

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

HANNAH MAGEE PORTÉE,
Plaintiff,

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v.

NO: 1:23-CV-00551-RP

MIKE MORATH, in his official
capacity as COMMISSIONER OF
EDUCATION, TEXAS
EDUCATION AGENCY, AND
STATE BOARD FOR
EDUCATOR CERTIFICATION

Defendants.

PLAINTIFF’S MOTION FOR JUDGMENT ON THE PLEADINGS

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Plaintiff, HANNAH MAGEE PORTÉE, moves this Court for a judgment on the pleadings as permitted by Rule 12(c) of the Federal Rules of Civil Procedure.

I.
SUMMARY

Plaintiff Hannah Portée moves for a judgment on the pleadings under Rule 12(c) of the federal Rules of Civil Procedure since Defendants failed to controvert any factual allegations, and since the Court already resolved questions of law. Specifically, Defendants failed to controvert any of facts asserted by Plaintiff in her *Complaint for Declaratory and Injunctive Relief*, [ECF 1] or in her *Plaintiff’s Motion for Preliminary Injunction* [ECF 5]. The only responsive pleading filed by Defendants was *State Defendants’ Opposition to Plaintiff’s Motion for Preliminary Injunction*, [ECF 18], but they did not challenge any of the factual allegations. Defendants’ answer

deadline was July 31, 2023,¹ and as of the filing of the instant motion, no answer was made. Since the only issues presented concerns questions of law, which was already decided by this Court, [ECF 16], Plaintiff is entitled to a judgment on her pleadings, and requests the Court enter a judgment stating the following:

- 1. Declare that Defendants violated, and continue to violate, Hannah Portée’s rights under the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. § 3901, et seq., and more specifically under 50 U.S.C. § 4025a.**

- 2. Permanently enjoin Defendants from enforcing 19 Tex. Admin Code § 230.113(b) with respect to Hannah Portée’s application for a Texas educator certificate to the extent it requires verification of two credible years of service in the specific student services or administrative area sought.**

- 3. Declare that Hannah Portée is entitled to recover costs of this action, and reasonable attorney fees, as permitted under 50 U.S.C. § 4042(b).**

Plaintiff further prays that the Court award Plaintiff any and all further relief to which she may be entitled, and that the Court deems appropriate.

II. **BACKGROUND**

Plaintiff incorporates by reference, the uncontested, undisputed factual background as described by the Court at **ECF 16, at 3-4**. Under these uncontroverted facts, Plaintiff is entitled to the protections under the SCRA, and Defendants are violating these rights by failing to recognize

¹ See Text Order entered June 28, 2023, stating in part, that *Defendants’ Motion for Extension of Time* to file an answer be extended to July 31, 2023, [ECF 6], was “Granted as stated on the record on June 27, 2023.”

them by enforcing contrary provisions. Notably, Defendants still have not issued to Plaintiff any certification that would permit her to utilize her out of state licenses in the State of Texas.

III. **AUTHORITIES AND ARGUMENTS**

A. Legal Standard for Judgment on the Pleadings

“After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). Judgment on the pleadings is appropriate if the matter can be adjudicated by deciding questions of law rather than factual disputes. *Brittan Commc'ns Int'l Corp. v. Sw. Bell Tel. Co.*, 313 F.3d 899, 904 (5th Cir. 2002).

“The standard for dismissal under Rule 12(c) is the same as that for dismissal for failure to state a claim under Rule 12(b)(6).” *Bosarge v. Miss. Bureau of Narcotics*, 796 F.3d 435, 439 (5th Cir. 2015) (citation and brackets omitted). As it does when deciding a motion to dismiss under Rule 12(b)(6), the Court must consider the facts in a light most favorable to the non-moving party and will accept as true the plausible factual allegations in the non-moving party's pleadings. *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008).

