No. 20-8137

ORIGINAL

RIB

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON DC 20543

MARILYNN M. MCRAE – PETITIONER

vs.

DONNIE HARRISON, Sheriff – RESPONDENT(S)

PETITION FOR REHEARING ON THE WRIT OF CERTIORARI

SUPREME COURT OF THE UNITED STATES

PETITION FOR REHEARING

Marilynn M. McRae

4233 Birmingham Way

Raleigh, NC 27604

(919-225-8290)

No. - 20-8137

Pursuant to rule 44 of this court, the petitioner Marilynn M. McRae hereby, respectfully petitions for rehearing of this case by a preponderance of factual evidence that contradicts the trial court and appeals court judge's decisions in favor of respondent, Donnie Harrison, Sheriff.

The evidence will show Unfairness and violations of defendant's attorney, Jennifer Jones and associates toward the plaintiff/appellant, Marilynn McRae and as a result caused her harm and the dismissals of her case.

The listed rules and regulations of the North Carolina State Bar is associated with this case regarding the unethical behavior of defendant's attorney Jennifer Jones, and associates.

Rule 3.4 (a)(b)(c)(d) Fairness To Opposing Party, Rule 3.5(10)(11) Impartiality and decorum of the Tribunal, Rule 4.1 Truthfulness in statements to others, Misrepresentation (1) Statement of Fact, (2), Crime or Fraud by Client (3) Under Rule 1.2(d), Rule 4.4 Respect for rights of third persons (Comment (2)). Rule 3.2 Expediting Litigation (Comment (1), ethics opinion notes CPR321) It is improper for an attorney to file motions and pleadings for the mere purpose of delay. Rule 3.3 Candor Toward The Tribunal, (a)(1)(3), (b)(d), (Comment (2)). Representations by a lawyer, (3), Rule 1.2(d), Legal Argument (4), Offering Evidence (5) paragraph (a)(3), (6), (8), and see Rule 1.0(g), (9) paragraph (a)(3), (11) and see Rule1.2(d), (12), Duration of Obligation (14).

No. 20-8137

STATEMENT OF FACTS

1. On September 23, 2019, Case 5:17-cv-00023-H-KS (DE 83) page 1 of 20; the Honorable Judge Malcolm J. Howard, Senior United States District Judge filed an Order on the defendant's motion to dismiss, (44). Plaintiff proceeding pro se responded, DE 48. Pages 11- 20.

   a. Wrongful Discharge under the ADA –Denied

   b. Failure to Make a Reasonable Accommodation –Denied

   c. Retaliation –Denied

   d. Harassment / Hostile Work Environment –Denied

   e. Intentional Infliction of Emotional Distress –Granted

   f. Family Medical Leave Act (FMLA) Violations –Denied

2. On January 28, 2020, (DE 90) ORDER pages 1-27 contradicted his ORDER (DE 83), and all the orders dismissing the defendant's motions to dismiss.

   On this date Judge Howard granted Summary Judgment in favor of Sheriff, Donnie Harrison.

   Appellants factual documents were not acknowledged in ORDER DE 90 referencing all of the attorney's entries in respondents Memorandum in Support For Summary Judgment.

   The District Court were given the originals of the factual documents, and copies given to sheriff Harrison's attorneys.

Plaintiff filed a letter to Judge Howard notifying him on January 1, 2019, DE 57, pages 1-14 of the unethical practices of attorney Jones toward the plaintiff. Plaintiff asked Judge Malcolm to take her of the case or hoping that he would intervene to stop Sheriff Harrisons attorney Jennifer Jones. Nothing was done and attorney Jones continued to delay the case and continued to mislead the tribunal by leaving out the truth and factual documents she has in her possession. (Ex. A Letter to Judge Malcolm Howard attached).

3. Attorney Jones Memorandum In Support Of Motion For Summary Judgment, DE 66 Filed April 15, 2019, pages 1 of 32.

   a. Attorney Jones states on page 5 no. 1. That plaintiff's claims under the ADA should be dismissed because the forecast of evidence fails to establish that there is a genuine issue of material facts. Attorney Jones states in the second paragraph that, "Plaintiff was not able to perform the essential functions of a detention officer, and thus as a matter of law, Defendant is entitled to summary judgment on all ADA claims.

