NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 28, 2024*
Decided Marc 29, 2024

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 23-2613

SARENA ANDERSON,
Plaintiff-Appellant,

v.

LAWRENCE HALL YOUTH SERVICES,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 22 CV 837

Lindsay C. Jenkins,
Judge.

O R D E R

Sarena Anderson, a former employee of Lawrence Hall Youth Services, was unable to return to work after using her full twelve weeks of leave under the Family and Medical Leave Act ("FMLA"), 29 U.S.C. §§ 2601–2654. Anderson alleges that Lawrence Hall violated the FMLA by failing to reinstate her after she took leave, and

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101–12213, by failing to accommodate her disability. The district judge granted Lawrence Hall's motion for summary judgment and denied Anderson's cross-motion. Because Anderson is not a "qualified individual" under the ADA, and Lawrence Hall did not violate her rights under the FMLA, we affirm.

On review of cross-motions for summary judgment, we construe the record in the light most favorable to the nonmoving party on each motion and draw all reasonable inferences in that party's favor. *Lalowski v. City of Des Plaines*, 789 F.3d 784, 787 (7th Cir. 2015). Lawrence Hall is a nonprofit agency that provides services for severely emotionally troubled children and their families. Its programs include residential treatment and a therapeutic day school. Lawrence Hall first hired Anderson as a medical secretary in 2015. When she was hired, she informed Lawrence Hall that she had degenerative joint disease and intervertebral disc disorder, but neither condition required accommodations at the time.

In 2019, Anderson became a teacher's assistant after Lawrence Hall eliminated the role of medical secretary, and she also worked extra hours as a residential treatment specialist at the agency's Children and Family Treatment Center. The job descriptions for both roles state that the worker must pass and re-certify in "Therapeutic Crisis Intervention," which entails being able to "physically restrain students when necessary" and to "kneel and return to standing without assistance."

In March 2020, Lawrence Hall closed its school because of the COVID-19 pandemic, and Anderson was asked to work full time as a residential treatment specialist. In June, Anderson was kicked in the knee by a child, which either exacerbated her existing physical conditions or caused new problems. In early July, she applied for FMLA leave, which was initially granted through August 17. Anderson requested several extensions of leave and ultimately was scheduled to return to work on September 12.

When Anderson did not return to work on September 12, Gwendolyn Stubblefield, a human resources staffer, contacted her to ask when she would be returning; Anderson's maximum of 12 weeks' FMLA leave was slated to expire on September 24. Anderson requested additional leave through October 31. Stubblefield told Anderson that, while Lawrence Hall could give her a few additional weeks of leave with a firm end date in mind, they were not able to hold her position through October.

Anderson then told Stubblefield that she could no longer perform the physical job requirements of any direct-care position, and she asked for another kind of job. She related that her doctor had imposed restrictions that included "no lifting, pushing, [or] pulling" over 10 pounds and "no prolonged sitting, standing, [or] walking" for more than 20-minute intervals. Stubblefield offered her a job as a medical driver, while acknowledging that this position did not exactly fit because it would require extended periods of sitting. She asked whether Anderson's restrictions might change. Anderson turned down the driving position and instead requested an administrative position; she mentioned that she had applied through the Lawrence Hall website to be a contact tracer. That position, however, had already been filled. Because Anderson was unable to take the medical driver position and there were no suitable roles for her, Lawrence Hall terminated Anderson's employment in November 2020.

Anderson, through counsel, filed this lawsuit in 2022, alleging that Lawrence Hall violated her rights under the ADA, the FMLA, and the Age Discrimination in Employment Act, 29 U.S.C. §§ 621–634, by failing to accommodate her disability with light-duty work and terminating her employment after she took FMLA leave. The district judge dismissed the age discrimination claim for failure to exhaust administrative remedies, *id.* § 626(d)(1), but the other claims proceeded. After discovery, Lawrence Hall moved for summary judgment; by then Anderson was proceeding pro se. Anderson filed multiple responses, her own motion for summary judgment, and requests to settle. The district judge explained that she would consider Anderson's materials collectively in support of her summary judgment motion and in opposition to the defendant's motion.

The judge granted Lawrence Hall's summary judgment motion and denied Anderson's. On the ADA claim, the judge determined that, because no reasonable accommodation would allow Anderson to continue working as a teacher's assistant or residential treatment specialist, she was not a "qualified individual" for those positions; that she had not identified any alternative open positions she was qualified for; and that Lawrence Hall was not obligated to create a light duty position for her. On the FMLA claim, the judge explained that Lawrence Hall had allowed Anderson to use the full amount of leave without discouraging her or interfering, and that Anderson was not entitled under the FMLA to reinstatement because she could no longer perform the essential functions of her job. The judge also determined that Anderson had not causally connected her use of FMLA leave with the termination of her employment. Anderson appeals, and our review is de novo. *Mahran v. Advoc. Christ Med. Ctr.*, 12 F.4th 708, 712 (7th Cir. 2021).

