

IN THE MONROE CIRCUIT COURT 6
STATE OF INDIANA
CIVIL DIVISION

LISA JENEE' TRIMBLE)
)
 Plaintiff)
)
 v.) CASE NO. 53C06-2505-CT-001496
)
 MONROE COUNTY GOVERNMENT,)
 MONROE COUNTY COMMISSIONERS,)
 MONROE COUNTY AUDITOR,)
 BRIANNE GREGORY)
)
 Defendant

**DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT**

Come Defendants, Monroe County Government, Monroe County Commissioners, Monroe County Auditor, and Brianne Gregory, by Counsel, and for their Reply in support of their Motion to Dismiss Plaintiff's Amended Complaint, hereby state as follows:

Plaintiff, Lisa Jene Trimble, was an at-will employee of the Monroe County Auditor's Office. Her Amended Complaint alleges various acts or omissions of individuals who admittedly were not employed by the Monroe County Auditor's Office, but instead were employed by the Monroe County Assessor's Office.

The Amended Complaint also alleges that Plaintiff reported alleged fraud in the Monroe County Assessor's Office to the Monroe County Commissioners, but there is no nexus between those allegations and the allegation that Plaintiff was wrongfully terminated by the Monroe County Auditor. And those allegations are belied by the Department of Local Government Finance's Final Determination which concluded that Plaintiff's allegations of fraud were wholly unsupported.

Ultimately, the Amended Complaint alleges that the Monroe County Auditor, Brianne Gregory, wrongfully terminated Plaintiff after Plaintiff left work early on May 13, 2025.

Monroe County Government cannot be sued for this claim given that it is governed by its Board of Commissioners. The County Commissioners cannot be sued either because the Monroe County Auditor's Office is a separate and distinct office created by the Indiana Constitution.

Plaintiff's Amended Complaint further fails to demonstrate that she was terminated from her employment because she exercised a statutory right or refused to violate the law. Therefore, Plaintiff could have been terminated for good reason, bad reason, or no reason at all. Because this is true, Plaintiff's Amended Complaint fails to state a wrongful discharge or termination claim, and further fails to state a retaliatory discharge or termination claim.

Lastly, there is no private right of action under the Indiana code provisions Plaintiff asserts were violated. Consequently, Plaintiff's Amended Complaint again fails to state a cognizable claim upon which relief can be granted.

I. THE COURT SHOULD NOT CONSIDER PLAINTIFF'S EXHIBITS.

In reviewing a Motion to Dismiss under Indiana Trial Rule 12(B)(6), a court "may look only at the pleadings, with all well-pleaded material facts alleged in the complaint taken as admitted, supplemented by any facts of which the court will take judicial notice." *Davis ex rel. Davis v. Ford Motor Company*, 747 N.E.2d 1147, 1149 (Ind. Ct. App. 2001). A court "may take judicial notice of a fact." *Sanders v. State*, 782 N.E.2d 1036, 1038 (Ind. Ct. App. 2003). A fact to be judicially noticed "must be one not subject to reasonable dispute." *Id.* Thus, a fact must either be "(1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Id.* (citing Ind. Evidence Rule 201(a)).

Plaintiff submitted nine (9) exhibits with her Response, including emails, a slideshow presentation, a letter, and screenshots. She did not include any of those exhibits with her Amended Complaint, and she did not ask the Court to take judicial notice of the contents of those exhibits.

Furthermore, Plaintiff's exhibits are subject to reasonable dispute, and, in fact, were reasonably disputed by the Department of Local Government Finance. The Department of Local Government Finance's Final Determination, which these Defendants requested the Court take judicial notice of, was an outright denial of Plaintiff's claims of purported fraud. Consequently, Plaintiff's exhibits should not be considered when deciding these Defendants' Motion to Dismiss Plaintiff's Amended Complaint.

II. MONROE COUNTY GOVERNMENT IS A NON-SUABLE ENTITY.

Plaintiff's Amended Complaint does not contain any factual allegations against Monroe County Government. Her Response does not address this failure, and it does not cite to any supporting legal authorities which demonstrate that Monroe County Government can be liable to her for the asserted claims.

Under Indiana law, a county is governed by its executive - the Board of Commissioners. Ind. Code § 36-2-2-2. Thus, "in legal contemplation, the board of commissioners is the county." *Schon v. Frantz*, 156 N.E.3d 692, 700 (Ind. Ct. App. 2020) (internal quotation omitted). Therefore, Monroe County Government is not an entity which is capable of being sued in this case, and should be dismissed.

III. MONROE COUNTY COMMISSIONERS CANNOT BE LIABLE TO PLAINTIFF.

In her Response, Plaintiff claims that her Amended Complaint explains the reasons why the County's Board of Commissioners is a suable entity. To Plaintiff, her Amended Complaint alleges that the County Commissioners were responsible for governing, mediating, and resolving

“the situation.” Plaintiff’s Response, p. 1. She further asserts in her Response that her Amended Complaint alleges that the County Commissioners were required to report purported fraud to the Indiana State Board of Accounts. Plaintiff’s Response, pp. 1-2. Yet, Plaintiff’s Amended Complaint does not make any such allegations.

