23-6781

ORIGINAL

No. 22A1015

IN THE

SUPREME COURT OF THE UNITED STATES

STEPHANIE NORMAN --- PETITIONER

V.

H. LEE MOFFITT CANCER CENTER—RESPONDENT

JACKSON LEWIS, P.C.

390 N. ORANGE AVE. #1285

ORLANDO, FLORIDA, 32801

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED:

In this case, Family Medical Leave Act (Interference) and (Retaliation), Americans with Disabilities Act Amendments of 2008 ADAAA (Disability Discrimination) and (Retaliation) and Florida Civil Rights Act (Disability Discrimination) and (Retaliation). Under the Family Medical Leave Act of 1993, if employers interfere/retaliate against an employee for exercising their rights under this act they are subject to civil liability. (Doc. 1 all counts I-VI and compensations).

Under ADAAA 2008 Disability Discrimination/Retaliation the defendant actions constitute a violation which they are liable. Under Florida Civil Rights Act Chapter 760, Florida Statues respondent actions constitute a violation by disability discrimination and retaliation.

1. **Whether the U.S. Appeals Court erred Affirming with District Court granting Summary Judgment to Defendant for petitioner's entire compliant (Doc. 1) for lack of evidence and would not allow the record to be supplemented with evidence? Material evidence attached.**
2. **Whether a doctor's order to return to work can be overridden?**

LIST OF PARTIES

All parties appear in the caption of the cover page.

RELATED CASES

Stephanie Norman v. Moffitt Cancer Center, No. 21-12095, U. S. Appeals for the Eleventh Circuit, Judgment entered on 22 February 2023.

Stephanie Norman v. Moffitt Cancer Center, No. 19-cv-02430, U.S. District Court Middle District of Florida, Judgment entered on 26 May 2021.

Ziccarelli v. Dart, No. 19-3435, U.S. Court of Appeals for the Seventh Circuit, Judgment entered 01 Jun 2022.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Stephanie Norman, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appx. A1-A6 to petition and is reported at LEXIS 34734 (11 Circuit Nov. 22, 2021)

The opinion of the United District Court granting Summary Judgment appears at Appx B1-B6 to the petition and is not reported and may be found at 2018 U.S. Dist. LEXIS

JURISDICTION

The date on which the United States Court of Appeals decided my case was February 22, 2023. No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Response To Questions Presented:

1**Issue is whether the U.S. Appeals Court erred Affirming with District Court granting Summary Judgment to Defendant for petitioner's entire complaint (Doc. 1) for lack of evidence and would not allow the record to be supplemented with evidence?

> An issue is "genuine" if a reasonable jury could possibly hold in the non-movant's favor with regard to that issue. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S.Ct. 2505, 2509-10, 91 L.Ed.2d 202 (1986). A fact is material if it influences the outcome under the governing law. Id. at 248, 106 S.Ct. at 2510 (omitted citation).
>
> Admissions on file," designate "specific facts showing that there is a genuine issue for trial." 241 U.S. App .D.C. 246, 746 F.2d 1563, vacated and remanded (omitted citation).

Norman material evidence is attached for genuine issue. Norman was still on FMLA status (**Appx. E16**).

Adickes, "in seeking review here, the District Court erred both in directing a verdict on the substantive count, and in granting summary judgment on the conspiracy count. Last Term we granted certiorari, 394 U. S. 1011 (1969). (Omitted citation), and we now reverse and remand for further proceedings on each of the two counts".

Rule 56(e) of the Federal Rules of Civil Procedure and this Court's decision in *Adickes* v. *S. H. Kress & Co.*, 398 U. S. 144, 159 (1970), establish that "the party opposing the motion for summary judgment bears the burden of responding *only after* the moving party has met its burden of coming forward with proof of the absence of any genuine issues of material fact."

2** Issue whether a doctor's order to return to work can be unilaterally overridden?

Bragdon v. Abbott, 118 S.Ct. 2196 (U.S. 1998). This case pertains to Supreme Court further held in *Bragdon* that "determination that an individual poses an unacceptable health or safety risk, also known in the law as a "direct threat," must be based on medical or other objective evidence. Even a good-faith belief that there is a significant risk is insufficient, the court advised. This holding also translates easily to employment-related matters: It made it clear that a determination that an applicant or employee poses a direct threat must be based on objective evidence".(Quoted).

Marie[1] (OH) (Doc.50-3:p1-2). Marie (OH) supervisor who states she is a nurse-by-training, did not follow doctor's order which stated return Norman back to work on 06 September 2017. She stated her beliefs and followed her own instructions by not following doctors' orders (**Appx. E20**).

[1] Petitioner—Norman
Defendant--- Moffitt, Suzy, Mary, Jennifer, Marie (OH) Dennis, Gloria, Frances (LOA) and others.

STATEMENT OF THE CASE

Norman had a healthcare career of over 25 years before starting to work at Moffitt on 13 July 2015 as a Medical Coder Trainee. With over 14 years of being a medical coder with other employers, Norman decided to pursue higher education with a degree in healthcare. Norman completed her MBA Degree focused in Healthcare Management in 2011, and looking forward to a position as a Director of Healthcare.

After the completion of certification she became a Certified Outpatient Hospital Coder with Moffitt 2016. Norman worked from home with Moffitt's office equipment for a short period of time from 2016 to around April 2017. Suzy requested Norman to return to office to work and stated do not ask to work from home until we (Suzy & Mary) let you know otherwise.