Anderson first generally challenges the conclusion that Lawrence Hall did not violate the ADA. To support a claim of disability discrimination based on a failure to reasonably accommodate, Anderson must make the threshold showing that she was a "qualified individual" under the ADA: that she, with or without a reasonable accommodation, could perform the essential functions of her job. 42 U.S.C. § 12111(8); *Tate v. Dart*, 51 F.4th 789, 793 (7th Cir. 2022). She must also produce evidence that her employer refused to make reasonable accommodations that would allow her to perform the essential functions of her job. *Tate*, 51 F.4th at 793–94. Anderson lacks sufficient evidence to raise a genuine issue of material fact as to either proposition.

First, Anderson is not a qualified individual under the ADA. She informed Lawrence Hall that she was no longer able to perform the physical requirements of crisis intervention—an essential function of both the positions of teacher's assistant and residential treatment specialist. Lawrence Hall requires all workers in these roles to be capable of physically restraining the clients, and the record shows that staff members are frequently asked to do so. We will not second-guess an employer's judgment about what functions are essential when they are used frequently, *see id.* at 795; moreover, Anderson herself acknowledged during her deposition that they are necessary. Anderson's inability to fulfill the requirements of her two positions means that she is not a "qualified individual" under 42 U.S.C. § 12111(8).

Second, Anderson did not provide evidence to suggest that Lawrence Hall failed to accommodate her disability. A reasonable accommodation under the ADA might be to reassign a worker to a vacant position for which she is qualified. 42 U.S.C. § 12111(9)(B); *Severson v. Heartland Woodcraft, Inc.*, 872 F.3d 476, 482 (7th Cir. 2017). Anderson bears the burden of showing that such positions were available but not offered to her. *Severson*, 872 F.3d at 482. But the evidence in the record demonstrates that Lawrence Hall searched for other positions Anderson could have taken, though none worked out, and Anderson has not shown that other positions were available but not offered to her. And the obligation to consider Anderson for available positions she could perform does not mean that Lawrence Hall had to create a vacancy or a new position. *Id.* Summary judgment on her ADA claim was therefore appropriate.

Anderson next generally challenges the district judge's determination that Lawrence Hall did not violate her rights under the FMLA. FMLA claims can take two forms: interference or retaliation. Unlawful interference occurs when an employer interferes with, restrains, or denies FMLA benefits to which an employer was entitled. *Anderson v. Nations Lending Corp.*, 27 F.4th 1300, 1304 (7th Cir. 2022).

There is no evidence that Lawrence Hall interfered with Anderson's statutory rights. Lawrence Hall approved Anderson's leave initially and granted every extension; it even gave her a few weeks of additional leave. Her inability to perform the required actions for either position meant that she had no right to reinstatement. *Id.* at 1305–07. Therefore, Lawrence Hall also did not deny an FMLA benefit when it did not reinstate Anderson after she used her maximum leave (and more). 29 U.S.C. § 2614(a)(1)(A), (B).

Similarly, Anderson did not support her claim that, by firing her, Lawrence Hall retaliated against her for taking FMLA leave, which is a protected activity, because she lacks any evidence of a causal connection between the two events. *See Anderson*, 27 F.4th at 1307. An employer is liable for retaliation only if the employee's protected activity was a "substantial or motivating" factor in the adverse employment decision. *Id.* But here, evidence showed that Lawrence Hall decided to terminate Anderson's employment because she could no longer perform the duties required of her, and there was no suitable alternative position open for her. Against this evidence, Anderson can point to nothing beyond timing—that her termination post-dated her use of FMLA leave. That is insufficient to place Lawrence Hall's rationale, supported by evidence, into dispute. *Lutes v. United Trailers, Inc.*, 950 F.3d 359, 369 (7th Cir. 2020). Therefore, summary judgment on Anderson's FMLA claims was appropriate.

Finally, insofar as Anderson alleges that the district judge should have allowed her to proceed with her age discrimination claim, she is incorrect because she failed to exhaust her administrative remedies as required. 29 U.S.C. § 626(d)(1). She did not check the box for "age," nor did she reference age discrimination in her statement of facts in her charge with the Equal Employment Opportunity Commission. She therefore did not "reasonably alert" the Commission or Lawrence Hall to the possibility of age discrimination. *See Ajayi v. Aramark Bus. Servs., Inc.*, 336 F.3d 520, 528 (7th Cir. 2003).

AFFIRMED