

Summary Judgment Review

Case Name: *Lubin as trustee for the estate of Simpson v. Cox Communications, Inc.*

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

Magistrate Judge: Russel G. Vineyard

District Judge: Eleanor L. Ross

Claims & Outcomes:

1. **Claim:** Disability Discrimination (ADA)
 - a. **Outcome:** Summary Judgment Granted
2. **Claim:** Retaliation (ADA)
 - a. **Outcome:** Summary Judgment Granted
3. **Claim:** Retaliation (ADA)
 - a. **Outcome:** Summary Judgment Granted
4. **Claim:** Intentional Infliction of Emotional Distress (GA State Law)
 - a. **Outcome:** Claim Withdrawn by Plaintiff

Whether R&R Followed: Yes

For Race/Gender Discrimination Cases:

Race of Plaintiff: N/A

Gender of Plaintiff: N/A

Summary

Plaintiff Tiffany Simpson (“Simpson” or “Plaintiff”) suffered from major depression and anxiety. During her employment, she received numerous warnings from Defendant Cox Communications, Inc. (“Cox” or “Defendant”) in her performance reviews regarding poor management of her workload and related performance issues. On March 18, 2019, her supervisors decided to place her on a Performance Improvement Plan (“PIP”). They told her in a March 27 meeting that she would shortly be placed on a PIP. During this same meeting, Simpson told her supervisors of her diagnoses of depression and anxiety, and they advised her to address it with the appropriate company officials. After meeting with those officials, Simpson went on FMLA leave to get treatment. She submitted a letter on March 29 from her psychiatrist which identified her diagnoses but didn’t request any particular accommodation. During her leave, Simpson also submitted other letters from her psychiatrist, requesting she have time off for mental health treatment. Also during her leave (on June 25), Simpson filed an EEOC charge, alleging she was issued the PIP because she revealed she was disabled and asked for an accommodation. Her doctor then released her to return to work without restrictions, and she returned to work on July 10. Her

PIP was re-implemented the next day. Approximately 30 days later (on August 12), Cox terminated her employment, saying that she had not met the requirements of the PIP and had not improved her performance. She filed a 2nd EEOC charge 2 days after her termination.

At the same time as all these events were occurring, Simpson filed for Chapter 7 bankruptcy. She did not reveal her claims against Cox as an asset in any of her bankruptcy filings and, on August 26, her bankruptcy case was discharged.

Simpson filed suit in this case, alleging discriminatory discipline and discharge based on disability in violation of the Americans with Disabilities Act (“ADA”), retaliation in violation of the ADA, failure to accommodate in violation of the ADA, and the state-law tort of Intentional Infliction of Emotional Distress (“IIED”).

Defendant moved for Summary Judgment on all claims. In response to the Motion for Summary Judgment, Plaintiff withdrew her IIED claim, leaving only the 3 ADA claims. Also, as part of its Summary Judgment Motion, Defendant argued the case should be dismissed based on judicial estoppel because Simpson failed to disclose her current claims as assets to the Bankruptcy Court. In response, Simpson asked the Bankruptcy Court to re-open her case and notified the bankruptcy trustee, Jordan Lubin (“Lubin”), who decided to pursue the claims on behalf of the bankruptcy estate. Plaintiff moved to substitute Lubin as the plaintiff and the real party in interest.

Magistrate Judge Russell G. Vineyard recommended granting the motion to substitute plaintiffs and granting Defendant’s summary judgment motion on all remaining claims. None of the parties objected to this recommendation, and District Judge Eleanor L. Ross therefore adopted the recommendation as the opinion of the Court. Thus, the reasoning that follows is from Judge Vineyard’s Report & Recommendation.

First, Judge Vineyard found that, when Simpson filed for bankruptcy and failed to disclose her claims, the bankruptcy estate (represented by Lubin) became the owner of Simpson’s claims against Cox and the real party in interest for those claims. Therefore, he granted the motion to substitute Lubin for Simpson as the Plaintiff. And, since Lubin had not failed to disclose any assets to the bankruptcy court, Judge Vineyard recommended denying summary judgment on the basis of judicial estoppel.

Second, as to the discriminatory discharge claim, Judge Vineyard assumed that Plaintiff established a *prima facie* case and skipped to the pretext analysis. Here, Judge Vineyard rejected Plaintiff’s argument she was never given examples of her performance deficiencies, noting they were repeatedly identified in her performance reviews. He also noted that Plaintiff’s arguments that her performance was not as bad as claimed misses the point, since the issue at the pretext stage is whether the Defendant believed in good faith that her performance was deficient, not the objective reality of her performance. Moreover, Judge Vineyard noted that the decision to place Simpson on a PIP occurred before she notified her supervisors of her disability, so her disability could not have motivated that decision. Moreover, the documentary record showed her performance did not improve while she was on her PIP, so the termination reasons were not pretextual.

Third, as to the retaliation claim, Plaintiff's arguments failed for similar reasons. The decision to place her on a PIP preceded any protected activity, and so could not have been motivated by her protected activity. That her PIP was implemented upon her return from leave (during which she had filed an EEOC charge) did not demonstrate retaliatory animus because Cox was simply following through on a previously-decided course of action. And, as noted with the discrimination claim, Cox had not shown that the reason given for her termination (poor performance) was pretext.

Finally, as to the failure-to-accommodate claim, Judge Vineyard found that the record showed Simpson never made a specific request for accommodation. When she told her bosses about her disability, there was no discussion of accommodation. She was granted FMLA leave, so there was no denial of accommodation there. Her doctors' notes to Cox either did not request a specific accommodation or asked for time to get mental health treatment...which she was already receiving via the medical leave. When she returned to work, her doctor wrote that she was able to return without restrictions, so there was no reason for Cox to believe she needed an accommodation.

Judge Vineyard, therefore, recommended granting Defendant's Motion for Summary Judgment as to all the ADA claims.

District Judge Ross, following the recommendation of Magistrate Judge Vineyard, GRANTED summary judgment on Plaintiff's ADA claims.