

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

KIMBERLY GILYARD R.N.

PLAINTIFF,

V.

**TEXAS LAUREL RIDGE HOSPITAL LP
DBA
LAUREL RIDGE HOSPITAL
DEFENDANT**

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CASE NO. 5:07-CV-00650-OLG

PLAINTIFF'S AMENDED ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, PLAINTIFF, KIMBERLY GILYARD R.N. ("Plaintiff"), and brings this action complaining of discrimination in employment by TEXAS LAUREL HOSPITAL LP dba LAUREL RIDGE HOSPITAL. Plaintiff's suit alleges a violation of her employment rights under *Title VII, 42 U.S.C. § 2000e, et seq.* and Section 1981 of the Civil Rights Acts of 1991 at *42 U.S.C. § 1981(b et seq)*. Plaintiff also alleges that she was retaliated against, harassed and discriminated against in violation of Chapter 161.134(a) of the Texas Health and Safety Code, the Texas Occupations Code 301.413 and 25 TAC 133.43. Plaintiff pleads as follows:

PARTIES

1. Plaintiff, Kimberly Gilyard R.N., at all times material to this action, was and is now a resident of San Antonio, Bexar County, Texas. Plaintiff is a black female and an American citizen. Plaintiff is licensed by the Texas Board of Nurse Examiners as a Registered Nurse.

2. Defendant Texas Laurel Ridge Hospital LP dba Laurel Ridge Hospital (hereinafter "Laurel Ridge") is a duly licensed hospital entity, and a Limited partnership organized under the laws of the state of Texas with its principal place of business at 840 Crescent Centre Drive, Suite

460 Franklin Tennessee 37067. Service of process is not required at this time as Defendant has appeared. Laurel Ridge is an employer as the term “employer” is defined under *Title VII*. Laurel Ridge employs in excess of twenty-five (25) employees and its business affects interstate commerce.

JURISDICTION

3. Jurisdiction vests with this Court under *Title VII*, 42 U.S.C. § 2000e (amended by the *Civil Rights Act of 1991*), under 42 U.S.C. § 1981(b) *et seq.* and under 28 U.S.C. § 1331 and under 28 U.S.C. § 1343.

VENUE

4. Venue is proper in this district under 42 U.S.C. §2000e-5(f)(3) and 42 U.S.C. § 1981(b) *et seq.* because the alleged unlawful employment practice was committed in this district.

EXHAUSTION OF ADMINISTRATIVE PROCEDURES FOR TITLE VII CLAIMS

5. Plaintiff has exhausted her administrative remedies. Plaintiff was suspended from employment on October 19, 2006, and was terminated on October 27, 2006, and timely filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) before the expiration of 300 days on October 23, 2006 with an Amendment filed to that Charge on October 27, 2006. Plaintiff received a Notice of Right to Sue within 90 days of the filing of this lawsuit, on or about May 5, 2007. A copy of the Notice is attached hereto as Exhibit “A” and is incorporated herein by reference. This lawsuit was filed timely within 90 days of the receipt of the Notice of Right to Sue.

Plaintiff is not required to exhaust administrative remedies for the 42 U.S.C. § 1981(b) claims.

STATEMENT OF CLAIM

6. Ms. Gilyard was employed with Laurel Ridge for six years, ultimately attaining the position of Charge Nurse.

7. On or about October 27, 2006 Plaintiff was informed that she was being discharged from her position for alleged violations of corporate policy and the Texas Nurse Practice Act related to administration of medication in an emergency to a pediatric patient. Plaintiff later obtained a physician order for the medication.

8. Plaintiff can show that a white male Registered Nurse committed the same type of infraction and did not get a doctor to cover the Order on October 31, 2006 and was not terminated from employment. The black LVN involved in the incident on October 31, 2006 was fired.

9. Specifically, Plaintiff can also show that she was discriminated against because of her race in that a white male Registered Nurse, who also gave an order to a licensed vocational nurse to give medication to a patient (without a doctor's order) was not terminated for the same type of offense for which Plaintiff was terminated.

10. Plaintiff filed a Charge of Discrimination, Charge No. 451-2007-00118 with the Equal Employment Opportunity Commission on October 23, 2006, alleging discrimination by Laurel Ridge on the basis of racial discrimination.

11. Plaintiff was retaliated against in violation of Chapter 161.134(a) of the Texas Health and Safety Code, the Texas Occupations Code 301.413 and 25 TAC 133.43 and 25 TAC 134.42 due to her reporting of abuse and neglect of patients, inadequate staffing that put patients at risk as well as for exposing cover-ups by management related to patient injury.

