Coronado v Weill Cornell Med. Coll.
2019 NY Slip Op 31897(U)
June 24, 2019
Supreme Court, New York County
Docket Number: 152012/2016
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46
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ILEANA RUIDIAZ CORONADO, Index No. 152012/2016

Plaintiff

- against - DECISION AND ORDER

WEILL CORNELL MEDICAL COLLEGE and
WEILL CORNELL GRADUATE SCHOOL OF
MEDICAL SCIENCES,

Defendants

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Plaintiff sues under the New York State Human Rights Law (NYSHRL) and New York City Human Rights Law (NYCHRL) claiming defendants unlawfully discriminated against her when they failed to provide a reasonable accommodation for her medical condition related to her pregnancy and then fired her because she failed to report to work. Plaintiff seeks to hold defendants liable for their managers' and supervisors' unlawful discrimination.

I. FACTUAL ALLEGATIONS

In September 2015, plaintiff, a housekeeper for defendants since 2006, informed her direct supervisor Ynes Fondeur that plaintiff was pregnant. In October 2015, plaintiff informed defendants' Director of Housekeeping Services Marie-Flore Berger that plaintiff was pregnant. Plaintiff requested a change in her schedule due to her pregnancy from both Fondeur and Berger, to which Fondeur responded by directing plaintiff to contact defendants' Department of Human Resources. On October 13, 2015, plaintiff delivered to defendants' Department of Human Resources

a note from her obstetrician advising that plaintiff was to avoid strenuous activity, including heavy lifting, prolonged standing, and excessive bending during her pregnancy. On October 16, 2015, defendants' Benefits and Leave Associate Joseph Tallent received the note from plaintiff's obstetrician and forwarded it to Jamal Lopez, defendants' Associate Director of Employee Relations and Development, for processing. On October 26, 2015, Lopez sent plaintiff forms for her to complete as part of her request for a workplace accommodation.

On October 30, 2015, in the course of her job duties, plaintiff injured her back while bending to retrieve keys. She was transported to defendants' hospital in an ambulance and was discharged later that day with instructions to stay home from work November 2-3, 2015. On November 4, plaintiff notified defendants that she would be absent from work November 4-6, 2015. During the week of November 9-13, plaintiff did not report to work, request leave, or directly notify defendants that she would be absent from work. On November 6, however, plaintiff informed Felicia Dimmick, an employee of defendants' claims service provider Gallagher Bassett, that plaintiff was pregnant, injured her back October 30, 2015, and would be unable to work until early December. Dimmick indicated to plaintiff that Dimmick or Tallent would respond to plaintiff and relayed Dimmick's exchange with plaintiff to Tallent via email. During that week, november 6-13, 2015, plaintiff also informed Tallent that she was pursuing a Workers' Compensation claim for her injury.

On November 17, 2015, Lopez and Tallent telephoned plaintiff to discuss her injury and absence from work. Lopez and Tallent claim plaintiff refused to speak to them and directed them to speak to her lawyer. Plaintiff testified at her deposition, however, that she asked Lopez and Tallent to telephone her later because she was in too much pain and did not feel well enough to speak to them then, and she wanted to speak to her lawyer before speaking to them. Defendants did not attempt to contact plaintiff again to engage in any discussion, nor attempt to contact her lawyer, nor allow plaintiff or her lawyer an opportunity to contact defendants, but instead sent plaintiff a letter dated November 17, 2015, firing her effective November 9, 2015.

II. SUMMARY JUDGMENT STANDARDS

Defendants now move for summary judgment dismissing plaintiff's claims for discrimination based on her pregnancy, failure to accommodate her pregnancy or disability, and discrimination based on sexual orientation raised for the first time at her deposition. C.P.L.R. § 3212(b). To obtain summary judgment, defendants must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence eliminating all material issues of fact. C.P.L.R. § 3212(b); Friends of Thayer Lake LLC v. Brown, 27 N.Y.3d 1039, 1043 (2016); Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft LLP, 26 N.Y.3d 40, 49 (2015); Voss v. Netherlands Ins. Co., 22 N.Y.3d 728, 734 (2014); Vega v. Restani Constr. Corp., 18

N.Y.3d 499, 503 (2012). Only if defendants satisfy this standard, does the burden shift to plaintiff to rebut that prima facie showing, by producing evidence, in admissible form, sufficient to require a trial of material factual issues. De Lourdes Torres v. Jones, 26 N.Y.3d 742, 763 (2016); Nomura Asset Capital Corp. v. Cadwalader Wickersham & Taft LLP, 26 N.Y.3d at 49; Morales v. D & A Food Serv., 10 N.Y.3d 911, 913 (2008); Hyman v. Queens County Bancorp, Inc., 3 N.Y.3d 743, 744 (2004). In evaluating the evidence for purposes of defendants' motion, the court construes the evidence in the light most favorable to plaintiff. De Lourdes Torres v. Jones, 26 N.Y.3d at 763; William J. Jenack Estate Appraisers & Auctioneers, 22 N.Y.3d 470, 475 (2013); Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Cahill v. Triborough Bridge & Tunnel Auth., 4 N.Y.3d 35, 37 (2004).