This position with Moffitt was a God given opportunity and Norman's main source of income for herself, 2 young college students and elderly parents. This job provided Norman with enough disposable income to care for family and pay all bills on time without payment plans.

Therefore, there is no way Norman would have forfeited her career if letter was received by not responding to certified letters dating (**Appx. E34**), 22 January 2018 and 14 February 2018 (Doc. 51-2), Exhibit 35 and 36, if she had received them. Norman requested tracking signature card as proof of receipt to which Defendant

never produced to Norman with proof when sending RFP's (Response for Production). Please see Defendant's answers to Plaintiff Interrogatories (**Appx. D13**). Defendant completed these after Dr. List and others were given an accommodation to resign. List resigned in 2019.

Norman loved her job with Moffitt and gave it 100% of herself, skills and educational background while following coding clinic guidelines (**Appx. D1**). Concerning Moffitt's productivity and Norman meeting it: There have always been issues with Moffitt's documentation where the diagnosis are not definitive or correct within doctor's notes. (Meaning Lateralization ICD10). All coders experience this. Norman remembers educator Dennis wanting her to charge patients for services not rendered or received.

Norman had numerous conversations with management Suzy, Mary, Gloria, Dennis, Jennifer and others concerning this issues about doctor's documentation not stating definitive diagnosis (**Appx. D7**) in patient's electronic medical records. The HIM department (coders, supervisors) that works for Moffitt knows this is true. Approximately (90%) of the time coding patients' visit for any given date of service, Norman would have to look back at another visit to ascertain specific diagnosis. When asked about incorrect diagnosis, Suzy and Mary would say look at a previous

charge and code it the same; which is not appropriate under clinical guidelines (**Appx. D1, D3**).

For example, doctors write/type patients' diagnosis that are not clearly stated or precise on documentation. Doctor's state Breast Cancer which is coded as (C50.919)[2] on the chart which is Breast Cancer unspecified and Medicare does not pay this code (**Appx. E10, D3**). Therefore, looking back at previous notes takes time to find the patients' specified dx[3] sometimes coders have to go all the way back to the surgery note from 1 to 2 years ago which stated Left Breast Cancer upper-outer quadrant coded as (C50.412).

Another example, chemo medications and radiation (**Appx. D5**) given for treatments should be on order listed in patient chart for that date of service, instead Moffitt doctors just write a running list of dates and unspecified diagnosis and circle what date it should be given (**Appx. E4**). This requires medical coders[4] to look on a previous date of service note to code current medications given for current date of service bill (**Appx. D5, E6**).

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[2] ICD-10... International Classification of Diseases

[3] Diagnosis.. (dx)

[4] Medical coder: Abstracting coding information from Medical Chart, entering diagnosis codes for outpatients from different clinics (Cancer center).

There are many occasions where patients visit 3 doctors in one day and when coding that date of service, all visits for that day are coded on one bill. Therefore, Norman had to read all three clinical notes to code the bill correctly. Managers and supervisors are only interested in Primary Diagnosis being correctly coded, but the patients' other diagnosis tells a story about their health as well, not just the cancer code. When coders are moved to a different educator the same accounts would be coded different (**Appx. E8**), because of the educator. Norman's rebuttal with coder educator about incorrect diagnosis, even Suzy stated documentation is not clear. (**Appx. D7**). If the doctor's documentation were clearly stated, there would be no back and forward about diagnosis. Doctors' unclear documentation clearly stated, causes Norman to re-read note before coding.

Moffitt's process of coding is different even when patients' cancer is removed completely with treatment of chemo and radiation, Moffitt still charges patients' insurance as "current cancer" not history until after five or ten years later by treating with a long term drug. Norman's education for coding was as coding clinic states; if the doctor does not state a specific diagnosis send documentation back to that doctor for clarification. Per clinical guidelines (coding clinic) (**Appx. D1**).

Norman filed for FMLA and was approved, shortly after experienced a serious health condition "Cough Variant Asthma[5]" (**Appx. E18**) from there she was terminated by Moffitt in February 2018, which Norman was told over voicemail from Suzy (**Appx. D9, D15**). Norman filed an EEOC complaint and received Notice of Right to Sue (**Appx. E2**) and later found Moffitt listed her with a No-Rehire (**Appx. E12**) status and she was not informed until she requested records from them (RFP). With that being said, Moffitt caused irreparable damage to her career on all counts listed in (Doc.1) as well as malicious, reckless intent causing emotional distress, exacerbating her condition and discriminated against her. This is a genuine issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986).

Norman disputes (Doc.54) with her attached evidence as proof that statements are not factual truth. Regarding number four, Norman's start date was 13 July 2017 not 16 June 2017. Regarding number five, there is no kind of anonymous activity at Moffitt, especially regarding complaints. Regarding number thirteen Norman's EIP was dated 26 July 2017 (**Appx. E14**), to which Suzy did not mention anything about termination but only asked how she could help (**Appx. D11**).

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[5] Cough Variant Asthma—a type which the main symptom is dry (non-productive cough). (A non-productive cough does not expel any mucus from the respiratory tract.) People with cough-variant asthma often have no other "classic" asthma symptoms, such as wheezing or shortness of breath (WebMD). (CVA) is a form of asthma, which presents solely with coughing. CVA is one of the most common causes of chronic cough.(nih.gov)

Statement Concerning Issues

Norman was discriminated against and terminated by former employer Moffitt while on FMLA leave. Norman has attached material evidence, received from the Defendant Moffitt (RFP's) stating Norman still on FMLA leave (**Appx. E16**). Norman was covered under both FMLA and ADA in the protected status, employees in the workplace may have rights under both laws if they meet the definition of a "serious health condition" "disability" (ADA) and (FMLA). Norman met both conditions diagnosed with Cough Variant Asthma (**Appx. E18**).

