

Summary Judgment Review

Case Name: *Giordano v. Adaptive Learning Center for Infants and Children, Inc.*

Nature of the Order: Order Adopting the Report & Recommendation and Denying Summary Judgment

Magistrate Judge: Catherine M. Salinas

District Judge: Eleanor L. Ross

Claims & Outcomes:

1. **Claim:** ADA Disability Discrimination
 - a. **Outcome:** Summary Judgment Denied
2. **Claim:** ADA Retaliation
 - a. **Outcome:** Summary Judgment Denied
3. **Claim:** Breach of Employment Contract (GA state law)
 - a. **Outcome:** Summary Judgment Denied

Whether R&R Followed: Yes

For Race/Gender Discrimination Cases:

Race of Plaintiff: N/A

Gender of Plaintiff: N/A

Summary

Defendant Adaptive Learning Center for Infants and Children, Inc. (“Adaptive”) provides services to special needs children. Plaintiff Cecilia Giordano (“Giordano”) was an Inclusion Specialist for Adaptive. On December 13, 2018, Giordano was found in her car in the Adaptive parking lot “choking, . . . drooling and saying she could not control her arms and legs.” She had several similar episodes over the next several days and was hospitalized and discharged. When she told Adaptive she was ready to return to work, a meeting was held on December 21, 2018 with Giordano, her husband, and several Adaptive officials. Giordano reported that test results showed that she had not suffered epileptic seizures, but rather seizure-like anxiety episodes due to Conversion Disorder. She reported that her doctors had released her to work without restrictions. However, the Adaptive officials stated that they would treat it like a seizure disorder that could recur and make her a danger to students and herself. She was not allowed to return to work and was paid through December. At the end of the year, she was not given an annual \$50 gift card that was given to all employees. However, on January 3, 2019, Adaptive emailed Giordano requesting that she obtain a release from her physician to return to work with or without restrictions. Giordano did not provide a release and instead sent a letter on January 4, 2019 stating that Adaptive had terminated her.

Adaptive moved for summary judgment on all of Giordano's claims. Magistrate Judge Salinas recommended denial of summary judgment on all claims. None of the parties objected to this recommendation, and District Judge Ross adopted the recommendation as the opinion of the Court. Thus, the reasoning that follows is from Judge Salinas's Report & Recommendation.

Because Adaptive did not respond to Giordano's Statement of Additional Material Facts, Judge Salinas deemed those Facts admitted. This is not always how judges in this District treat a failure to respond to the non-movant's Statement of Additional Facts. (In contrast, a failure to properly respond to a movant's Statement of Undisputed Material Facts is always deemed an admission.) Thus, Judge Salinas's decision here is worth noting for those who have cases before her. (Because nobody objected to the R&R, Judge Salinas's decision on this point was upheld by Judge Ross.)

Adaptive did not provide any specific analysis of the ADA or state law breach of contract claims. It did not, for instance, challenge Giordano's status as "disabled" or contend that it could not make a reasonable accommodation. Instead, it simply made the overarching argument that it did not terminate Giordano's employment, but rather that she resigned. However, Judge Salinas noted facts on both sides of whether Giordano was fired or resigned and called it a "classic dispute over a material fact . . . that only a jury can resolve." She noted that Adaptive may persuade a jury that it did not terminate Giordano on December 21, 2018, but "on the present record and at the summary judgment stage, Adaptive plainly is not entitled to judgment as a matter of law."

Judge Ross, following the recommendation of Magistrate Judge Salinas, DENIED summary judgment on all claims.