To obtain summary judgment dismissing each of plaintiff's claims under the NYSHRL, defendants must establish that the undisputed evidence (1) negates at least one of the essential elements of her claim or (2) conclusively demonstrates their legitimate, non-discriminatory reasons for their challenged actions and the absence of material factual issues as to whether these reasons were pretext. Forrest v. Jewish Guild for the Blind, 3 N.Y.3d 295, 305 (2004); Bailey v. New York Westchester Sq. Med. Ctr., 38 A.D.3d 119, 123 (1st Dep't 2007); Messinger v. Girl Scouts of U.S.A., 16 A.D.3d 314, 314 (1st Dep't 2005). For defendants to succeed on their motion for summary judgment dismissing each of plaintiff's claims under the NYCHRL,

defendants must meet the test outlined above and also eliminate a "mixed motive" for their challenged actions. Suri v. Grey Global Group Inc., 164 A.D.3d 108, 119 (1st Dep't 2018); Cadet-Legros v. New York Univ. Hosp. Ctr., 135 A.D.3d 196, 200 n.1 (1st Dep't 2015); Melman v. Montefiore Med. Ctr., 98 A.D.3d 107, 113 (1st Dep't 2012); Bennett v. Health Mgt. Sys., Inc., 92 A.D.3d 29, 45 (1st Dep't 2011). The NYCHRL's "mixed motive" analysis requires defendants to demonstrate that discrimination was not one of the motivating factors for the challenged action. Bennett v. Health Mgt. Sys., Inc., 92 A.D.3d at 45; Williams v. New York City Hous. Auth., 61 A.D.3d 62, 78 n.27 (1st Dep't 2009). See Cadet-Legros v. New York Univ. Hosp. Ctr., 135 A.D.3d at 202. If defendants meet this burden, plaintiff then must present evidence that defendants' legitimate, non-discriminatory reasons were a pretext or that defendants were motivated "at least in part" by discrimination against plaintiff's protected status. Cadet-Legros v. New York Univ. Hosp. Ctr., 135 A.D.3d at 200 n.1; Melman v. Montefiore Med. Ctr., 98 A.D.3d at 127; Bennett v. Health Mgt. Sys., Inc., 92 A.D.3d at 39.

III. PLAINTIFF'S CLAIMS OF DISCRIMINATION BASED ON HER PREGNANCY

Both the NYSHRL, New York Executive Law § 296(1)(a), and the NYCHRL, New York City Administrative Code § 8-107(1)(a), prohibit defendants from discriminating against plaintiff based on her gender and thus based on her pregnancy. Chauca v. Abraham, 30 N.Y.3d 325, 330 n.1 (2017); Elaine W. v. Joint Diseases N. Gen. Hosp., Inc., 81 N.Y.2d 211, 216 (1993). See Kim v. Goldberg,

Weprin, Finkel, Goldstein, LLP, 120 A.D.3d 18, 26 (1st Dep't 2014). Defendants maintain that they are entitled to summary judgment because plaintiff's failure to submit documentation excusing her absences from work, failure to communicate with defendants, and overall abandonment of her job were legitimate, non-discriminatory reasons for defendants to fire plaintiff.

Defendants are not entitled to summary judgment dismissing plaintiff's NYSHRL or NYCHRL claims, however, due to material factual issues whether defendants' reasons were a pretext. Lopez testified at his deposition that he and Tallent telephoned plaintiff November 17, 2015, to discuss her leave and completion of the forms for her accommodation request, but plaintiff refused to speak to them, directed them to speak to her lawyer, and abruptly hung up the telephone. Aff. of Sheryl A. Orwell Ex. 18, at 24. Lopez also testified that defendants decided to fire plaintiff because she was unresponsive and never engaged in "the process" for supporting her absence with medical documentation. Id. at 26.

Plaintiff's account of the telephone conversation November 17, 2015, directly contradicts Lopez's account. Plaintiff testified that she did not refuse to speak to Lopez and Tallent that day, but instead asked them to telephone her later because she was in too much pain and not feeling well enough to speak to them then and because she expected to speak to her Workers' Compensation lawyer later that day to "get everything straight." Aff. of C.K. Lee Ex. D, at 328-29. Both Lopez and plaintiff

testified that defendants did not follow up with her or her lawyer by telephone or email after that initial telephone conversation November 17, 2017. Id.; Orwell Aff. Ex. 18, at 24-25.