Workers who have exhausted FMLA leave can still have rights under ADA if they meet the definition of a person with a disability.

Accommodation is one such right (ADA National Network) (omitted citation). Suzy and Frances, Disability & Leave Administrator (LOA) knew of Norman's condition from doctor's note (text) (**Appx. E18, E24, D15**), and yet Norman was terminated due to her disability while still on protected leave (**Appx. E16**), B3, Doc 1 at 2 Count I).

On 26 May 2021, the district court issued an order. The Court granted summary judgment (Doc.49) on all counts (Doc.1). Judgment (Doc.61) shall enter for Defendant (Moffitt) and the Clerk is directed to close this case. Signed by Judge Jung. The Deputy Clerk entered the judgment the same day (Doc.62).

Defendant entered Bill of Cost (Doc.63) and Motion for Taxation of Cost (Doc.64) on 09 June 2021.

On 16 June 2021 Plaintiff filed (Doc.65) On Motion to Appeal (Doc.61) and Order on Motion for Summary Judgment (Doc.62). Transmittal of initial appeal package to USCA Eleventh Circuit (Doc.66) as well as (Doc.67) Miscellaneous Relief of Motion, specifically to waive appeal fee. Therefore (Doc.68) was filed denying without prejudice (Doc.67) due to needing the proper form 24 June 2021.

On 29 June 2021 Norman filed (Doc.70) Motion to Appeal in Forma Pauperius/Affidavit of Indigency. On 06 July 2021 Norman filed (Doc.71) Motion to Appeal in Forma Pauperius.

On 15 July 2021, The Magistrate Judge filed (Doc.72) Report and Recommendation re Plaintiff Norman (Doc.71). On 02 August 2021 Plaintiff Norman filed (Doc.74) Objection to (Doc.72) Report and Recommendations. Then on the same day the Magistrate Judge (Doc.73) Order Denying (Doc.70, 71).

On 22 November 2021 Norman filed (Doc.75) Motion to proceed In Form Pauperius. Norman is DENIED re as to (Doc.65) Notice of Appeal. USCA number 21-12095-D. On 29 December 2021, Norman filed (Doc.76) Motion for extension to pay filing fee. Motion was Granted same day. Norman paid filing fee on 25 February 2022.

On 08 August 2022, the Clerk of the District Court for the Middle District of Florida certifies that the record is complete for the purposes of this appeal re: (Doc.65) Notice of Appeal Documents was forwarded in paper format in addition to the electronic record. Volume of pleadings: 1 Sealed USCA number: 21-12095D (BES), the same day.

On 22 February 2023, USCAS OPINION issued by court as to Appellant Norman. Decision: Affirmed. USCA number: 21-12095AA.

REASONS FOR GRANTING THE PETITION

THE DECISION OF THE ELEVENTH CIRCUIT IS CONTRARY TO THE DECISIONS OF THIS COURT AND OTHER CIRCUITS AND THE LANGUAGE OF THE FEDERAL RULES CIVIL PROCEDURE 56.

1. The Eleventh Circuit has affirmed the decision of the District Court concerning Norman FMLA Interference/Retaliation, (Doc.1) all counts. Whether the Appeals Court erred in not allowing Norman to supplement the record and affirming Summary Judgment with District Court to Defendant (Moffitt) for lack of evidence submitted by Plaintiff. The Eleventh Circuit Courts of Appeal did not allow Plaintiff request of oral argument and denied Plaintiff to supplement the record with evidence.

A summary judgment is a ruling made by a court in favor of one party without a full trial (law. Cornell). The court can grant a summary judgment if there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. If there is a genuine issue of material fact, the case must proceed to trial, therefore a summary judgment should not be granted.

Due to Norman having material evidence the District Court should not have granted Defendant summary judgment (**Appx. A3 & B2**). If the Eleventh Circuit had allowed Norman to supplement the record summary

judgment would have been reversed (Doc.1) on all counts. Norman should have been given every opportunity to a jury trial.

In these cases the U.S. Appeals Courts and District Court failed to properly consider additional evidence that could have affected the outcome of the cases. The failure to allow the record to be supplemented with evidence can be a significant error, as it denies the parties the opportunity to present their full case and can result in an unjust outcome.

The District Court erred in granting summary judgment to the defendant for lack of evidence submitted.

I. In this case there is a genuine dispute with material facts. Celotex Corp. v. Catrett, 477 U.S. 317, 328 (1986). The U.S. Supreme Court held that a party seeking summary judgment need not produce evidence negating the non-moving party's case but must only point out the lack of evidence on an essential element of the non-moving party's case. The Court also noted that the nonmoving party must then come forward with specific facts showing that there is a genuine issue for trial. We granted certiorari to resolve the conflict, 474 U.S. 328 (omitted citation).

Applying the holding in Celotex Corp. v. Catrett, the U.S. District Court erred in granting summary judgment to the Defendant for lack of evidence submitted. The Plaintiff only had to show a genuine issue of material fact on an essential element of their case, which they did. Therefore, the Defendant should not have been granted summary judgment.

An issue is "genuine" if a reasonable jury could possibly hold in the non-movant's favor with regard to that issue.

Fed.R.Civ.P. 56(c). As the Supreme Court recently instructed in *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986), "there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party."

