2019 IL App (1st) 180440-U

No. 1-18-0440

Order filed on March 29, 2019

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

DEBORA PICKEN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 16 L 3633
	)	
DOYLE SIGN, INC., a Corporation,	)	The Honorable
	)	Margaret Ann Brennan,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly granted defendant's motion for summary judgment on plaintiff's retaliatory discharge claim because she failed to provide the requisite medical release to return to work. We affirm.

¶ 2 Plaintiff Debora Picken appeals from a February 1, 2018, circuit court order granting summary judgment in favor of defendant Doyle Sign, Incorporated (Doyle), on plaintiff's retaliatory discharge claim based upon her prior worker's compensation claim and employment

with defendant.[1]

¶ 3 Briefly stated, plaintiff was a member of the International Brotherhood of Electrical Workers, Local 134 and was initially employed by defendant as a neon sign glass bender in 1990. Throughout the course of her employment, plaintiff worked in various departments at Doyle, including vinyl, paint, soldering, awnings and outdoor installations. Plaintiff began experiencing severe irritation to her eyes while at work and as a result, was granted several paid leaves of absence beginning in November 2013. Plaintiff was diagnosed with severe allergic conjunctivitis in January 2014. Her allergist, Amee R. Majmundar, M.D., noted that plaintiff "is an electrician and has occupational exposure with high mold counts and possibly dust mites" and recommended "avoidance of possible exposures at work." A month later, an environmental consultant inspected defendant's facility and found that despite evidence of previous water damage, there was no existing dampness, leaks or significant mold growth in the neon area.

¶ 4 Plaintiff returned to work in the vinyl department on May 1, 2014, but stopped working shortly thereafter. In a physician's note dated May 15, 2014, Majmundar indicated plaintiff had been under her care for "severe allergic conjunctivitis," and stated, "[plaintiff] reports that her symptoms worsen at the workplace, where she is exposed to mold. Due to persistent symptoms and high medication requirement, continued medication and strict avoidance is necessary for her condition to improve." That month, plaintiff filed a claim with the Illinois Worker's Compensation Commission (Commission) against defendant, alleging that she suffered "[s]evere and permanent" injuries to her "[e]yes, [l]ungs and respiratory system, [and] entire body" as a result of exposure to "high levels of mold, dust mites & contaminants [*sic*]." Over a year later, her claim settled and was approved by the Commission on September 1, 2015.

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order

¶ 5 Thereafter, plaintiff's union representative, Mike Leyden, had several conversations with defendant about plaintiff's return to work wherein defendant requested a physician's note releasing her to work. Plaintiff submitted a note from a general practitioner, instead of her allergist, stating, "[plaintiff] is physically fit to work." Defendant expressed concerns about reinstating plaintiff because of her previous medical issues in relation to the company's normal work environment, which had not changed. As such, defendant initially requested a medical release stating that plaintiff "is not allergic to dust mites, mold, welding and paint fumes and other allergens and that it is safe for her to work in conditions that expose her to these elements." At that time, he also requested that plaintiff sign a waiver stating she would not seek worker's compensation relief from any problems "relating to allergies or problems similar to what she experienced here previously." In a subsequent conversation with Leyden, however, defendant indicated that because of the company's normal work environment, "[a]t the very least, the allergist that treats [plaintiff] should write a letter specifically stating that she will be fine and healthy working around dust, mold and airborne contaminants typical of our manufacturing facility."

¶ 6 In 2016, plaintiff filed a complaint against defendant for retaliatory discharge based upon the filing of her worker's compensation claim. Defendant moved for summary judgment pursuant to section 2-1005 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1005 (West 2016)), asserting, among other things, that defendant did not discharge plaintiff but, rather, conditioned her reinstatement upon a medical release from her allergist because "she was seeking to return from a seventeenth month medical leave for an allegedly severe allergic condition which she claimed was caused by air contaminants at Doyle Signs."

¶ 7 The circuit court heard arguments from both parties and entered summary judgment in favor of defendant on February 1, 2018. In reaching its conclusion, the court found that defendant's request for a medical release from plaintiff's allergist was reasonable and that she failed to provide it. Plaintiff now appeals.