Instead, Plaintiff’s Amended Complaint alleges that she forwarded information to the County Commissioners on March 10, 2025, and received no response. Amended Complaint, ¶ 12. The Amended Complaint also alleges that Plaintiff forwarded a complaint to the County Commissioners on March 11, 2025, which she allegedly initially sent to Monroe County Assessor’s Office Director of Assessments, Barry Wood, and received no response. Amended Complaint, ¶ 13. Finally, Plaintiff alleges that she sent multiple emails to the County Commissioners, purportedly gave them a 120 page dossier, and then testified at their weekly meeting on April 17, 2025. Amended Complaint, ¶ 24, 28, and 29. The remaining allegations of the Amended Complaint do not mention, let alone concern, the County Commissioners.

With the above all in mind, the allegations of Plaintiff’s Amended Complaint fall well-short of stating a cognizable claim against the County Commissioners, particularly considering that the County Auditor’s Office is legally separate and distinct from the County and its Commissioners. Ind. Const. art 6, § 2 provides that there “shall be elected, in each county by the voters thereof, at the time of holding general elections, a Clerk of the Circuit Court, **Auditor**, Recorder, Treasurer, Sheriff, Coroner, and Surveyor, who shall, severally, hold their offices for four years.” (emphasis added). The Auditor is “the fiscal officer of the county.” Ind. Code § 36-2-9-2(c).

Given that Plaintiff's claims concern her employment in the County Auditor's Office and the Auditor is a separate and distinct entity from the County and its Commissioners, the County Commissioners cannot be liable to Plaintiff regarding any of her asserted causes of action.

Under Indiana law, there must be an agency relationship before liability can be imputed to the County Commissioners. *Carver v. Crawford*, 564 N.E.2d 330, 334 (Ind. Ct. App. 1990) (citing *Delk v. Board of Commissioners of Delaware County* 503 N.E.2d 436 (Ind. Ct. App. 1987)). Yet, County Commissioners do not have any control over the acts of separately created offices or officers, such as the Auditor. *See id.* That is because separately created offices, such as the County Auditor, are created by the Indiana Constitution and the powers and duties of that office are established by the legislature, not individual counties. *Id.*

IV. BRIANNE GREGORY CANNOT BE INDIVIDUALLY LIABLE TO PLAINTIFF.

To prevail against a public employee in their personal or individual capacity, the Indiana Tort Claims Act requires a complaint to allege that an act or omission of the public employee was "criminal, clearly outside the scope of the employee's employment, malicious, willful and wanton, or calculated to benefit the employee personally," and "must contain a reasonable factual basis supporting the allegations." Ind. Code § 34-13-3-5(c).

Plaintiff's Amended Complaint does not meet these requirements. In fact, the Amended Complaint wholly fails to demonstrate that Brianne Gregory clearly acted outside the scope of her employment as the Monroe County Auditor. There are also no allegations of conduct which was criminal, malicious, willful, or wanton. Consequently, Brianne Gregory cannot be individually liable to Plaintiff.

V. MONROE COUNTY AUDITOR CANNOT BE LIABLE TO PLAINTIFF.

There is no nexus between Plaintiff's termination and her reporting of purported fraud. As a result, Plaintiff's Amended Complaint fails to demonstrate that she was terminated by the Monroe County Auditor for exercising a statutory right, or for refusing to violate the law. Consequently, Plaintiff's claims are controlled by Indiana's employment at-will doctrine. *Cantrell v. Morris*, 849 N.E.2d 488, 494 (Ind. 2006).

Under Indiana's employment at-will doctrine, an employee may be terminated for a "good reason, bad reason, or no reason at all." *Cantrell v. Morris*, 849 N.E.2d 488, 494 (Ind. 2006). In other words, an employee may be terminated with or without cause. Herein, Plaintiff was so terminated, and her Response does not contain any evidence or authorities which rebut this conclusion. Therefore, Monroe County Auditor cannot be liable to Plaintiff for wrongful discharge or termination, or for retaliatory discharge or termination.

Monroe County Auditor cannot be liable based upon a promissory estoppel theory either. To state a claim for promissory estoppel, a plaintiff must demonstrate that "the employer made a promise to the employee, that the employee relied on that promise to h[er] detriment, and that the promise otherwise fits within the Restatement test for promissory estoppel." *Coutee v. Lafayette Neighborhood Housing Services, Inc.*, 792 N.E.2d 907, 911 (Ind. Ct. App. 2003) (citation omitted). To fit within the Restatement test for promissory estoppel, a plaintiff may only seek "damages actually resulting from the detrimental reliance," and may not seek "the benefit of altering the employment status from an at-will relationship to a permanent one which requires just cause for termination." *Jarboe v. Landmark Community Newspapers of Indiana, Inc.*, 644 N.E.2d 118, 122 (Ind. 1994).

