26-6189

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOHNNY BEDGOOD, JR.,

Petitioner,

v.

WASTE MANAGEMENT, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Petitioner, Pro Se

Appendix A

NOT FOR PUBLICATION

In the United States Court of Appeals For the Eleventh Circuit

No. 25-12372
Non-Argument Calendar

JOHNNY BEDGOOD, JR.,

Plaintiff-Appellant,

versus

WASTE MANAGEMENT INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:22-cv-01449-CEM-NWH

Before GRANT, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

Johnny Bedgood, Jr. brings this appeal to challenge the district court's order granting summary judgment in his employer's favor. We affirm.[1]

I.

Driving while drowsy is dangerous. In July 2020, Johnny Bedgood fell asleep behind the wheel of a garbage truck—almost rear-ending another vehicle. When Bedgood reported that his persistent drowsiness is attributable to obstructive sleep apnea, his employer granted him two months of medical leave, from July 27 to September 30.

Bedgood did not show up to his first shift on October 2, citing "childcare issues." The following week, Bedgood missed all four assigned shifts—without notice or explanation. Pursuant to his employer's written attendance policy, Bedgood's consecutive "no-call, no-shows" constituted grounds for termination. When his manager informed him about the decision, Bedgood responded, "I don't appreciate you calling me trying to terminate me over the phone and I would appreciate it if you never call my phone again."

Proceeding pro se, Bedgood filed this lawsuit. He alleges that his employer discriminated against him because of his disability—namely, his obstructive sleep apnea—in violation of the Americans with Disabilities Act. The district court granted the employer's motion for summary judgment. In its view, no

[1] All pending motions are denied as moot.

reasonable jury could find that Bedgood was terminated on the grounds of his disability.

This is Bedgood's appeal.

II.

We review the district court's grant of summary judgment de novo. *See McCreight v. AuburnBank*, 117 F.4th 1322, 1329 (11th Cir. 2024). A movant is entitled to summary judgment if he can show that there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

III.

The Americans with Disabilities Act makes it unlawful for an employer to "discriminate against a qualified individual on the basis of disability." 42 U.S.C. § 12112(a). To prevail, the plaintiff must show that "he was subjected to unlawful discrimination because of his disability."[2] *See Mazzeo v. Color Resols. Int'l, LLC*, 746 F.3d 1264, 1268 (11th Cir. 2014).

Here, Bedgood offers "virtually no evidence of discriminatory intent." *Wascura v. City of South Miami*, 257 F.3d 1238, 1246 (11th Cir. 2001). Tellingly, when asked at his deposition whether he had any evidence that his sleep apnea might have played a role in his employer's decision-making, he conceded, "I

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[2] The employer does not dispute that Bedgood's obstructive sleep apnea qualifies as a disability.

don't have none at the moment." Indeed, his employer accommodated his medical needs from the very start and at every juncture. Rather than fire him for falling asleep behind the wheel, his employer granted his medical leave request. And when he was slated to return, Bedgood did not claim that his medical leave had not yet lapsed or that he needed further accommodations. Instead, he cited "childcare issues" for one absence and proffered no explanation at all for the others. On this record, no reasonable jury could find that Bedgood's termination had anything to do with his obstructive sleep apnea, as opposed to his frequent and unexplained absences.[3]

* * *

We **AFFIRM**.

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[3] To the extent Bedgood's filings advance a failure-to-accommodate claim, he does not point to any evidence indicating that he made a "specific demand" for additional medical leave during the period leading up to his termination. *See Gaston v. Bellingrath Gardens & Home, Inc.*, 167 F.3d 1361, 1363–64 (11th Cir. 1999) (concluding that an employee's "failure to demand a reasonable accommodation after being shown the new job requirements is fatal" to her failure-to-accommodate claim).

To the extent Bedgood challenges the district court's denial of leave to file a second amended complaint, he has failed to establish "good cause" to warrant a modification of the scheduling order. *See* Fed. R. Civ. P. 16(b)(4). He filed his motion to amend fourteen months after the expiration of the amendment deadline, without an adequate explanation for why "the schedule cannot be met despite the diligence of the party seeking the extension." *See Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1418 (11th Cir. 1998) (quotation omitted).

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

June 22, 2026

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 25-12372-GG
Case Style: Johnny Bedgood, Jr. v. Waste Management Inc.
District Court Docket No: 6:22-cv-01449-CEM-NWH

Opinion Issued
Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing
The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing.

Costs
No costs are taxed.

Bill of Costs
If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees
The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel
Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

OPIN-1 Ntc of Issuance of Opinion

Appendix B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOHNNY BEDGOOD JR.,

Plaintiff,

v. **Case No. 6:22-cv-1449-CEM-NWH**

WASTE MANAGEMENT INC.,

Defendant.

