerk,

Shelbi Phelps