Since the court must construe the evidence most favorably to plaintiff and thus accept her version of the conversation November 17, 2015, she raises a factual dispute as to whether she refused to speak to defendants and abruptly hung up the telephone, or she merely asked to postpone the conversation until she was in less pain, felt better, and had spoken to her lawyer. This factual issue is material to defendants' motives in firing plaintiff, since defendants maintain that her unresponsiveness and lack of communication were bases for firing her. If two of their stated bases are untrue, a jury reasonably might find that all three of defendants' reasons for firing her were a pretext and that defendants, instead, fired her because of her pregnancy and the prospect that she would be absent due to her injury, require an accommodation after she returned to work, and be absent further due to childbirth.

Dimmick's email November 6, 2015, advising Tallent that plaintiff had informed Dimmick that plaintiff expected to be unable to work until December also raises a question as to whether defendants' stated bases for firing plaintiff were a pretext. Defendants' knowledge that plaintiff would be absent from work until December undermines their insistence that they fired her because they believed she abandoned her job. This

knowledge of her incapacitation from work also must be considered together with their knowledge, according to plaintiff's account, that plaintiff wanted to speak with them about her leave and accommodation, demonstrating an intent to keep her job. These combined facts raise the inference that defendants used plaintiff's prior absence as a pretext to fire her when in fact they did not want to extend her leave due to her injury or accommodate her pregnancy or the birth of her child after she returned to work.

If defendants knew plaintiff had not refused to communicate with them and did not intend to abandon her job, their only remaining basis for her firing is her five days of absence from work, which defendants knew was due to her injury. Defendants present no evidence that they warned plaintiff about any potential consequences of her extended absence or requested medical documentation explaining her absence, despite communicating with her multiple times after her injury. Defendants also fired plaintiff effective November 9, 2015, which was the first day that her absence was unexcused, indicating that her firing was due to occurrences before her unexcused absences November 9-13, 2015: receipt of her obstetrician's note October 16 advising that plaintiff was to avoid specified activities during her pregnancy, her injury on the job October 30, and her absence November 2-6, 2015, due to her injury.

In sum, the record raises factual issues whether defendants' stated reasons for firing plaintiff were a pretext and whether

defendants actually fired plaintiff because she was pregnant or suffering a disability related to her pregnancy. Watson v. Emblem Health Servs., 158 A.D.3d 179, 183 (1st Dep't 2018); Barone v. Emmis Communications Corp., 151 A.D.3d 523, 524 (1st Dep't 2017); Short v. Deutsche Bank Sec., Inc., 79 A.D.3d 503, 505 (1st Dep't 2010); Davin v. JMAM, LLC, 27 A.D.3d 371, 371 (1st Dep't 2006). See Kim v. Goldberg, Weprin, Finkel, Goldstein, LLP, 120 A.D.3d at 25-26. Since plaintiff's discrimination claims survive summary judgment under the NYSHRL, they survive dismissal under the more lenient NYCHRL for the same reasons. At minimum, her version of the telephone conversation November 17, 2015, Dimmick's prior email to Tallent, and defendants' knowledge throughout that plaintiff was absent from work due to her injury and was seeking an accommodation due to her pregnancy raise material factual issues that undermine defendants' stated reasons for firing plaintiff. Once the evidence calls defendants' stated reasons into question, it suggests that discriminatory reasons, at least in part, motivated defendants' decision to fire her. Therefore, even if defendants were entitled to summary judgment under the framework applicable to her NYSHRL claims, defendants' motion for summary judgment fails under the mixed motives analysis applicable to her NYCHRL claims. Watson v. Emblem Health Servs., 158 A.D.3d at 183; Barone v. Emmis Communications Corp., 151 A.D.3d at 524; Short v. Deutsche Bank Sec., Inc., 79 A.D.3d at 505; Davin v. JMAM, LLC, 27 A.D.3d at 371.

IV. PLAINTIFF'S CLAIMS OF FAILURE TO ACCOMMODATE HER PREGNANCY

The NYSHRL, N.Y. Exec. Law § 296(3)(a), prohibits defendants from refusing to provide plaintiff a reasonable accommodation for conditions related to her pregnancy. The NYCHRL, N.Y.C. Admin. Code § 8-107(22), prohibits defendants from refusing to provide plaintiff a reasonable accommodation for her pregnancy, for a related medical condition, or for childbirth to allow her to perform the essential requisites of her job, as long as defendants knew of her pregnancy, her related medical condition, or the impending childbirth. Administrative Code § 8-107(28) requires defendants to engage in a cooperative dialogue with plaintiff within a reasonable time after her request for an accommodation. Under both statutes, a request need not take a specific form, be in writing, refer to any law, or use the terms "reasonable accommodation." Watson v. Emblem Health Servs., 158 A.D.3d at 182; Phillips v. City of New York, 66 A.D.3d 170, 189 (1st Dep't 2009).