_____/

ORDER

THIS CAUSE is before the Court on Plaintiff's Motion to Supplement Amended Complaint ("Motion to Amend," Doc. 59), to which Defendant filed a Response (Doc. 63). This cause is also before the Court on Defendant's Motion for Summary Judgment (Doc. 73), to which Plaintiff filed a Response (Doc. 76), and Defendant filed a Reply (Doc. 77). For the reasons set forth below, the Motion to Amend will be denied, and the Motion for Summary Judgment will be granted.

I. MOTION TO AMEND

Plaintiff, proceeding *pro se*, seeks to file a Second Amended Complaint to add claims for discrimination under the Florida Civil Rights Act ("FCRA"); breach of contract; interference with rights under the Family and Medical Leave Act ("FMLA"); retaliation under the Florida Whistleblower Act ("FWA"); hostile work

environment under the FWA; and "wrongful termination" under the FLMA, ADA, and FWA.[1] (Doc. 59 at 10–11).

A. Legal Standard

Where, as here, "a motion to amend is filed after a scheduling order deadline, [Federal Rule of Civil Procedure] 16 is the proper guide for determining whether a party's delay may be excused." *Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1418 n.2 (11th Cir. 1998). Rule 16 requires district courts to issue a scheduling order and provides that such order "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b). "This good cause standard precludes modification unless the schedule cannot 'be met despite the diligence of the party seeking the extension.'" *Sosa*, 133 F.3d at 1418 (quoting Fed. R. Civ. P. 16 advisory committee's note to 1983 amendment). Only after the movant has established good cause can a court determine whether amendment would be proper under Federal Rule of Civil Procedure 15. *Id.* at 1419.

Under Rule 15, "[t]he court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). "The district court, however, need not allow an amendment (1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where

[1] This wrongful termination claim is duplicative of the other claims asserted or proposed by Plaintiff, and therefore, the analysis of those claims is the same.

allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile." *Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1014 (11th Cir. 2005) (per curiam) (quotation omitted). "The nonmovant bears the burden of showing prejudice, bad faith and futility of the amendment." *Jackson v. Fulton Cnty.*, No. 1:12-cv-0518-ODE-ECS, 2013 U.S. Dist. LEXIS 207229, at *18 (N.D. Ga. Nov. 6, 2013) (quotation omitted); *see also Allstate Ins. Co. v. Regions Bank*, No. 14-0067-WS-C, 2014 U.S. Dist. LEXIS 115540, at *27 (S.D. Ala. Aug. 19, 2014) (explaining that "[t]he burden lies with [the defendant], as the party opposing amendment, to show that it would suffer undue prejudice if [the plaintiff] were allowed to amend its Complaint" and collecting cases); *Tims v. Golden*, No. 15-0516-WS-B, 2016 U.S. Dist. LEXIS 45252, at *37 & n.20 (S.D. Ala. Apr. 4, 2016) (collecting cases for the proposition that the burden of showing futility is on the non-moving party).

B. Analysis

Plaintiff filed his Charge of Discrimination (Doc. 1-1 at 8–10) on April 1, 2021. (*Id.* at 8). This case was filed on August 15, 2022. Due to procedural delays, Defendant appeared on June 23, 2023. (Motion to Dismiss, Doc. 23, at 1). After the case was dismissed for failure to prosecute and then reopened, (Doc. Nos. 29 & 31), the Case Management and Scheduling Order (Doc. 32) was issued on August 22, 2023. The deadline for motions to amend pleadings was October 21, 2023, and

discovery closed on January 31, 2025. (*Id.* at 1). Fourteen months after the deadline for motions to amend pleadings, and only six weeks prior to the close of the year-and-a-half long discovery period, Plaintiff filed his Motion to Amend.

Plaintiff has not shown that he exercised due diligence as required by Rule 16. Primarily, Plaintiff accuses Defendant of delaying and obstructing the discovery process. The record reflects no such thing. To the contrary, it appears that Plaintiff, appearing *pro se*, misunderstood how to obtain documents from a third party. (*See, e.g.*, Motion to Compel, Doc. 49, at 1 (seeking to compel Defendant to produce documents from third party Sedgwick Claims Management Services ("Sedgwick")); Email Correspondence, Doc. 70, at 407–09 (Defense counsel explaining that Defendant is not in possession of any additional documents from Sedgwick but indicating no opposition to Plaintiff subpoenaing Sedgwick directly)).

