

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

MARY SUE LINN

PLAINTIFF

v.

No. 4:11-cv-514-DPM

**CABOT PUBLIC SCHOOL DISTRICT and
JIM DALTON**

DEFENDANTS

ORDER

Linn moves for partial summary judgment on liability. *No* 18. She says that there is no dispute that the Cabot School District and Assistant Superintendent Dalton interfered with her rights under the Family and Medical Leave Act and retaliated against her for using those rights. *No* 18 & 19. The District and Dalton disagree, saying that the District terminated Linn due to unexcused absenteeism not protected by FMLA, absences both before and after her approved FMLA leave. *No* 35 & 36.

Linn is not entitled to partial summary judgment on liability because genuine issues of material fact exist. Compare the parties' dueling statements of key facts. *No* 20 & 37. A jury needs to answer, in the circumstances, whether the District gave Linn adequate notice of her FMLA rights, whether

Linn's notice to the District about her alleged need for intermittent leave was adequate, and whether the District fired Linn for missing too much work apart from her approved FMLA leave or for exercising her FMLA rights. Based on the deposition excerpts, affidavits, and records, reasonable people could disagree on these facts. *Brown v. City of Jacksonville*, 2013 WL 1274566, at *6-7 (8th Cir. 29 Mar. 2013). Motion, No 18, denied.

Linn's motion in limine to exclude evidence of her pre-accident attendance, No 22, is also denied. The District's defense is Linn's complete work history. The Court will, however, instruct the jury to only consider the attendance records for purposes of determining why the District fired Linn, not as evidence that she had a bad character trait of absenteeism. The alleged overpayments can, the Court concludes, come in only on damages. And the Court will so instruct.

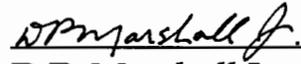
Defendants' motion in limine, No 28, is denied without prejudice as moot. The motion is short on specifics. And Linn says she's disclosed all the evidence she intends to offer. No harm, no foul – apparently – for the lack of formal supplemental discovery responses. The parties should confer; the District and Dalton should then refile their motion with particulars if need be.

The Court understands the parties made progress toward settlement at a recent conference before Magistrate Judge Joe Volpe. Things bogged down, though, over the issues in these pending motions. With these issues now resolved, the Court refers the case back to Judge Volpe to reconvene the discussions and report by 31 May 2013.

* * *

Motion for partial summary judgment, *No 18*, denied. Motions in limine, *No 22 & 28*, denied with caveats.

So Ordered.



D.P. Marshall Jr.
United States District Judge

23 April 2013