Defendants maintain that they did not refuse plaintiff any accommodation because she failed to submit a request for an accommodation. Plaintiff did request an accommodation, however, when she submitted a note from her obstetrician to defendants October 13, 2015, advising that plaintiff was pregnant and was to avoid specified activities, and thus demonstrating a physical condition related to her pregnancy that inhibited her exercise of normal bodily functions such as lifting, standing, and bending. N.Y. Exec. Law § 292(21-f); N.Y.C. Admin. code § 8-107(22).

Defendants do not deny receipt of this note or knowledge of plaintiff's request for an accommodation. Although plaintiff failed to submit defendants' required forms before she was fired, she did communicate to defendants a request for an accommodation, to which defendants never responded other than by sending her forms to complete. Jacobsen v. New York City Health and Hosps. Corp., 22 N.Y.3d 824, 840 (2014); Watson v. Emblem Health Servs., 158 A.D.3d at 182; Phillips v. City of New York, 66 A.D.3d at 189. Defendants may be permitted to use their own forms to process requests for an accommodation, but may not use their forms to impede a prompt substantive response to a request or the provision of accommodations as required.

Defendants nevertheless maintain that they are entitled to summary judgment because plaintiff failed to engage in an interactive process when she failed to submit the required forms to defendants. Although plaintiff did fail to submit the required forms between October 26 and October 30, 2015, when she was injured and thus no longer in immediate need of an accommodation until she was able to return to work, a factual issue remains as to whether defendants failed to engage in an interactive process. They failed to respond to her until November 17, 2015, when, based on plaintiff's version of their telephone conversation, plaintiff asked Lopez and Tallent to telephone her after she felt better and spoke to her lawyer. Based on her account, when defendants decided to fire plaintiff for abandoning her job rather than telephone her to discuss her

leave and accommodation as she requested, they did not engage in an interactive process in good faith. In fact they do not deny that they wrote their letter dated November 17, 2015, even before their initial contact with plaintiff by telephone that day. In any event, because defendants do not dispute their knowledge of both plaintiff's pregnancy and her request for an accommodation, their choice to fire plaintiff before investigating her request for an accommodation forecloses dismissal of her claims based on her failure to engage in the interactive process. Jacobsen v. New York City Health and Hosps. Corp., 22 N.Y.3d at 837; Watson v. Emblem Health Servs., 158 A.D.3d at 183-84; Chernov v. Securities Training Corp., 146 A.D.3d 493, 494 (1st Dep't 2017).

V. PLAINTIFF'S CLAIMS OF STRICT LIABILITY AND DISCRIMINATION BASED ON HER SEXUAL ORIENTATION

Defendants maintain that they may not be held strictly or vicariously liable for the conduct of their managers and supervisors because that conduct was not discriminatory and did not violate any law. Since defendants have failed to establish that their managers and supervisors did not discriminate against plaintiff based on her pregnancy or fail to accommodate her pregnancy, defendants are not entitled to dismissal of plaintiff's claims of strict or vicarious liability. See N.Y.C. Admin. Code § 8-107(13)(b); Zakrzewska v. New School, 14 N.Y.3d 469, 479 (2010).

Defendants also seek dismissal of plaintiff's claim for discrimination based on her sexual orientation. Plaintiff raised this claim only at her deposition, however, did not plead this

claim in her complaint, and has not sought to amend her complaint to include this claim. Since she has not pleaded this claim, the court need not consider a motion for summary judgment on such a claim. See Demetriades v. Royal Abstract Deferred, LLC, 159 A.D.3d 501, 503 (1st Dep't 2018); Burgos-Lugo v. City of New York, 146 A.D.3d 660, 662 n.3 (1st Dep't 2017); Ostrov v. Rozbruch, 91 A.D.3d 147, 154 (1st Dep't 2012);

VI. CONCLUSION

For all the reasons explained above, the court denies defendants' motion for summary judgment dismissing plaintiff's claims under the NYSHRL and NYCHRL of discrimination based on her pregnancy, failure to accommodate her pregnancy, and liability for the conduct of defendants' managers and supervisors. C.P.L.R. § 3212(b). Plaintiff does not claim discrimination based on her sexual orientation in this action.

DATED: June 24, 2019

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.