Plaintiff also broadly claims that his Motion to Amend is premised on evidence obtained during discovery. The only such evidence cited is communications from Sedgwick that Plaintiff obtained on July 18, 2024—five months prior to Plaintiff filing the Motion to Amend. (Doc. 59 at 3). Plaintiff cites no other evidence, and it is apparent that he had the remaining information prior to even filing suit because the allegations are within his personal knowledge. (*See, e.g.*, Doc. 1-1 (making allegations about Plaintiff's FCRA and FMLA claims in his March 31, 2021 Charge of Discrimination); Complaint Intake Form, Doc. 72-5, at 1

(making allegations in Plaintiff's October 16, 2020 internal complaint similar to those underlying his proposed FWA and FMLA claims)).

Additionally, even if Plaintiff had shown good cause under Rule 16—which he has not—it appears that all the proposed claims would be futile. Plaintiff's FCRA claim is identical to his ADA claim and would fail for the same reasons discussed below in the summary judgment analysis. Plaintiff's proposed FMLA claims would be time-barred because the statute of limitations for FMLA claims ran, at the latest, on October 14, 2023—three years after Plaintiff's termination and over a year before the Motion to Amend. *Liu v. Univ. of Mia. Sch. of Med.*, 693 F. App'x 793, 799 (11th Cir. 2017) ("FMLA actions generally have a two-year statute of limitations, unless a plaintiff establishes that a defendant's violation was willful, in which case, the action must be brought within three years." (citing 29 U.S.C. § 2617(c))). The FMLA claim would also fail for the same reasons discussed within the legitimate, non-discriminatory reason analysis of Plaintiff's ADA claims.

The proposed FWA claims fail because the FWA requires a violation of a "law, rule, or regulation," Fla. Stat. § 448.102, and Plaintiff only alleges violations of "company policy and ethical standards," (Doc. 59 at 6–7). Finally, Plaintiff's breach of contract claim fails because he only references unilateral "policy statements" within the employee handbook, and "[i]t is well established Florida law that [such] statements contained in employment manuals do not give rise to

enforceable contract rights . . . unless they contain specific language which expresses the parties' explicit mutual agreement that the manual constitutes a separate employment contract." *Carlucci v. Demings*, 31 So. 3d 245, 247 (Fla. 5th DCA 2010).

Thus, Plaintiff has failed to meet his burden under Rules 16 or 15, and the Motion to Amend will be denied.

II. MOTION FOR SUMMARY JUDGMENT

A. Background

Plaintiff is a former employee of Waste Management Inc. of Florida ("WMFL"). (McBean Decl., Doc. 72-4, at 1–2). WMFL provides services including garbage collection and recycling pickup. (*Id.* at 1). Plaintiff was employed by WMFL as a residential route driver. (*Id.*). Defendant is a holding company that does not have any employees. (Tippy Decl., Doc. 72-2, at 1). WMFL is an "indirect wholly-owned subsidiary of [Defendant]." (*Id.*).

On July 23, 2020, Plaintiff fell asleep while on duty and operating a vehicle. (Doc. 72-4 at 2). He was placed on administrative leave to determine if a medical condition caused his drowsiness. (*Id.* at 3). Plaintiff was diagnosed with obstructive sleep apnea. (Doc. 72-1 at 28, 130). Plaintiff requested and was approved for FMLA leave from July 27, 2020, through August 30, 2020. (Aug. 11, 2020 Approval Letter,

Doc. 72-1, at 122; Claim Notes, Doc. 72-6, at 33). The leave was later extended through September 30, 2020. (Doc. 72-6 at 21–22).

On September 29, 2020, the day before Plaintiff's leave expired, he discussed the process of returning to work with a human resources ("HR") administrator and his supervisor, indicating that he was "trying" to return to work. (Doc. 72-1 at 12–13). At that time, Plaintiff provided a note from his doctor stating that they were pursuing additional tests for proper management of his sleep apnea, and she recommended he not drive if he was sleepy or had poor sleep the night before.[2] (*Id.* at 133).

Based on this information, Plaintiff was scheduled and attended a Department of Transportation ("DOT") re-certification medical exam the next day—i.e., the first day after his leave ended. (Medical Examiner's Certificate, Doc. 72-1, at 134; Doc. 72-1 at 16). The DOT physician performed a medical exam and certified that Plaintiff met the required standards to return to work. (Doc. 72-1 at 134). Plaintiff agreed that he could have driven safely at the time. (*Id.* at 28). Accordingly, Plaintiff was placed back on his regular Monday through Friday schedule, and he was

[2] In his Response, Plaintiff fixates on this note, arguing that it was an insufficient return-to-work clearance under the FMLA. Even ignoring the fact that Plaintiff did not bring an FMLA claim, his argument turns the FMLA regulations on their head. The cited regulation permits an employer under certain circumstances to require return-to-work medical clearance, it does not mandate such clearance. *See generally* 29 C.F.R. § 825.312.

informed that his return-to-work date was Friday, October 2, 2020. (Doc. 72-4 at 4–5).

