IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

RENAE EKSTRAND,

OPINION AND ORDER No. 2

Plaintiff,

08-cv-193-bbc

v.

SCHOOL DISTRICT OF SOMERSET,

Defendant.

- -

This civil case for money damages under the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12117, was tried in September 2010 and is before the court on the motion of defendant School District of Somerset for judgment notwithstanding the verdict under Fed. R. Civ. P. 50(b). Defendant prevailed originally, after this court entered summary judgment in its favor in March 2009, but the Court of Appeals for the Seventh Circuit disagreed with the decision and remanded the case for trial.

In reversing this court's decision, the court of appeals ruled that the evidence presented on summary judgment did not show that plaintiff Renae Ekstrand had made defendant aware before she went on leave in October 2005 that she was disabled and had

a medical need for a specific accommodation. The court of appeals reaffirmed the proposition that employees claiming to be disabled under the ADA "must make their employers aware of any nonobvious, medically necessary accommodations with corroborating evidence such as a doctor's note or at least orally relaying a statement from a doctor, before an employer may be required under the ADA's reasonableness standard to provide a specific modest accommodation the employee requests." Ekstrand v. School District of Somerset, 583 F.3d 972, 976 (7th Cir. 2009). It added that a reasonable accommodation "is connected to what the employer knows about the employee's precise limitations." Id.

The court found, however, that defendant learned of the need for the accommodation, specifically, plaintiff's medical need for a classroom with natural light for her disability of seasonal affective disorder, as of November 28, 2005, when plaintiff's treating psychologist sent a letter to that effect to defendant's workers' compensation carrier. Id. at 975. Thus, plaintiff had made two of the showings necessary to her claim: she was disabled and she had a medical need for a specific accommodation. Because it is undisputed that defendant did not provide her the specific accommodation she needed and defendant has never suggested that doing so would have been an undue burden, the only remaining issue was whether plaintiff was a qualified person under the Act. The court of appeals did not decide this last question: whether plaintiff could have performed the essential functions of her teaching job with an accommodation after October 17, 2005, when she took a medical leave, and before

January 3, 2006, when her doctor had written to defendant to say that plaintiff would be unable to perform her job for the rest of the school year. It held, however, that plaintiff had put in enough evidence to create a factual dispute about this question. Her doctor had noted on two occasions in November that she was improving and the superintendent of the school district, Randal Rosburg, knew from talking with her on November 14 that she was willing and able to return if she was assured of having a classroom with natural light.

After trial, the jury found in plaintiff's favor and awarded her almost $1,996.662 in damages. $246,662 of the damages award was for loss of future earning capacity; $1,750,000 was to compensate her for emotional pain or mental anguish.

In support of its Rule 50(b) motion, defendant argues first that before plaintiff went on sick leave in mid-October 2005 because of severe depression, she had never made it known to defendant that she had a medical need for a classroom with exterior windows and natural light, and second, that plaintiff did not prove that between late November 2005 and January 3, 2006, defendant knew that it was medically necessary for plaintiff to know that she would be moved to a classroom with exterior windows if she came back to work. Plaintiff opposes the motion, asserting that her conversations with her principal, Cherrie Wood, alerted Wood to plaintiff's medical need for a classroom with exterior windows. Plaintiff adds that even if the conversations fell short of doing this, defendant was aware of her medical need after November 28, 2005 and had an obligation under the ADA to tell plaintiff

that she would have the kind of classroom she required when she returned from her leave of absence. Had defendant done this, she says, she would have been willing and able to come back to work at the beginning of the second semester in January 2006.

I conclude that the motion for judgment as a matter of law must be denied, in light of the rulings of the court of appeals and the jury's verdict in favor of plaintiff.