Rule 56(e) of the Federal Rules of Civil Procedure and this Court's decision in *Adickes* v. *S. H. Kress & Co.*, 398 U. S. 144, 159 (1970), establish that "the party opposing the motion for summary judgment bears the burden of responding *only after* the moving party has met its burden of coming forward with proof of the absence of any genuine issues of material fact." The District Court ruled that petitioner had "failed to allege any facts from which a conspiracy might be inferred." 252 F. Supp., at 144. This determination was unanimously affirmed by the Court of Appeals, 409 F. 2d, at 126-127. (Omitted citation)

Miss Adickes, in seeking review here, claims that the District Court erred both in directing a verdict on the substantive count, and in granting summary judgment on the conspiracy count. Last Term we granted certiorari, 394 U. S. 1011 (1969), (omitted citation), and we now reverse and remand for further proceedings on each of the two counts.

Before Norman was terminated, she requested a meeting with Mary (Manager) concerning moving to another position around 03 August 2017. Email was sent: Norman spoke with Mary and her reply was belittling and degrading. "You don't stick to anything". Norman replied, Excuse me, "I went back to school and completed Associate to Master's Degree graduating Summa Cum Laude and top 3% of my Master's Class Focus while working Full-time". This conversation transpired in person because Norman was looking for a new position. (**Appx. D25**).

I. FMLA has two types of claims Interference and retaliation. 29 U.S.C. §2615(a)(1)-(2).

Under the Family Medical Leave Act of 1993, if employers interfere/retaliate against an employee for exercising their rights under this act they are subject to civil liability. FMLA states that the medical certification must be sufficient to authenticate the need for leave and must be provided by a healthcare provider. The term healthcare provider is defined as a doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, or any other healthcare provider who is authorized by the state. In other words, a doctor's order for medical leave is considered valid and cannot be overridden by others. "Marie (OH) overrode

Norman's doctor's order to return to work on 05 September 2017, Marie stated outside OH building to Norman "she could not return her to work in the building with that cough until its gone (**Appx. E20, E22**). Marie emailed Suzy and left out pertinent information about Stephanie (**Appx. E22**) (Sensitivity was Normal, when it should have been High.)

Suzy (supervisor) stated that doctor's notes/excuses are not sufficient for employees out sick (**Appx. E24**). Suzy continued with individuals must be on FMLA to be out sick or it would count against them as an occurrence.

On or about 31 August 2017, Norman submitted paperwork and was approved for leave under the Family and Medical Leave Act (FMLA), due to experiencing a medical illness (Cough Variant Asthma). Marie (OH) never returned Norman back to work (building) due to her cough (**Appx. E20**).

Prior to applying for FMLA leave Norman was placed on an Employment Improvement Plan (EIP) around 27 July 2017 (Doc. 50-4 p. 29) with a revisit in 60 day, not 90 (**Appx. E14**), Suzy Bishoff and Mary Mayer, during this meeting

Norman made comments concerning the doctor's documentation not being precise and definitive with diagnosis on the medical chart. Norman must look back at previous (1-2 years ago) notes for the specified diagnosis. Concerning productivity, Mary and Suzy replied "You know how to code and you are good at it. Just code the note and move on" (**Appx D21**).

Norman stated "if this facility is ever audited it will be fined due to doctors' not correctly placing specified diagnosis on medical record and it has been coded specified for billing purposes".

Mary replied "We (Moffitt) is a specialty clinic and that's not happening." Norman asked questions concerning doctors' documentation and productivity, Suzy

replied "It's up to the Higher Ups." Norman replied who is that to which Suzy replied "I am not at liberty to say". Norman asked is it Dr. Alan List CEO/President whom it was at that time.

Norman asked if a meeting could be scheduled with Dr. Alan List to speak about issues concerning doctor's documentation not being specified. The answer was No!

After the meeting in July 2017, Norman went down stairs to the Human Resource Department and ask to speak with Chad concerning HIM department, only to be told that Veniece was HIM department complaint personnel. The front desk clerk stated Veniece was out to lunch and she would have her contact Norman.

Norman left a message with her name, phone number and email for Veniece to schedule an appointment to discuss things happening in her department. Needless to say, the meeting never materialized.

Ziccarelli v. Dart, 35 F. 4th 1079 - Court of Appeals, 7th Circuit 2022
The Seventh Circuit reversed the grant of summary judgment on Ziccarelli's FMLA interference claim. At the outset, the court noted that its prior FMLA interference decisions "have used varying language that has led to some confusion," with some requiring a denial of FMLA benefits, but others requiring denial or interference with those benefits. The court concluded that the latter formulation was correct because the text of the FMLA "makes clear that a violation does not require actual denial of FMLA benefits." Ibid. And despite having ordered additional briefing and amicus participation to address a conflict among the circuits, the court determined that it's reading of the FMLA "does not conflict with the relevant case law in this or

other circuits" because the "apparent contradictions prove illusory on closer inspection." Id. at 10a-11a. Starting with the statutory language, the court concluded that the "use of the disjunctive 'or' in § 2615(a)(1) signals that interference or restraint without denial is sufficient to violate the statute, and that requiring denial would turn 'interfere with, restrain. The court placed additional significance on the fact that the FMLA "protects 'the attempt to exercise' FMLA rights," concluding that, for the FMLA to protect such attempts, "it must **be read so** that an interference or restraint without actual denial is still a violation" (quoted).