Plaintiff did not show up for his October 2 shift, calling in due to childcare issues. (Haynes Aff., Doc. 72-3, at 1). The following week, Plaintiff did not show up for his scheduled shifts on October 5, 6, 7, 8, or 9, and he did not contact anyone regarding these absences. (*Id.*; Doc. 72-4 at 5). Pursuant to WMFL's attendance policy, and in consultation with HR, Plaintiff's supervisor decided to terminate his employment. (Doc. 72-4 at 6). When Plaintiff was contacted regarding this decision, he stated that he had already sent in his resignation via e-mail. (*Id.* at 6–7). Plaintiff's supervisor subsequently located this email in her spam folder. (*Id.* at 7). It was sent on and effective as of October 7, 2020. (*Id.*; Resignation Email, Doc. 72-4, at 16–17). The Resignation Email stated Plaintiff was resigning due to his "family circumstances." (*Id.* at 17). Plaintiff's supervisor indicated that his resignation did not change WMFL's decision to terminate his employment. (*Id.* at 8).

The next day, despite Plaintiff's resignation and termination, he filed a complaint with WMFL's internal complaint system, (*see generally* Doc. 72-5), and submitted a request for another extension of his leave to WMFL's third-party FMLA administrator, Sedgwick, without informing Sedgwick of his termination or resignation, (Doc. 72-6 at 19).

Based on these events, Plaintiff filed suit alleging claims under the ADA. Defendant has now moved for summary judgment as to all claims.

B. Legal Standard

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is material if it may "affect the outcome of the suit under the governing law." *Id.*

"The moving party bears the initial burden of showing the court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial." *Allen v. Bd. of Pub. Educ.*, 495 F.3d 1306, 1313–14 (11th Cir. 2007). In ruling on a motion for summary judgment, the Court construes the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). However, when faced with a "properly supported motion for summary judgment," the nonmoving party "must come forward with specific factual evidence, presenting more than mere allegations." *Gargiulo v. G.M. Sales, Inc.*, 131 F.3d 995, 999 (11th Cir. 1997) (citing *Anderson*, 477 U.S. at 248–49 (1986)); *see also LaRoche v. Denny's, Inc.*, 62 F. Supp. 2d 1366, 1371 (S.D. Fla. 1999) ("The law is clear . . . that

suspicion, perception, opinion, and belief cannot be used to defeat a motion for summary judgment.").

"[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249. "[T]he proper inquiry on summary judgment is 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Stitzel v. N.Y. Life Ins. Co.*, 361 F. App'x 20, 22 (11th Cir. 2009) (quoting *Anderson*, 477 U.S. at 251–52). Put another way, a motion for summary judgment should be denied only "[i]f reasonable minds could differ on the inferences arising from undisputed [material] facts." *Pioch v. IBEX Eng'g Servs.*, 825 F.3d 1264, 1267 (11th Cir. 2016) (quoting *Allen*, 121 F.3d at 646).

C. Analysis

"The ADA prohibits . . . employers from 'discriminat[ing] against a qualified individual on the basis of disability.'" *Butler v. Econ-O-Check Corp.*, No. 24-10867, 2025 U.S. App. LEXIS 9245, at *7 (11th Cir. Apr. 18, 2025) (quoting 42 U.S.C. § 12112(a)). Where, as here, "a plaintiff seeks to satisfy [his] burden with circumstantial evidence, we evaluate that evidence under the familiar *McDonnell Douglas* burden-shifting framework that governs Title VII employment-discrimination claims." *Todd v. Fayette Cnty. Sch. Dist.*, 998 F.3d 1203, 1215 (11th

Cir. 2021) (footnote omitted). "Under that framework, [Plaintiff] must first establish a prima facie case of disability discrimination. *Id.* at 1215. "If [Plaintiff] fulfills the prima facie case showing, 'the burden of production shifts to [Defendant] to articulate a legitimate, nondiscriminatory reason for its actions.'" *Id.* at 1216 (quoting *Holland v. Gee*, 677 F.3d 1047, 1055 (11th Cir. 2012)). "And if [Defendant] satisfies that requirement, the burden shifts back to [Plaintiff] to show that the reasons [Defendant] articulated are merely a pretext for discrimination." *Id.* This framework applies equally to retaliation claims. *Connelly v. WellStar Health Sys.*, 758 F. App'x 825, 832 (11th Cir. 2019).

However, "establishing the elements of the *McDonnell Douglas* framework is not . . . the *sine qua non* for a plaintiff to survive a summary judgment motion in an employment discrimination case." *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011). If, despite failing to precisely establish the *McDonnell Douglas* elements, the plaintiff "presents circumstantial evidence that creates a triable issue concerning the employer's discriminatory intent"—i.e., "a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker"—the plaintiff can still survive summary judgment. *Id.* (quotation and footnote omitted).