In deciding this motion, the Court must look only to the pleadings, *Brittan Commc'ns*, 313 F.3d at 904, which includes exhibits attached to the pleadings. *Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 313 (5th Cir. 2002); *Voest-Alpine Trading USA Corp. v. Bank of China*, 142 F.3d 887, 891 n.4 (5th Cir. 1998). While the Court will generally not consider matters outside the pleadings in deciding a 12(b)(6) motion, the Fifth Circuit has stated that “it is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.” *Norris v. Hearst Trust*, 500 F.3d 454, 461 n.9 (5th Cir. 2007); *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). This is helpful in the event the Court

wants to construe the preliminary injunction motion, response, and order, as public record rather than as pleadings.

1. There is No Factual Dispute

Plaintiff's factual allegations remain uncontroverted. Therefore, there is not any factual dispute that would preclude judgment. Plaintiff prevails even when taking the factual allegations as true and in favor of the non-movant Defendants.

2. There is no Legal Dispute.

The Court already resolved the legal dispute when it issued its order granting preliminary injunction in favor of Plaintiff. The Court concluded that Plaintiff is entitled to portability of her license under the SCRA, and as a result, the Defendants are not permitted to enforce its conflicting provision against her. ECF 16 at 13.

B. Legal Standard for Permanent Injunction

“The party seeking a permanent injunction must . . . establish (1) success on the merits; (2) that a failure to grant the injunction will result in irreparable injury; (3) that said injury outweighs any damage that the injunction will cause the opposing party; and (4) that the injunction will not disserve the public interest.” *Env't Tex. Citizen Lobby, Inc. v. ExxonMobil Corp.*, 824 F.3d 507, 533 (5th Cir. 2016) (quoting *VRC LLC v. City of Dallas*, 460 F.3d 607, 611 (5th Cir. 2006)).

1. Success on the Merits

The Court previously found that Plaintiff demonstrated a substantial likelihood of success. **ECF 16, at 6-10.** Plaintiff's uncontroverted facts demonstrate actual success on the merits.

2. The Other Factors

The Court previously evaluated the other factors when it granted a preliminary injunction. *See generally* **ECF 16.** Nothing has changed.

C. Plaintiff is Entitled to Recover Costs of Court and Reasonable Attorney Fees

The SCRA provides that, “The court may award to a person aggrieved by a violation of this Act who prevails in an action under subsection (a) the costs of the action, including a reasonable attorney fee.” 50 U.S.C. § 4042(b).

Here, Portèe, “in a civil action – obtain[ed] appropriate equitable or declaratory relief with respect to the violation[.]” *Id.* § 4042(a)(1). Therefore, she met her burden to be entitled to recover costs of the action, including a reasonable attorney fee. The Supreme Court has long held that the Eleventh Amendment does not bar such awards. *Maher v. Gagne*, 448 U.S. 122, 132 (1980).

Moreover, it is plainly obvious that Congress intended plaintiffs to recover attorney fees against state officials that violate the SCRA. Licensing authorities, as described in 50 U.S.C. = § 4025a, primarily prefers to state licensing authorities. This is made clear when the SCRA describes an exception to 50 U.S.C. § 4025a if the licensing authorities maintain interstate licensure compacts. *Id.* § 4025a(b). Defendants impliedly concede this point when they represented a state’s interest in “the qualification and licensure of Texas teachers.” **ECF 13, at 15.**

PRAYER

Plaintiff prays that the Court enter a judgment on the pleadings declaring that (1) Defendants violated the SCRA; (2) permanently enjoins Defendants from continuing its violation of the SCRA; and (3) determines that Plaintiff is entitled to recover costs of court and a reasonable attorney fee, which should be determined pursuant to a bill of costs submitted in accordance with Local Rule CV-54.

Respectfully Submitted,

GRABLE GRIMSHAW PLLC

/s/ Brandon J. Grable

BRANDON J. GRABLE

Texas State Bar No. 24086983

brandon@g2.law

1603 Babcock Road, Suite 280

San Antonio, Texas 78229

Telephone: (210) 963-5297

Facsimile: (210) 641-3332

COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby affirm that on this 1st day of August 2023, the foregoing document was filed with the Court's CM/ECF electronic filing system and that a copy of said document was served upon all parties of record.

/s/ Brandon J. Grable

Brandon J. Grable