Plaintiff's Amended Complaint only asserts that the Monroe County Auditor enabled retaliation, thereby committing promissory estoppel. Her Response, on the other hand, alleges that the Monroe County Auditor "promised the Plaintiff that she would be terminated or reprimanded for coming forward with the fraud...." Response, p. 2. Because that allegation does not appear in Plaintiff's Amended Complaint, it should be ignored given that only the well-pleaded material facts contained in the Amended Complaint may be considered by the Court at this stage. *Davis ex rel. Davis v. Ford Motor Company*, 747 N.E.2d 1147, 1149 (Ind. Ct. App. 2001).

The allegations of Plaintiff's Amended Complaint do not demonstrate a promise made by the Monroe County Auditor or Plaintiff's detrimental reliance upon the same. Consequently, Plaintiff cannot state a promissory estoppel claim upon which relief can be granted.

VI. PLAINTIFF CANNOT PREVAIL UNDER ANY OF THE STATUTES CITED IN HER AMENDED COMPLAINT.

In her Response to these Defendants' Motion to Dismiss, Plaintiff continues to assert that the Monroe County Auditor violated "Indiana State Code" by purportedly failing to report suspected fraud to the Indiana State Board of Accounts. The Amended Complaint only asserts that "Defendant" violated such provisions, meaning that these Defendants have not been "sufficiently notified concerning the claim so as to be able to prepare to meet it" as required by Indiana law. *ARC Const. Management, LLC v. Zelemak*, 962 N.E.2d 692, 697 (Ind. Ct. App. 2012) (citation omitted).

To the extent that Plaintiff's Amended Complaint may be construed to assert such claims specifically against any of these Defendants, there is no private right of action available to Plaintiff. Indiana Code § 36-1-8-8(a) provides that an employee of a political subdivision "may report in writing" a violation of federal law, a violation of state law, a violation of a political subdivision's ordinance, or the misuse of public resources. A political subdivision may not terminate an

employee for making any such written report. Indiana Code § 36-1-8-8(b). The remedy for an alleged violation of the statute is for the employee “to process an appeal of the disciplinary action under the procedure set forth in any personnel policy or collective bargaining agreement adopted by the political subdivision.” Indiana Code § 36-1-8-8(c).

There is a dearth of Indiana state court authorities analyzing this statute. However, the Southern District of Indiana has concluded that there is no express or implied private right of action conferred by the statute. *See Walden v. Indianapolis Housing Agency*, No. 1:23-cv-00437-JMS-KMB, 2023 WL 12175302, at *4-5 (S.D. Ind. Aug. 31, 2023); *see also Kodrea v. City of Kokomo, Ind.*, 458 F. Supp.2d 857 (S.D. Ind. 2006). There is no express private right of action because “the statute clearly limits [an employee’s] remedy to appealing any disciplinary action pursuant to the procedures set forth by personnel policy or collective bargaining agreement.” *Kodrea*, 458 F.Supp.2d at 874.

There is also no implied private right of action because the Indiana legislature granted the right to pursue a civil action in Indiana Code § 22-5-3-3 – “a companion statute” to Indiana Code § 36-1-8-8 – but granted no such right in Indiana Code § 36-1-8-8. *Walden*, 2023 WL 12175302, at *4. Thus, “the legislature used clear language to grant a private right of action for one whistleblower statute and in the next section of the same legislation, chose to offer a different remedy—one that is internal.” *Id.*

The remaining statutes cited by Plaintiff do not apply to her asserted claims. Indiana Code § 22-5-3-3, cited above, applies to “[a]n employee of a private employer that is under public contract....” Plaintiff was admittedly an employee of a political subdivision, the Monroe County Auditor’s Office, and not an employee of a private employer that is under public contract.

Finally, Indiana Code § 5-11-1-9.5 applies to individuals who report “suspected misfeasance, malfeasance, or nonfeasance” to the State Board of Accounts. However, there are no allegations that Plaintiff made such a report to the State Board of Accounts at any time pertinent to this case.

VII. THERE IS NO COGNIZABLE CLAIM FOR NEGLIGENCE, BULLYING, AND HARASSMENT.

Plaintiff’s Amended Complaint fails to demonstrate who, when, why, or how these Defendants allegedly bullied or harassed Plaintiff. Moreover, there are no allegations which demonstrate that these Defendants breached a legal duty owed to Plaintiff which is required to state a cognizable negligence claim. See, e.g., *Holt v. Quality Motor Sales, Inc.*, 776 N.E.2d 361, 365 (Ind. Ct. App. 2002). Plaintiff’s Response does not address these failures either. Consequently, Plaintiff cannot state a claim upon which relief can be granted for negligent, bullying, and harassment.

VIII. CONCLUSION.

For the reasons examined herein and in these Defendants’ Memorandum of Law in Support of their Motion to Dismiss, Plaintiff’s Amended Complaint wholly fails to state a claim upon which relief can be granted. Accordingly, these Defendants respectfully request dismissal of Plaintiff’s Amended Complaint *with prejudice*.

Respectfully submitted,

/s/ Justin M. Schaefer

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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the forgoing has been electronically filed with the Indiana Odyssey e-Filing (IEFS) system on this 15th day of December, 2025.

This will further certify that a true and correct copy of the foregoing has been sent by electronic notice and U.S. Mail to the following:

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