To establish a prima facie case of discrimination under the ADA, Plaintiff "must show that [ ]he (1) is disabled, (2) is a qualified individual, and (3) was

discriminated against because of [his] disability." *Todd*, 998 F.3d at 1215–16. For retaliation, "an employee must show that '(1) [ ]he engaged in statutorily protected activity, (2) [ ]he suffered an adverse employment decision, and (3) the decision was causally related to the protected activity." *Connelly*, 758 F. App'x at 832 (quoting *Schaaf v. Smithkline Beecham Corp.*, 602 F.3d 1236, 1243 (11th Cir. 2010)).

For summary judgment purposes, Defendant does not dispute that Plaintiff is disabled and qualified. Defendant argues that Plaintiff was not discriminated or retaliated against.[3] Although not entirely clear, it appears Plaintiff is alleging that he was terminated because of his disability and in retaliation for taking medical leave and that he was denied a reasonable accommodation in the form of additional medical leave.

"[T]he duty to provide a reasonable accommodation is not triggered under the ADA unless a specific demand for an accommodation has been made by the plaintiff." *Byrd v. UPS*, 814 F. App'x 536, 539–40 (11th Cir. 2020) (citing *Gaston v. Bellingrath Gardens & Home, Inc.*, 167 F.3d 1361, 1363–64 (11th Cir. 1999)). The undisputed evidence shows that WMFL accommodated Plaintiff with medical

[3] As an initial matter, Defendant offers evidence that WMFL, not Defendant, was Plaintiff's employer. (Doc. 72-2 at 1–2). Plaintiff makes conclusory arguments in opposition, but he fails to provide any evidence to support his assertion that WMFL and Defendant should be considered joint employers. For that reason alone, Defendant is entitled to summary judgment on all claims. However, because Plaintiff is *pro se* and Defendant's counsel has also protected the interests of WMFL, the Court will address the substance of Plaintiff's claims to afford closure to all parties.

leave when he requested it. Plaintiff was then in communication with HR, his supervisor, and the route manager; informed of his return-to-work date; and not requesting additional leave at that time, despite knowing how to do so. Instead, he attended the scheduled medical clearance exam. Further, on his first day back on the schedule, Plaintiff called in because he had childcare issues—he never mentioned needing additional medical leave. This reason was corroborated by Plaintiff's resignation letter, which provided "family circumstances" as the reason for his resignation.

It was only after Plaintiff failed to return to work when scheduled, submitted his letter of resignation, and was terminated for the no-call no-show infractions that he submitted a request to the third-party administrator for an extension of his leave. This after-the-fact request does not satisfy the prima facie case for failure to accommodate under the ADA. *Adams v. Day & Zimmerman, Inc.*, No. 2:20-cv-1712-GMB, 2023 U.S. Dist. LEXIS 244540, at *27 (N.D. Ala. July 17, 2023) (holding that because the plaintiff's request for accommodation "occurred after the infraction leading to [the plaintiff's] termination, it was not a reasonable request for an accommodation"); *Beller v. Wal-Mart Transp., LLC*, No. 2:17-cv-530, 2019 U.S. Dist. LEXIS 52887, at *21 (S.D. Ohio Mar. 28, 2019) ("Defendants had no obligation to engage in the interactive process and consider any post termination accommodation requests [the plaintiff] made.").

Additionally, for all of Plaintiff's ADA claims, WMFL has provided a legitimate, non-discriminatory reason for his termination. Plaintiff was terminated for his repeated, unexplained failure to show up at work after he had been notified of, and acknowledged, being put back on the schedule. Plaintiff did not request additional leave, object to being put back on the schedule, or question whether he had been cleared to return to work. Plaintiff has not provided any evidence of pretext. Instead, Plaintiff acknowledged that he was back on the schedule by calling in on his first day back due to childcare issues. Plaintiff also acknowledged that he was able to safely perform his job at the time, indicating that he did not actually need additional leave as an accommodation. Plaintiff has not met his burden to establish the reason for his termination was pretextual.[4]

III. CONCLUSION

In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

1. Plaintiff's Motion to Supplement Amended Complaint (Doc. 59) is **DENIED**.
2. Defendant's Motion for Summary Judgment (Doc. 73) is **GRANTED**.

[4] Despite not pleading an FMLA claim, Plaintiff's Response is almost entirely focused on the FMLA. But even if Plaintiff were permitted to bring an FMLA claim, Defendant would be entitled to summary judgment on any such claims for the same reasons. *Connelly*, 758 F. App'x at 832 (11th Cir. 2019) (indicating that the *McDonnell Douglas* framework applies to FMLA claims).