¶ 8 ANALYSIS

¶ 9 Summary judgment is proper where the pleadings, admissions on file, depositions and any affidavits, reveal no genuine issue of material fact so that the movants are entitled to judgment as a matter of law. *Miller v. Lawrence*, 2016 IL App (1st) 142051, ¶ 21. The movant may satisfy its burden by either affirmatively demonstrating that an element must be resolved in its favor or by showing an absence of evidence to support the nonmovant's case. *Id*. ¶ 22. In addition, courts must strictly construe the record against the movant. *Id*. ¶ 21. We review summary judgment rulings *de novo*, and may affirm the judgment on any basis in the record, regardless of whether the circuit court relied on that basis or its reasoning was correct. *Id*. ¶¶ 21, 22.

¶ 10 Illinois courts recognize retaliatory discharge as a limited and narrow exception to the general rule that at-will employment is terminable at any time for any or no reason. *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 159 (1992). In addition, it is well-settled that the tort of retaliatory discharge does not encompass any behavior other than actual termination of employment; thus, constructive discharge is insufficient to sustain an action for retaliatory discharge. *Welsh v. Commonwealth Edison Co.*, 306 Ill. App. 3d 148, 153 (1999). A valid claim for retaliatory discharge requires that (1) an employee has been discharged; (2) in retaliation for the employee's activities; and (3) that the discharge violates a clear mandate of public policy. *Hartlein*, 151 Ill. 2d at 160. Moreover, the element of causation is not met if the employer had a

valid, nonpretextual basis for discharging the employee. *Id*. In this regard, an employer is not obligated to retain an at-will employee who is medically unable to return to her assigned position nor is he obligated to reassign that employee to another position in lieu of terminating the employment. *Id*. at 159-60. Likewise, an employer may fire an employee for excess absenteeism regardless of whether it results from a compensable injury. *Id*. at 160.

¶ 11 Here, the circuit court properly granted defendant's motion for summary judgment because it is undisputed that plaintiff failed to provide the requisite medical release from her allergist in order to return to work at Doyle. *Cf. Herman v. Power Maintenance & Constructors, LLC*, 388 Ill. App. 3d 352, 364 (2009) (finding a genuine issue of material fact existed where the defendant's stated reason for refusing to recall the plaintiff, *i.e*. substandard job performance, conflicted with the plaintiff's "mostly good or excellent" performance evaluations). Thus, defendant did not discharge plaintiff because her return to work was conditioned upon the above-stated physician's note, which she failed to provide. *C.f. Hinthorn v. Roland's of Bloomington, Inc.*, 119 Ill. 2d 526, 529, 530-31 (1988) (finding the plaintiff sufficiently alleged facts that she was discharged where the defendant directed her to sign a " 'Voluntary Resignation' " form or face losing her job and, thus, forced her resignation).

¶ 12 Nonetheless, plaintiff cannot establish causation because defendant was not obligated to retain plaintiff as an employee when she was medically unable to return to her position at Doyle. See *Hartlein*, 151 Ill. 2d at 160. As set forth above, plaintiff was diagnosed with severe allergic conjunctivitis by her allergist, Majmundar, who stated that plaintiff reported "her symptoms worsen at the workplace, where she is exposed to mold" and that "[d]ue to persistent symptoms and high medication requirement, continued medication and strict avoidance is necessary for her condition to improve." As such, defendant's request that, "[a]t the very least, the allergist that

treats [plaintiff] should write a letter specifically stating that she will be fine and healthy working around dust, mold and airborne contaminants typical of our manufacturing facility," was a reasonable condition for her returning to work given that Doyle's work environment, including the neon sign department, had not changed.

¶ 13 Based on the foregoing, we conclude that the circuit court correctly entered summary judgment on plaintiff's retaliatory discharge claim.

¶ 14 CONCLUSION

¶ 15 For the reasons stated, we affirm the circuit court's judgment.

¶ 16 Affirmed.