BACKGROUND

Plaintiff Renae Ekstrand taught elementary classes in the Somerset School District from 2000 until the fall of 2005. For the first five years, she taught kindergarten classes, but in the spring of 2005, she asked to switch to first grade to reduce her physical stress. She suffers from fibromyalgia, which was first diagnosed in 1997, and she has suffered from episodes of depression since she was in high school. In the fall of 2005, her doctor suspected she had multiple sclerosis and was testing her for it. At about the same time, she learned that she had been assigned a makeshift first grade classroom with no exterior windows, located in a busy and noisy part of her school. Plaintiff talked to the principal on a number of occasions about changing rooms; the principal refused that request, but worked with plaintiff in an effort to make the room she had been assigned more accommodating to teaching.

About six or seven weeks into the fall semester, plaintiff began to experience severe

depression. On October 17, 2005, she saw a psychologist, who recommended that she take an immediate leave of absence from teaching for the remainder of the semester. Her general practice doctor, Dr. Arnold Potek, agreed with the recommendation. Plaintiff took a three-month leave at first, but on January 3, 2006, Dr. Potek wrote defendant to say that plaintiff was temporarily unable to work through the remainder of the 2005-06 school year. Later, plaintiff later extended the leave through the 2006-07 school year. She never returned to the Somerset school system.

OPINION

At the outset, it is necessary to decide what issues remained open after the court of appeals' decision. At trial, the parties took the position that all issues were open. Plaintiff introduced evidence of conversations that plaintiff had with principal Wood, presumably in an effort to show that the court of appeals had not appreciated the nature and extent of those conversations when it found that plaintiff had not proved that defendant knew of plaintiff's disability and medical need for a specific accommodation before November 28. For its part, defendant introduced evidence in an attempt to prove that the court of appeals was wrong when it found that defendant learned of plaintiff's disability and need for accommodation on November 29, 2005, when defendant's workers' compensation carrier received a letter from plaintiff's psychologist, explaining plaintiff's disability and the

necessary accommodation requested of defendant.

In retrospect, I believe that it would have been advisable to limit the evidence to the one issue left for resolution, which was whether plaintiff was a qualified person under the ADA at any time between November 28, 2005, when the letter was written, and January 3, 2006, when the court of appeals held that she was not qualified. The court of appeals' holdings on the questions of plaintiff's disability and the school district's knowledge of that disability and her medical need for a specific accommodation are the law of the case, binding on this court. Christianson v. Colt Industries Operating Co., 486 U.S. 800, 816-17 (1988) (when one court decides upon rule of law, its decision should continue to govern same issues in subsequent stages of same case (citing dictum in Arizona v. California, 460 U.S. 605, 618 (1983), and 1B J. Moore, J. Lucas & T. Currier, Moore's Federal Practice ¶ 0.404[1], p. 118 (1984) (this rule promotes finality and efficiency of judicial process)).

The court of appeals held that employees who seek "nonobvious, medically necessary accommodations" must make their employer aware of the need for the accommodation "with corroborating evidence such as a doctor's note or at least orally relaying a statement from a doctor." Ekstrand, 583 F.3d at 976. It added that plaintiff never provided her employer specific information that a doctor had given her a diagnosis of seasonal affective disorder and told her she needed to be in a classroom with natural light until November 28, 2005, so defendant could not be held liable for not providing her the specific accommodation she

wanted earlier than that date. Id. at 976-77. The court found that a letter from a doctor sent to a defendant employer's workers' compensation carrier explaining a medical need for a specific accommodation is notice to the defendant employer. Id. at 976. Therefore, as of November 28, 2005, defendant knew of plaintiff's need for a classroom with natural light.

Even if it was error to allow these issues to be re-opened, none of the evidence introduced at trial undermined the factual bases for the court of appeals' legal conclusions. Plaintiff did not show that defendant knew of her medical need for a specific accommodation any earlier than November 28, 2005 and defendant did not show that its carrier did not receive the November 28 letter or that the letter did not contain the information on which the court of appeals relied.