3. The Motion to Amend Case Management and Scheduling Order (Doc. 75) is **DENIED as moot**.

4. The Clerk is directed to enter judgment in favor of Defendant and against Plaintiff, providing that Plaintiff shall take nothing on his claims. Thereafter, the Clerk is directed to close this case.

DONE and **ORDERED** in Orlando, Florida on July 8, 2025.

CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
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August 13, 2026

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 25-12372-GG
Case Style: Johnny Bedgood, Jr. v. Waste Management Inc.
District Court Docket No: 6:22-cv-01449-CEM-NWH

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

REHG-1 Ltr Order Petition Rehearing

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12372

JOHNNY BEDGOOD, JR.,

Plaintiff-Appellant,

versus

WASTE MANAGEMENT INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:22-cv-01449-CEM-NWH

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

Before GRANT, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court

be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.

Appendix D

Constitutional and Statutory Provisions Involved In Verbatim

Americans with Disabilities Act

42 U.S.C. § 12111(5), (9) — See Appendix D, at A-7

(5) Employer

(A) In general

The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions

The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

(9) Reasonable accommodation

The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C. § 12112(a), (b)(5)(A) — See Appendix D, at A-8.

(a) General rule

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(5) (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

29 C.F.R. § 1630.2(o)(3) — See Appendix D, at A-8.

(3) To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

Family and Medical Leave Act

29 U.S.C. § 2614(a)(1), (3)–(4) — See Appendix D, at A-8 through A-9.

(a) Restoration to position

(1) In general

Except as provided in subsection (b), any eligible employee who takes leave under section 2612 of this title for the intended purpose of the leave shall be entitled, on return from such leave—

(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or

(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) Loss of benefits

The taking of leave under section 2612 of this title shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(3) Limitations

Nothing in this section shall be construed to entitle any restored employee to—

(A) the accrual of any seniority or employment benefits during any period of leave; or

(B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(4) Certification

As a condition of restoration under paragraph (1) for an employee who has taken leave under section 2612(a)(1)(D) of this title, the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid State or local law or a collective bargaining agreement that governs the return to work of such employees.

29 U.S.C. § 2615(a)(1) — See Appendix D, at A-9.

(a) Interference with rights

(1) Exercise of rights

It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter.

29 C.F.R. §§ 825.300(d)–(e), 825.312(a), (d)–(e), 825.313(d), and 825.702 — See Appendix D, at A-10 through A-17.

29 C.F.R. §§ 825.300(d)–(e)

(d) Designation notice.

(1) The employer is responsible in all circumstances for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee as provided in this section. When the employer has enough information to determine whether the leave is being taken for a FMLA-qualifying reason (e.g., after receiving a certification), the employer must notify the employee whether the leave will be designated and will be counted as FMLA leave within five business days absent extenuating circumstances. Only one notice of designation is required for each FMLA-qualifying reason per applicable 12-month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or intermittent or reduced schedule leave. If the employer determines that the leave will not be designated as FMLA-qualifying (e.g., if the leave is not for a reason covered by FMLA or the FMLA leave entitlement has been exhausted), the employer must notify the employee of that determination. If the employer requires paid leave to be substituted for unpaid FMLA leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, the employer must inform the employee of this designation at the time of designating the FMLA leave.

(2) If the employer has sufficient information to designate the leave as FMLA leave immediately after receiving notice of the employee's need for leave, the employer may provide the employee with the designation notice at that time.

(3) If the employer will require the employee to present a fitness-for-duty certification to be restored to employment, the employer must provide notice of such requirement with the designation notice. If the employer will require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's position, the employer must so indicate in the designation notice, and must include a list of the essential functions of the employee's position. See § 825.312. If the employer handbook or other written documents (if

any) describing the employer's leave policies clearly provide that a fitness-for-duty certification will be required in specific circumstances (e.g., by stating that fitness-for-duty certification will be required in all cases of back injuries for employees in a certain occupation), the employer is not required to provide written notice of the requirement with the designation notice, but must provide oral notice no later than with the designation notice.

(4) The designation notice must be in writing. A prototype designation notice may be obtained from local offices of the Wage and Hour Division or from the Internet at www.dol.gov/whd. If the leave is not designated as FMLA leave because it does not meet the requirements of the Act, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement.

(5) If the information provided by the employer to the employee in the designation notice changes (e.g., the employee exhausts the FMLA leave entitlement), the employer shall provide, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, written notice of the change.