Attorney Jones had in her procession the job assignments that the plaintiff was assigned to and working at the sheriff department that included the dorms, laundry control stations, and general duty. Plaintiff was performing the essential functions of a detention officer until she was made by her supervisors to go on nightshift on a twelve- hour shift and work in the control stations only. The detention

Administrators made a new light duty policy for the detention staff only, everyone in detention except the Administrators had to abide by the new policy.

b. The new policy was implemented on August 1, 2013 for detention staff only. The policy was discriminatory and as a result EEOC through the charges that plaintiff filed made the sheriff department change the policy where everyone that worked in the sheriff department. The policy was discriminatory that separated a class of people. Attorney Jones mislead everyone by saying in her reports that plaintiff was put on night shift because of her working eight- hours, and fail to say in any report that plaintiff was made to go on nightshift per the implementation of the new light duty policy, and work in the control station only.

c. Attorney Jones had Director Butler falsify an affidavit and he didn't tell the truth. Both parties knew that plaintiff was working in other areas of the jail and with inmates. Nightshift shuts down at 12.00 am and all the inmates are locked down in the room if they have a room. The officer working the floor would come in and relieve me after my eight-hour shift was complete. There were no other officers needed on the floor and no one had to do extra work. If Director Butler and Director Higdon had given plaintiff a lunch break, her time would have been extended on the job to work an additional 45 minutes. Director Higdon refused to change her hours of work they gave her when she went on nightshift that was from 6:45 pm to 2:45 am., which didn't include a lunch break or a regular break that everyone has the

pleasure of enjoying at the detention centers. The appellant was the only employee at the Wake County Sheriff Office that was not allowed a regular schedule whether or not on an eight-hour shift or a twelve-hour shift.

2. Respondent through his attorney stated in part 1. pg. 5 of the memorandum of the summary judgment that: Plaintiff 's claims under the ADA should be dismissed because the forecast of evidence fails to establish that there is a genuine issue of material fact.

(a) Fact by appellant and record on multiple documents in the CMF that appellant work at other locations in the jail with inmates, until the light duty policy was implemented, and appellant was mandatoried to work in a control station, per discriminatory light duty policy, which EEOC made them change to include all WCSO employees. The lawsuit the appellant implemented and wasn't allowed the benefit of using. The new light duty policy is in her federal FOIA file.

Respondent pg. 5 - 8: Defendant is Entitled to Summary Judgment on Plaintiff's Failure to Accommodate Claim.

FACT: Under this claim the attorney admits to all the requirements under the ADA that qualifies the appellant, other than that the appellant fails under the third and fourth element that of a failure to perform the essential functions of her job, with or without accommodations. Respondent details classification 7036 job description. Appellant was working in multiple areas of the job and with inmates, and only had to work in the control station only per her administrators for being on light duty status. Which caused the appellant to only be able to do that job. The

respondent attorney failed to mention that I was only working the control station because I needed and had to keep my job, per the new light duty policy for detention officers, and regular supervisors other than the administrators. Nor did or do she mention that I asked for a modified schedule of working a full eight-hour forty hour week and was denied and harassed. The attorney use information as factual and leave out pertinent information that she know to be true, which mislead anyone if they don't read the full case and see that the documents are legitimate and was recorded or received from the sheriff's office computer, emails, or letters sent to her. At no time did the appellant believe that the control station was a permanent position because she was working in other areas of the jail.

Respondent: No. 1 pages (9-10) The Control Booth Job was Not a Permanent Position, and Employer is Not Required to Create a Permanent Position.

Appellant Fact: Appellant was only continually working in the control booth, due to the implementation of the new light duty policy, dated August 1, 2013 generated for everyone on light duty only. Prior to the detention administering the policy the appellant was working in other areas of the jail and with inmates. The assignment documents were given to respondent's attorney who have them in her possession, All of the verification documents are recorded in the case files in this case. The attorney for sheriff Harrison continually leave out pertinent information and continually state the same information with case files of other cases and continually repeat certain medical dr. notes and never mention the other dr. notes or return to work dr. notes and certification from the appellant doctors who said she can return to her full -time duties and on the 12 hour shift. Attorney Jones always leave out pertinent information that she have in her procession, and misrepresent the truth.

~~Respondent DE 66, pg. 12-14:~~ Defendant Was Not Required to Convert a Temporary Light Duty Position into a Permanent Position as a Reasonable Accommodation.

Appellant Fact: Attorney Jones misled the facts again. Appellant did say in DE 66 page 13 line 3-8 Question: Did you ever request a reasonable accommodation. Answer - I answered the control station was an reasonable accommodation. I informed them. My doctor informed them. What more did they need, Question: line 7 What did you ask for as your accommodation? Was it to work permanently in the control station?

Answer: Of course not. It was not- even though we do have permanent control station workers. We do. Sheriff department do have permanent control station workers. No I did line 12 - not ask that because I didn't think my condition was going to be permanent. It was for the time being, for when I couldn't work on the floors or around inmates.

It was never said that the Appellant believed the control station to be a permanent Position and was working in the control station per orders from the mandatory light duty policy. Appellant asked for a modified shift for her disability and was given 6;45 pm to 2:45 am, with no lunch break of 45 minutes, and a 15 min. break. All other employees had regular lunch breaks and 2 – 15- minute breaks.

Respondent DE 66, pages 14-18: Defendant is Entitled to Summary Judgment on Plaintiff's Wrongful Termination Claim under the ADA.