To protect these rights, the FMLA prohibits covered employers from (i) interfering with, restraining, or denying the exercise of FMLA rights; and (ii) discriminating or retaliating against employees for exercising FMLA rights. See § 2615(a) (1) & (a) (2). The FMLA also grants employees a right of action to recover damages for violations of these provisions. § 2617(a) (2). To establish a claim of FMLA interference, an employee must prove three elements. First, the employee must demonstrate an entitlement to FMLA benefits. Secondly, evidence must show that the employer interfered with, restrained or denied the exercise of the right, or the attempt to exercise that right. Third, the employee must show harm occurred. *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 89 (2002) (citing 29 U.S.C. § 2615(a) (1)).

II. Norman was retaliated against due to becoming disabled and was never notified by Moffitt how FMLA was calculated such as starting at the beginning of year or another time. As well as never received any letters (**Appx. B. p.4**) (See Appx. E34) (Doc. 50-5 at 2-3. 5, 7) and (Doc. 51-2 at Pl.'s Dep. 184-187) the Defendant spoke of regarding termination. Norman never requested additional leave as an accommodation.

III. Defendant's Answers to Plaintiff Interrogatories (**Appx. D13**). This was sent with one set of instruction and Defendant changed it to

meet their needs. Defendant's reason for termination only points to letters plaintiff did not receive **(Appx. D13. #12, 15, 16, 17)**. This document was sent after Dr. Alan List (**Appx. D17**) resigned due to his conflict of interest between Moffitt and China. He was offered an accommodation to abruptly resign. Moffitt keeps saying letters were sent to the only address they had on file. Defendant could have use the only phone numbers they had on file, just as Suzy left a voicemail (**Appx. D9**) to inform Norman of the termination and to return remote work equipment (**Appx. D15**) see Exhibit that shows discrimination. Equipment was returned (**Appx. D27**).

Defendant has reached out to other employees they favored by whatever means necessary. No disrespect to a deceased employee, but Eddie was an employee who they could not reach by phone, instant message or email. Therefore, Moffitt contacted Eddie's emergency person by phone and they had the police check only to find he was home deceased.

With this being said, Moffitt discriminates against whom they choose and hide behind the company as if they are not discriminatory. All of this comes full circle to Norman's termination. Moffitt's ADA (**Appx. E26, E28**).

Moffitt retaliated against Norman by the statement below: Prima Facie.

1. Norman was an employee protected under FMLA. Moffitt took adverse action against Norman by not giving her written notice of termination decision, reason, as well as No accommodation. 2. Moffitt not informing Norman of letters sent to Norman's address Certified, which Norman did not receive. Norman requested signature card from certified mailed letters from Moffitt and to no avail. 3. Retaliation caused Moffitt action by not offering Norman an accommodation due to her disability, termination and No-Rehire which in result damaged her career in Healthcare. Defendant also used Norman's communication due to disability against her stating to be a Medical Coder you must "speak clearly". There are many means of communication in 2018. 98% of Moffitt's Coders (Hospital Outpatients) worked remote they all communicated by email, text, instant message within Moffitt's systems. Norman could have communicated doing the same as well as installing text to speak on office equipment, speaking in between coughing, emailing and instant message.

During deposition, Stephanie Alder-Paindiris (Moffitt's Attorney) asked "Do you not have to speak to be a coder?" "How are you going to communicate to doctors? (**Appx. E28**) Example of how coders communicate in office or home with one another as well as doctors. What she did not know is that Norman

was not allowed to speak to doctors about any coding work related issues. Gloria, Mary and Suzy protects the doctors even at the expense of not abiding by coding clinic guidelines when documentation for that date of service does not indicate that diagnosis.

Defendant, Stephanie Alder-Paindris also made a statement that Norman only wanted to return to work for money, which was very disrespectful. To add insult to injury, Norman sat through multiple hours of deposition for two days and spoke, answering all of the Defendant's questions. Therefore, Norman could have kept her job with an accommodation albeit for the discrimination.

Eventually, Moffitt will be audited and they will see how much and how many fines and employees will lose their jobs. Those doctors are not going to take the fall and lose their career or license for what's happening.

2. Norman still had FMLA leave within the system at Moffitt. Please see (**Appx. E16**).

To establish a claim of FMLA retaliation, an employee must prove that the employee engaged in protected activity under the FMLA. Secondly, the employer must have taken adverse action against the employee. Finally, the adverse action must be causally connected to the protected activity.

When employees are injured or disabled or become ill on the job, they may be entitled to medical and/or disability-related leave under two federal laws: the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA). In addition, state workers' Compensation laws have leave provisions that may apply. Depending on the situation, one or more of these laws can apply to the same employee. To help employers understand their responsibilities related to medical and disability-related leave, an overview of each is provided below, including information about where the laws intersect and overlap. (dol.gov) (omitted citation) Moffitt's ADA (Appx. **E26, E28)**.

III. **Americans with Disabilities Act (ADA)** is a federal law that protects the rights of people with disabilities by eliminating barriers to their participation in many aspects of working and living in America. In particular, Title I of the ADA prohibits covered employers from discriminating against people with disabilities in the full range of employment-related activities, from recruitment to advancement to pay and benefits.

IV. Rehabilitation Act of 1973. Americans with Disabilities Act of 1990 (as Amended) or regulations issued under that act. Thus, leave provision of the FMLA are wholly distinct from the reasonable accommodation obligation of employers covered under ADA. Statues 825.702(A)(B)(C)(C4). (quote)

- **Covered employers**: Title I of the ADA applies to employers (including state or local governments) with 15 or more employees and to employment agencies, labor organizations and joint labor-management committees with any number of employees. (quote)
- **Covered individuals**: The ADA protects individuals with a disability who are qualified for the job, meaning they have the skills and qualifications to carry out the essential functions of the job, with or without accommodations. An individual with a disability is defined as a person who: (1) has a physical or
- Mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment: Cough Variant Asthma (CVA) (**Appx. E18**).
- **Medical and disability-related leave rules**: The ADA does not specifically require employers to provide medical or disability-related leave.