(6) The employer must notify the employee of the amount of leave counted against the employee's FMLA leave entitlement. If the amount of leave needed is known at the time the employer designates the leave as FMLA-qualifying, the employer must notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA leave entitlement in the designation notice. If it is not possible to provide the hours, days, or weeks that will be counted against the employee's FMLA leave entitlement (such as in the case of unforeseeable intermittent leave), then the employer must provide notice of the amount of leave counted against the employee's FMLA leave entitlement upon the request by the employee, but no more often than once in a 30-day period and only if leave was taken in that period. The notice of the amount of leave counted against the employee's FMLA entitlement may be oral or in writing. If such notice is oral, it shall be confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). Such written notice may be in any form, including a notation on the employee's pay stub.

(e) Consequences of failing to provide notice. Failure to follow the notice requirements set forth in this section may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered See § 825.400(c).

29 C.F.R 825.312(a), (d)–(e)

(a) As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employer may have a uniformly-applied policy or practice that requires all similarly-situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or providing sufficient authorization to the health care provider to provide the information directly to the employer) in the fitness-for-duty certification process as in the initial certification process. See § 825.305(d).

(d) The designation notice required in § 825.300(d) shall advise the employee if the employer will require a fitness-for-duty certification to return to work and whether that fitness-for-duty certification must address the employee's ability to perform the essential functions of the employee's job.

(e) An employer may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employer has failed to provide the notice required in paragraph (d) of this section. If an employer provides the notice required, an employee who does not provide a fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement under the FMLA. See § 825.313(d).

29 C.F.R 825.313(d)

(d) Fitness-for-duty certification. When requested by the employer pursuant to a uniformly applied policy for similarly-situated employees, the employee must provide medical certification, at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition, that the employee is fit for duty and able to return to work (see § 825.312(a)) if the employer has provided the required notice (see § 825.300(e)); the employer may delay restoration until the certification is provided. Unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated. See also § 825.213(a)(3).

29 C.F.R 825.702

(a) Nothing in FMLA modifies or affects any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability (e.g., Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act). FMLA's legislative history explains that FMLA is "not intended to modify or affect the Rehabilitation Act of 1973, as amended, the regulations concerning employment which have been promulgated pursuant to that statute, or the Americans with Disabilities Act of 1990 [as amended] or the regulations issued under that act. Thus, the leave provisions of the [FMLA] are wholly distinct from the reasonable accommodation obligations of employers covered under the [ADA], employers who receive Federal financial assistance, employers who contract with the Federal government, or the Federal government itself. The purpose of the FMLA is to make leave available to eligible employees and employers within its coverage, and not to limit already existing rights and protection." S. Rep. No. 103-3, at 38 (1993). An employer must therefore provide leave under whichever statutory provision provides the greater rights to employees. When an employer violates both FMLA and a discrimination law, an employee may be able to recover under either or both statutes (double relief may not be awarded for the same loss; when remedies coincide a claimant may be allowed to utilize whichever avenue of relief is desired. Laffey v. Northwest Airlines, Inc., 567 F.2d 429, 445 (D.C. Cir. 1976), cert. denied, 434 U.S. 1086 (1978).

(b) If an employee is a qualified individual with a disability within the meaning of the ADA, the employer must make reasonable accommodations, etc., barring undue hardship, in accordance with the ADA. At the same time, the employer must afford an employee his or her FMLA rights. ADA's "disability" and FMLA's "serious health condition" are different concepts, and must be analyzed separately. FMLA entitles eligible employees to 12 weeks of leave in any 12-month period due to their own serious health condition, whereas the ADA allows an indeterminate amount of leave, barring undue hardship, as a reasonable accommodation. FMLA requires employers to maintain employees' group health plan coverage during FMLA leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period, whereas ADA does not require maintenance of health insurance unless other employees receive health insurance during leave under the same circumstances.

(c)

(1) A reasonable accommodation under the ADA might be accomplished by providing an individual with a disability with a part-time job with no health benefits, assuming the employer did not ordinarily provide health insurance for part-time employees. However, FMLA would permit an employee to work a reduced leave schedule until the equivalent of 12 workweeks of leave were used, with group health benefits maintained during this period. FMLA permits an employer to temporarily transfer an employee who is taking leave intermittently or on a reduced leave schedule for planned medical treatment to an alternative position, whereas the ADA allows an accommodation of reassignment to an equivalent, vacant position only if the employee cannot perform the essential functions of the employee's present position and an accommodation is not possible in the employee's present position, or an accommodation in the employee's present position would cause an undue hardship. The examples in the following paragraphs of this section demonstrate how the two laws would interact with respect to a qualified individual with a disability.

(2) A qualified individual with a disability who is also an eligible employee entitled to FMLA leave requests 10 weeks of medical leave as a reasonable accommodation, which the employer grants because it is not an undue hardship. The employer advises the employee that the 10 weeks of leave is also being designated as FMLA leave and will count towards the employee's FMLA leave entitlement. This designation does not prevent the parties from also treating the leave as a reasonable accommodation and reinstating the employee into the same job, as required by the ADA, rather than an equivalent position under FMLA, if that is the greater right available to the employee. At the same time, the employee would be entitled under FMLA to have the employer maintain group health plan coverage during the leave, as that requirement provides the greater right to the employee.