COUNT ONE: PRETEXT AND DISCRIMINATION UNDER TITLE VII AND 1981

12. Plaintiff re-alleges Paragraphs 1 through 11. Further, Plaintiff alleges that the proffered reason for discharge is pretextual as she can show that another white employee committed the same violation and was not terminated.

13. Without waiving her allegation of pretext, Plaintiff alleges that Defendant intentionally discriminated against Plaintiff because of her race, in violation of *Title VII* of the *Civil Rights Act of 1964*, as amended, 42 U.S.C. § 2000e *et seq.* and 42 U.S.C. § 1981(b) *et seq.* by terminating her for an offense for which a white male Registered Nurse was not terminated.

14. As a result of the unlawful conduct of Defendant, Plaintiff has been deprived of equal employment opportunities made the basis for her EEOC charges and this lawsuit. Plaintiff seeks “make whole” relief including full back pay and benefits, front pay and other such relief as may be required to make Plaintiff whole, including pre-judgment and post-judgment interest, her costs of court and reasonable attorney’s fees for her counsel.

COUNT TWO: RETALIATORY HARASSMENT

15. Plaintiff was subject to ongoing discrimination and retaliatory harassment and was ultimately terminated in retaliation for her candor regarding abuse and neglect of patients, inadequate staffing that put patients at risk as well as for exposing cover-ups by management related to patient injury.

DAMAGES

16. As a direct and proximate result of Defendant’s conduct, Plaintiff suffered the following injuries and damages:

a) Plaintiff was terminated from employment with Defendant, and as a result has lost back pay, front pay, benefits and has suffered emotional injuries, embarrassment, humiliation and loss of professional standing.

b) Plaintiff has suffered damage to her pension or retirement benefits.

ATTORNEY'S FEES

17. Plaintiff is entitled to an award of attorney fees and costs under *Title VII, 42 U.S.C. §2000e-5(k)*, and *42 U.S.C. § 1981(b)*. Additionally, because Plaintiff was forced to engage counsel to protect her rights under Chapter 161.134(a) of the Texas Health and Safety Code, 25 TAC 133.43 and 25 TAC 134.42, the Texas Occupations Code 301.413. Plaintiff is entitled to an award of attorney's fees and costs.

PRAYER FOR RELIEF

Plaintiff prays for judgment with the following judgment and relief:

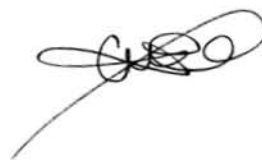
- [1] Declaratory and injunctive relief including back and front pay, accrued benefits and retroactive seniority with pre- and post-judgment interest and such other relief as required to make Plaintiff whole;
- [2] Compensatory damages for lost past and future wages and benefits, emotional injuries, embarrassment, humiliation and loss of professional standing in amounts authorized by *Title VII, Section 1981*, Chapter 161.134(a) of the Texas Health and Safety Code, the Texas Occupations Code 301.413 and 25 TAC 133.43 by law;
- [3] Exemplary damages as authorized by *Title VII, Section 1981* Chapter 161.134(a) of the Texas Health and Safety Code, the Texas Occupations Code 301.413 and 25 TAC 133.43 by law;

- [4] Award of costs and reasonable attorney's fees, pursuant to *Title VII of the Civil Rights Act of 1964*, as amended, *Section 1981* and Chapter 161.134(a) of the Texas Health and Safety Code, the Texas Occupations Code 301.413 and 25 TAC 133.43; and
- [5] Such other legal and equitable relief to which Plaintiff may show herself justly entitled to recover.

Dated: February 12, 2008

Respectfully submitted,

HIGGINBOTHAM & ASSOCIATES LLC



By:

Elizabeth Higginbotham RN,JD
State Bar No: 00787694
106 E. 6th Street, Suite 900
Austin, Texas 78701
(512) 322-5719 Phone
(512) 692-2752 Fax

Clay Dugas
Texas Bar No. 06173200
CLAY DUGAS & ASSOCIATES
805 Park
Beaumont, Texas 77701
(409) 813-1111 Phone
(409) 813-1396 Fax

ATTORNEYS FOR PLAINTIFF
KIMBERLY GILYARD R.N.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been served via the Court's Electronic Filing System upon:

Mark W. Peters
Chelsea Munday
Waller Lansden Dortch & Dabis, LLP
511 Union Street, Suite 2700
Nashville, Tennessee 37219-8966

Justin Sobey
Shannon B Schmoyer
Akin Gump Strauss Hauer & Feld LLP
300 Convent Street, Ste 1500
San Antonio, Texas 78205-3732

Clay Dugas
Dugas & Associates
805 Park
Beaumont, Texas 77701

On this the 12th day of February, 2008.

A handwritten signature in black ink, appearing to be "Elizabeth Higginbotham", with a long, sweeping underline.

By:

Elizabeth Higginbotham RN,JD