However, it does require employers to make reasonable accommodations for qualified employees with disabilities if necessary to perform essential job functions or to benefit from the same opportunities and rights afforded employees without disabilities. Accommodations (**Appx. E26**) can include modifications to work schedules, such as leave.

There is no set leave period mandated because accommodations depend on:

- Individual circumstances and should generally be granted unless doing so would result in "undue hardship" to the employer.

2. Whether a doctor's order to return to work can be overridden by non-licensed or non-certified medical personnel? No!

In other words a doctor's order for medical leave is considered valid and cannot be overridden by others. "Marie (OH) overrode Norman's return to (**Appx. E20**) work note. As Marie stated in (Doc. 50-3, p1) she is a nurse by training, therefore she should not have overrode an (ARNP) Advance Registered Nurse Practitioner order.

In other words, healthcare workers who override a doctor's order may be held liable for legal claims if their action result in harm.

Justice Pollock's opinion clearly indicated that the independence of the medical profession and the duties that its members owe the public could not be overridden by an employer directive that contravened public policy and conflicted with established medical practice. Id. at 72 (omitted citation).

ADA provides that no employer shall discriminate against a qualified individual on the basis of disability in discharging its employee. 42 U.S.C. § 12112 (a). Employees in these workplaces can have rights under both laws if they meet the definition of "disability" (ADA) and "serious health condition" (FMLA) (**Appx. E18**).

An accommodation is one such right that I was denied.

General requirement: Employers must provide people with disabilities an equal opportunity to benefit from the employment-related opportunities available to others. This includes things like recruitment, hiring, promotions, training, pay, and social activities (**Appx. E26, E28**).

The ADA includes specific requirements for employers to ensure that people with disabilities have equal access to employment.

The ADA Protects People with Disabilities.

A person with a disability is someone who 1. Has a physical or mental impairment that substantially limits one or more major activities. 2. has a history or record of such an impairment (such as asthma) and others 3. Is perceived by others as having such an impairment (such as a person who has scars from a severe burn).

If a person falls into any of these categories, the ADA protects them. The ADA is a law, and not a benefit program, you do not need to apply for coverage.

Under ADA: Title IV: Telecommunication companies. The general requirement includes Telephone companies must provide services to allow callers with hearing and speech disabilities to communicate.
According to Moffitt's policy speech is a necessity to work as a coder they need to adopt Title IV under the ADA law, with this being said Norman was discriminated against. Norman was covered under both with her condition as an employee. Norman requested to work from home, but to no avail. 1. Working from home or reduced hours and others would have been a reasonable accommodation due to the company office equipment was already home and Marie not returning Norman to the building to work. Marie failed to inform Suzy the reason she gave Norman for not returning Norman to work. 2. Add text to speak software to office computer due to "per Moffitt talking is a necessity". Applying Moffitt's own ADA policy (**Appx.E26, E28**), (Doc 54 p. 4) expected to speak clear is discrimination. Moffitt discriminated against Norman. Looking at (**Appx. E18**) Marie scheduled and appointment for Norman with Moffitt acute clinic which referred Norman.

Accommodations given to Moffitt employees, Norman knows about:

Dr. Alan List (CEO/President) and Thomas Sellers (Vice President/Director) and three others was given an accommodation to resign after a conflict of interest (Doc. 50-2, p. 12) between Moffitt and China (**Appx. D19**). Due to this situation this was an act of greed and not a disability, which should have been grounds for termination, No-Rehire and other things, but being a white man and CEO/President Moffitt gave him an accommodation to resign (**App. D17**).

Well needless to say two of the higher ups were given an accommodation to resign back in December 2019, instead of being terminated for their actions with China due to conflict of interest issues, after my termination. President and CEO Dr. Alan List and Director and Vice President Thomas Sellers and four researchers who resigned abruptly. Discrimination occurred by them receiving an option to resign and not terminate them with No Rehire on his record (**Appx. D17**, **E36**)

Coder, Dawn Snow was accommodated by Suzy when she was going through a divorce. Suzy switched over half of Dawn's patient's accounts to Norman to code and they were never given back to Dawn. This was another accommodation given to an employee without a disability.

Coder Charlotte was given an accommodation while working from home, and being on productivity keeping her newborn grandson when her daughter-in-law went back to work. Charlotte did not state she was on FMLA or disability with a doctor's note while caring for her newborn grandson.

Rolf HIM Department was also was given an accommodation by Gloria HIM Director. She sent out an email requesting coders to donate their PTO to him when a sinkhole opened within his area. This was not due to a disability or him being on FMLA but an accommodation nonetheless (**Appx. D19, E32**).

Marjorie HIM department was given an accommodation where Mary and Suzy created a position just for her in the Coding Department just for her to work

from home without her having a coding background or certificate. This person was not on FMLA or disabled when given this accommodation.

Suzy created her own accommodation without a doctor's note and not on FMLA when she wanted to work from home even if it was her in-office days. Another accommodation Suzy gave herself was to work from home on her in office days when she had an eye infection and could not wear make-up.