In Haulbrook, the Fourth Circuit stated:

In an ADA wrongful discharge , a plaintiff establishes a prima facie case if she or he demonstrates that (1) she or he is within the ADA'S protected class; (2)she or he was discharged; (3) at the time of his or her discharge she was performing the job at a level that meth her employers legitimate expectations; and his or her discharge occurred under circumstances that raise a reasonable inference of unlawful discrimination.

Haulbrbrook v. Michelin N. Am, 252 F. 3d 696, 702 (4th cir. 2001)

Appellant Fact: Appellant was working in other areas of the detention facility in dorms, general duty, laundry, control stations, and with inmates. Job assignments given to the court with dates. Appellant was performing essential duties.

Appellant on February 14, 2014 was home preparing to come on shift and received a phone call and was told not to report to work if she couldn't work a twelve-hour shift. Appellant was on an eight hour a day, schedule and had to stay on the twelve -hour rotation per Assistant Director Higdon which decreased her hours of work by four hours each day she worked. If she had been allowed to work the modified shift it would have been a forty- hour shift, modified from her original shift of 168 hours a month, as requested per her medical physician.

Appellant applied to her short term disability policy and received the additional (4) four- hours of pay lost. Prior to the disability policy kicking in appellant used her leave and sick leave pay for the additional hours.

Appellant was in limbo until December 19, 2014 when she was terminated. Prior to termination Appellant had completed her mandatory training, which consisted of physical training in inmate takedown, running, and other training and passed the training and was allowed to keep her certification as an officer. Appellant was terminated not long afterward. The training was in November of 2014.

Appellant had problems with trying to get the dates for training from approximately April till receiving the information in November from Captain Brown. While at training Lt. Oxendine told me that I wasn't supposed to be there and I informed her that I was on schedule to be there.

Respondent DE 66 pages 19 -22: Defendant is Entitled to Summary Judgment on Plaintiff's ADA Retaliation Claim.

Appellant Fact: Under Title of the Americans with Disabilities Act (ADA), a

reasonable accommodation is a modification or adjustment to a job, the work environment or the way things are usually done during a hiring process.

It's also illegal to harass an employee because he or she has a disability in the past, or is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less), and minor (even if he or she does not have such an impairment). Under the ADA, and Equal Employment Opportunity Commission – Disability Discrimination.

Appellant was told by her superiors that she wasn't going to work a regular 40- hour week schedule when they knew that's the procedure when employees medical doctors put them on limited hours from the regular 12- hour shift rotation. Appellant was on the 40 hour shift in 2008 with the sheriff department. By the appellant not accepting their bullying by taken rights of enjoyment of being able to work in a decent environment caused her superiors to strike back harder. As a result they took her out of work shunned her and then fired her. They tried to break her spirit. There was not one employee that suffered like the appellant. What she have endured even with this lawsuit is out of the norm. Appellant never expected to also be treated unfairly by the respondent's attorneys.

Appellant satisfied through factual documents that she qualifies under the ADA.

Respondent DE 66 pages 24-27: Defendant is Entitled to Summary Judgment on Plaintiff's FMLA Claims.

Appellant Fact: The sheriff department violated her FMLA rights by taking away the need for her to use the leave when she needed it. When appellant was told not to come back to work they used the FMLA leave to cover the harassment of them calling me at home and telling me just not to come back to work. Appellant didn't know that they had put her on FMLA leave. Appellants short term disability policy

Find Rule 33 34

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

July 15, 2021

Substantial grounds; In order for a ground to be substantial, it must be reasonable, arguable, and weighty. A ground that does not stand any chance of being sustained, and if a ground is considered substantial the court does not evaluate each argument put forward in support of such a grounds

Marilynn McRae
4233 Birmingham Way
Raleigh, NC 27604

RE: McRae v. Harrison
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substantial; Worthwhile, Important - a substantial reform.
Real; actual; true the evidence is substantial - of or relating to the basic or fundamental substance or aspect of a thing

Dear Ms. McRae:

The petition for rehearing in the above-entitled case was postmarked July 12, 2021 and received July 15, 2021 and is herewith returned for failure to comply with Rule 44 of the Rules of this Court. The petition must briefly and distinctly state its grounds and must be accompanied by a certificate stating that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

You must also certify that the petition for rehearing is presented in good faith and not for delay.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 15 days of the date of this letter, the petition will not be filed. Rule 44.6.

Intervening Circumstances;
When considering intervening causes what determines whether a defendant would be liable.
In tort law, an intervening cause is an event that occurs after a tortfeasors initial act of negligence and causes injury/harm to a victim. An intervening cause will generally absolve the tortfeasor of liability for the victims injury only if the event is deemed a superseding cause.

Sincerely,
Scott S. Harris, Clerk
By:
Redmond K. Barnes
(202) 479-3022

In tort

Enclosures