(3) If the same employee needed to work part-time (a reduced leave schedule) after returning to his or her same job, the employee would still be entitled under FMLA to have group health plan coverage maintained for the remainder of the two-week equivalent of FMLA leave entitlement, notwithstanding an employer policy that part-time employees do not receive health insurance. This employee would be entitled under the ADA to reasonable accommodations to enable the employee to perform the essential functions of the part-time position. In addition, because the employee is working a part-time schedule as a reasonable accommodation, the FMLA's provision for temporary assignment to a different alternative position would not apply. Once the employee has exhausted his or her remaining FMLA leave entitlement while working the reduced (part-time) schedule, if the employee is a qualified individual with a disability, and if the employee is unable to return to the same full-time position at that time, the employee might continue to work part-time as a reasonable accommodation, barring undue hardship; the employee would then be entitled to only those employment benefits ordinarily provided by the employer to part-time employees.

(4) At the end of the FMLA leave entitlement, an employer is required under FMLA to reinstate the employee in the same or an equivalent position, with equivalent pay and benefits, to that which the employee held when leave commenced. The employer's FMLA obligations would be satisfied if the employer offered the employee an equivalent full-time position. If the employee were unable to perform the essential functions of that equivalent position even with reasonable

accommodation, because of a disability, the ADA may require the employer to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

(d)

(1) If FMLA entitles an employee to leave, an employer may not, in lieu of FMLA leave entitlement, require an employee to take a job with a reasonable accommodation. However, ADA may require that an employer offer an employee the opportunity to take such a position. An employer may not change the essential functions of the job in order to deny FMLA leave. See § 825.220(b).

(2) An employee may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave may run concurrently (subject to proper notice and designation by the employer). At some point the health care provider providing medical care pursuant to the workers' compensation injury may certify the employee is able to return to work in a light duty position. If the employer offers such a position, the employee is permitted but not required to accept the position. See § 825.220(d). As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to the same or equivalent job the employee left or until the 12-week FMLA leave entitlement is exhausted. See § 825.207(e). If the employee returning from the workers' compensation injury is a qualified individual with a disability, he or she will have rights under the ADA.

(e) If an employer requires certifications of an employee's fitness for duty to return to work, as permitted by FMLA under a uniform policy, it must comply with the ADA requirement that a fitness for duty physical be job-related and consistent with business necessity.

(f) Under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, an employer should provide the same benefits for women who are pregnant as the employer

provides to other employees with short-term disabilities. Because Title VII does not require employees to be employed for a certain period of time to be protected, an employee employed for less than 12 months by the employer (and, therefore, not an eligible employee under FMLA) may not be denied maternity leave if the employer normally provides short-term disability benefits to employees with the same tenure who are experiencing other short-term disabilities.

(g) Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, et seq., veterans are entitled to receive all rights and benefits of employment that they would have obtained if they had been continuously employed. Therefore, under USERRA, a returning servicemember would be eligible for FMLA leave if the months and hours that he or she would have worked (or, for airline flight crew employees, would have worked or been paid) for the civilian employer during the period of absence due to or necessitated by USERRA-covered service, combined with the months employed and the hours actually worked (or, for airline flight crew employees, actually worked or paid), meet the FMLA eligibility threshold of 12 months of employment and the hours of service requirement. See §§ 825.110(b)(2)(i) and (c)(2) and 825802(c).

(h) For further information on Federal antidiscrimination laws, including Title VII and the ADA, individuals are encouraged to contact the nearest office of the U.S. Equal Employment Opportunity Commission.

United States Constitution

U.S. Const. amend. V, Due Process Clause — See Appendix D, at A-17.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Federal Rules of Civil Procedure

Fed. R. Civ. P. 26(a)(1)(A)(i)–(ii), 26(e)(1), 37(c)(1), See Appendix D, at A-18

(a) REQUIRED DISCLOSURES.

(1) *Initial Disclosure.*

(A) *In General.* Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(e) SUPPLEMENTING DISCLOSURES AND RESPONSES.

(1) *In General.* A party who has made a disclosure under Rule 26(a)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

Fed. R. Civ. P. 37(c)(1), See Appendix D, at A-19

(c) FAILURE TO DISCLOSE, TO SUPPLEMENT AN EARLIER RESPONSE, OR TO ADMIT.

(1) *Failure to Disclose or Supplement.* If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)—(vi).

56(a), (c)(1), (c)(4), (d) — See Appendix D, at A-19 through A-20.

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(c) Procedures.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(4) Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.