US Airways, Inc. v. Barnett, 122 S. CT. 1516 (S.CT.2002)

Additional guidelines: Avoid 100% healed policies. Employers cannot require a worker to be completely healed before returning to work. Such policies have been found to violate the ADA because they do not allow workers to use their right to an accommodation. Even when the worker is not 100% healed, she or he could possibly still work effectively with an accommodation (**Appx. E18, E20, E28**)

Avoid no-fault leave policies (**Appx. E16**). Automatically terminating workers who have, for any reason exceeded a pre-set amount of leave violates the ADA.

No-fault leave policies deny the worker the right to use a reasonable accommodation which allows them to return to work with a disability (adata.org/factsheet/work-leave).

Moffitt automatically violated ADA when they terminated Norman and did not offer her an accommodation.

Norman did receive short and long term disability benefits and SSDI benefits in 2019, due to the long term disability company stating if Norman do not apply for Social Security Disability benefits they will terminate her benefits (**Appx. B4-5**). This all transpired due to Moffitt malicious, egregious, discrimination, retaliation and wrongful termination. Norman's finances have suffered due to Defendants actions toward her. With her disability the finances received (**Appx. C4**) it is much less than if discrimination had not occurred with continued pay raises and other job opportunities as a Director of Healthcare. Norman have applied for other jobs and due to Moffitt no re-hire as Norman was approaching age 50. Defendant damaged it. Norman was placed on Rehabilitation return to work program with her disability.

In this case *Cleveland v. Policy Management Systems Corp.*, 119 S.Ct. 1597 (U.S. 1999). **But the claim for Social Security benefits did not inherently conflict with the ADA claim, the Supreme Court ruled.** The ADA's definition of a qualified individual with a disability includes those who may need job-related accommodations to perform essential job functions, the court pointed out, and the Social Security Administration does not take the possibility of reasonable accommodation into account when determining eligibility for benefits.

Retaliation under the ADA, a plaintiff must prove that (1) they engaged in protected activity, (2) their employer took adverse action against them, and (3) the adverse action was causally connected to their protected activity. (generalcounsellaw.com)

Gibbs v. ADS Alliance Data System , Inc. Case No. 10-2421-JWL (D. Kan. Jul. 28, 2011) In the case the summary judgment for defendant was denied, the

Plaintiff has come forward with sufficient evidence of pretext to survive summary judgment on this claim. (Omitted citation).

Norman was terminated from Moffitt on 06 February 2018. Moffitt placed a No-Rehire (**Appx. E12**) on Norman's employment record. Moreover, Norman filed an Equal Employment Opportunity Commission (EEOC) complaint and received the notice of a Right to Sue letter (**Appx. E10**)

Norman engaged in statutory protected conduct. She suffered an adverse action. There is a causal link between the adverse action and her protected conduct. 1. Norman was engaged in a protected activity (FMLA & ADA). 2. Moffitt terminated Norman due to her disability. 3. Moffitt termination caused damaged and caused harm to Norman's career permanently.

The EEO laws prohibit punishing job applicants or employees for asserting their rights to be free from employment discrimination including harassment. Asserting these EEO rights is called "protected activity," and it can take many forms. For example, it is unlawful to retaliate against applicants or employees for:

- filing or being a witness in an EEO charge, complaint, investigation, or lawsuit
- refusing to follow orders that would result in discrimination
- requesting accommodation of a disability or for a religious practice and others

Participating in a complaint process is protected from retaliation under all circumstances. Other acts to oppose discrimination are protected as long as the employee was acting on a reasonable belief that something in the workplace may violate EEO laws, even if he or she did not use legal terminology to describe it (eeoc.gov).

Cordoba v. Dillard's, Inc., 419 F.3d 1169, (8/2005)

To establish a prima facie case of employment discrimination on intentional discrimination an employee must show that they:

1. are a member of a protected class,
2. **suffered an adverse employment action**,
3. met their employer's legitimate expectations at the time of the adverse employment action, and
4. Treated differently from similarly situated employees outside their protected class.

A retaliation complaint first must file a charge of retaliation with the EEOC.8 If the EEOC does not conduct an investigation, the employee may, after a statutory period has expired, seek from the agency the issuance of a right-to sue letter.(**Appx. E2**)
("The analytical framework for ADEA discrimination and retaliation cases was patterned after the framework for Title VII cases, and our precedents are largely interchangeable."). After receiving permission to sue, a plaintiff then has ninety days in which to file suit against a private employer and thirty days in which to sue the federal government as an employer." See, e.g., Stewart v. Happy Herman's Cheshire Bridge, Inc., 117 F.3d 1278, 1287 (1lth Cir. 1997). (eeoc.gov)

While out on FMLA, Norman's doctor gave her a return to work note and Suzy was notified, to which she replied you must contact Occupational Health (OH) before returning to work. When Norman did contact and reported to Occupational Health and on or about 05 September 2017 arrived and waiting in lobby to see someone (Marie) whom is not a nurse by certification or license came out into the lobby and asked Norman to step outside. We did and (Marie) stated she could not return Norman back to work inside the building due to severe coughing (Cough Variant Asthma) which is Norman's disability. Suzy knew of Norman's disability,

from whenever we spoke over the phone, she would hear Norman coughing and coughing. Suzy's reply was "Oh my goodness, oh my, Stephanie are you okay?"

Cough variant Asthma (**Appx. E18**) is defined as is a type of asthma in which the main symptom is a dry, non-productive cough. (A non-productive cough does not expel any mucus from the respiratory tract.) People with cough-variant asthma often have no other "classic" asthma symptoms, such as wheezing or shortness of breath.

The National Library of Medicine states coughs in some patients is a chronic unremitting symptom leading to a marked decrement in quality of their life.

"The most common reported 5th complaint is Chronic Cough complaint seen by primary care physicians. It's reported up to 38% within the USA of a pulmonologist's outpatient practice is accounted for by persistently troublesome chronic cough" (nlm.gov).

Marie asked Norman are you sure your doctor is a doctor, and Norman replied yes she's an ARNP (Advance Registered Nurse Practitioner).

Marie (OH) replied she cannot and will not return Norman back to the building to work until that cough is gone. Marie (OH) also stated it sounds like "you have whooping cough to me."

Marie overrode Norman's doctor's note to return to Work. (Supp. 50-3 at 2). Suzy stated to Norman saying "I see you are not working today and did not call the absentee line I just want to check on you and make sure you are okay." Obviously Marie did not inform Suzy or anyone else of her decision, she chose not to return Norman back to work. Per Marie note to self **(Appx. E20).** It is also noted Marie's email to Suzy without placing status: High on email. (Importance: Normal not High or Sensitive) See **(Appx. E22)**, Defendant made sure to communicate regarding the collection of Moffitt equipment but neglected to reach out to Norman before termination. Norman returned equipment to Moffitt timely **(Appx. D15, D27)**.

According to Moffitt personnel (Joy Vongsyprasom) Norman was still in an "80" status- FMLA paid **(Appx. E16)**. Joy was asking for more information from employee leave (Frances Gonzalez-Esteez), which replied by email dated 14 February 2018 it should not process until tomorrow as letter advising the employee (Norman) about decision was placed in mail today **(Appx. E34)**

Norman did not receive letters about termination of her position before she was terminated.

Moffitt then applied the knee-jerk decision and jumped to Norman's productivity in coding, which is simply a pretext to obscure their true discriminatory motive. Norman's termination had nothing to do with productivity, due to Norman had never met productivity standards since

working there due to doctor's flawed documentation. See (**Appx. D11**), where Suzy was seeking to help with productivity and emails shows that.
Norman continued to receive pay increases as well as worked overtime and showed up to work and gave her best. Productivity was not the reason for termination, if so Norman would have been terminated long before becoming disabled. With doctors' visits being over $5000 coders need to make sure they are coding the correct diagnosis and documentation is correct. See (**Appx. D29**) Patient customers experience matters.

In the past, Moffitt had employed contracted medical coders and when they did not meet productivity within a certain amount of time approximately 60 days or less those coders were terminated. Moffitt did not wait until they were disabled.

Moffitt could have offered Norman a reasonable accommodation due to her disability by allowing her to work remotely since Marie would not return her to the building to work. Moffitt made a reckless decision not to.

Norman was working in the office (MBC) Moffitt Business Center building 12653 Telecom Rd. Tampa, FL 33637, not at Hospital address 12902 USF Magnolia Dr. Tampa FL 33612 Moffitt Cancer & Research Center Hospital with patients.
Norman had numerous conservations with Suzy, Dennis and Jennifer Latva (Coder Educators) concerning incorrect or unspecified written (typed)

diagnosis and doctor's diagnosis codes on documentation for outpatient medical record. (**Appx. D7, E30**)

When Norman was there the daily DNFC/Unbilled was $24 Million (**Appx. D23**). It was said that in 2020 the DNFC/Unbilled was $60+ Million if this is true surely productivity is way behind. With all this being said Moffitt discriminated and retaliated against Norman due to her disability. Florida Civil Right Act (FCRA) forbids employers to discharge or to fail or refuse to hire individuals, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, and handicap.

The FCRA prohibits employers from discriminating against any person because that person has opposed any practice which is unlawful employment under the law. Fla .Stat. § 760.10(7).

Under the FCRA Moffitt discriminated against Norman due to her disability. Norman suffered damages from Moffitt's actions and still today suffering damages (emotional distress, anguish, financial, physical).

Major Life Activities

To qualify as a disability under the ADA, an impairment must significantly limit a person's ability to engage in a major life activity. What is a major life activity, anyway? The ADA defines "major life activities" by examples. They include but are by no means limited to: caring for oneself, performing manual tasks, seeing, hearing, speaking.

Norman is enrolled in a Rehabilitation return to work program, but due to Moffitt's maliciousness (No-Rehire). Even participating in self-employment this no-rehire stills follows with much damage. During the Mediation (Doc.33) defendant asked Norman to sign a resignation letter. Norman replied, No! You fired me over 2 years ago.

Motion for Reconsideration to Strike Affidavits and Deposition in Support of Summary Judgment was denied. (Appeals Court). Procedure 56(e) affidavit must be stricken when it is not based on personal knowledge. (Omitted citation). Just another way of trying to stop Norman from a jury trial.

With all this being said Moffitt discriminated against Norman due to her disability on all counts (Doc. 1) I- VI.

Norman seeks jury trial and prays and ask for all compensation listed on Doc.1 for counts I, II, III, IV, V and VI. (At this time No Attorney fees). All other fees (A-G) on all counts. Norman has provided material evidence to support her claims. (**Appx. A1-A7, B1-B6, C1-C6**) Material evidence exists.

REASONS FOR GRANTING THE PETITION

This case is an excellent example with material evidence to stand firm against Corporate Discrimination related to Disability, FMLA, FCRA and Retaliation levied against employees and I pray and ask that my case be reversed and sent to jury trial. As well as due to the Petitioner's material evidence submitted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully, Stephanie Norman

Stephanie Norman

Date: 16 Aug. 2023