As to the remaining issue, whether plaintiff was a qualified person under the ADA in late November and December of 2005, defendant argues that she was not and adds that, even if it knew on November 28 what plaintiff needed for an accommodation, it did not know that plaintiff could be able to return to teaching if she was promised a classroom with natural light. Thus, it says, it had no duty under the ADA to let plaintiff know that she would be provided such a classroom when her leave expired and she returned to teaching. Plaintiff argues that because she was a qualified individual under the ADA at the time and still employed, defendant had a duty to offer her the accommodation. The court of appeals agreed with plaintiff's position, holding that if plaintiff was still qualified, defendant was

required to provide the specific accommodation she needed unless doing so would impose an undue hardship on defendant. Ekstrand, 583 F.3d at 977 (citing 42 U.S.C. § 12111(1)). (As I noted, defendant has never argued that it would have suffered an undue hardship in moving plaintiff to another classroom, so that issue can be ignored.)

Was plaintiff still qualified to teach first graders? The court of appeals thought it likely that she was, because she had informed Superintendent Rosburg on November 14, only two weeks before defendant received her psychologist's letter, that she was willing and able to return to work in a classroom with natural light.

At trial, plaintiff testified that when she met with Superintendent Rosburg on November 14, 2005, she broke down when she tried to explain what had happened to her in the 2005 school year. As she described it, although she had started taking medications, her emotions were still raw and she could not stop crying during the entire time she was with Rosburg. Tr. trans., dkt. #148, at 62. However, as the court of appeals pointed out, between November 14 and November 30, 2005, plaintiff's doctor, Arnold Potek, indicated in his notes that plaintiff's condition had improved slightly during that time. Potek Outpatient Clinic Notes of November 17, 2005 and November 30, 2005, tr. exh. #50, at 15, 16. Although the same notes show that on November 17, plaintiff still found her weeping difficult to control and was experiencing daytime drowsiness, she testified that in December she was feeling much better, "starting to feel more like me, more like a real

person." Tr. trans., dkt. #148, at 71. She was receiving support from both her psychologist and Dr. Potek, along with medication and therapy. Id. She conceded that life was not perfect and that she was still having some difficulty finding the right medication, but life was better than it had been in October or November. In December, she said, all she wanted was to be "back at work, doing what I love to do in a room that wasn't making me sick." Id.

The jury found that plaintiff continued to be qualified to perform her job with or without accommodation until July 2007, well past the time when defendant should have been aware of her disability and its obligation to accommodate her disability by providing her a room with exterior windows. This is a questionable finding in light of Dr. Potek's January 3, 2006 letter that plaintiff needed a leave of absence through the end of the school year. The court of appeals believed that this letter marked the cutoff date on which it was determined that plaintiff was no longer qualified for classroom teaching, at least through the 2005-06 school year. However, it is implicit in the verdict that the jury found plaintiff to be qualified in December 2005. If she was a qualified individual under the ADA in December, it follows that defendant had an obligation to advise her then that it would provide her the accommodation she had requested, as the court of appeals held. Ekstrand, 583 F.3d at 977. Its failure to do so was a violation of the ADA.

In summary, I conclude that defendant's motion for judgment as a matter of law must be denied. The jury's award of $1,996, 662 must be reduced to the statutory cap, as

42 U.S.C. § 1981a(b)(3) requires. In a separate opinion issued herewith, I have found the statutory cap to be $100,000, as the parties stipulated at trial.

ORDER

IT IS ORDERED that defendant School District of Somerset's motion for judgment as a matter of law under Fed. R. Civ. P. 50(b) is DENIED. The clerk of court is directed to enter judgment for plaintiff Renae Ekstrand in the amount of $100,000.

FURTHER, IT IS ORDERED that the parties are to brief the issue of attorney fees. Plaintiff may have until April 4, 2011, to update her fee request. Defendant may have until April 18, 2011 in which to file any objections it has to the request. Plaintiff may have until April 28, 2011 in which to file her reply.

Entered this 29th day of March, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge