UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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ALANA ORR, 17-CV-1280 GLS/TWD

Plaintiff,

-against-

ANTHONY MCGINTY,

Defendant.

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**RESPONSE TO DEFENDANT'S STATEMENT PURSUANT TO RULE 56.1(a)**

Pursuant to Rule 56.1(a) of the Local Rules of this Court, Plaintiff Alana Orr responds as follows to Defendant Anthony McGinty's assertion that as to certain material facts no genuine issues exist:

1. Admits that the allegations in paragraph 1 of Defendant Anthony McGinty's STATEMENT PURSUANT TO RULE 56.1(a) (hereinafter "Statement") are true.

2. Admits that the allegations in paragraph 2 of Defendant Anthony McGinty's Statement are true.

3. Admits that the allegations in paragraph 3 of Defendant Anthony McGinty's Statement are true.

4. Denies that the allegations in paragraph 4 of Defendant Anthony McGinty's STATEMENT PURSUANT TO RULE 56.1(a) (hereinafter "Statement") are true. The assertion that this letter was solely a request for 'audio recordings" is a mischaracterization of the facts. Defendant intentionally omitted facts from the record which show that there is a genuine issue in this matter pertaining to the understanding of what Plaintiff was requesting through her letter to the Defendant. The Examination Before Trial of Plaintiff included the following testimony which Defendant intentionally omitted from his 56.1(a) Statement and bears upon the Exhibit which Defendant has erroneously stated requested audio tape transcripts alone:

Q: "Okay. So Exhibit A, did you understand that -- do you understand this letter as an attempt to reach out to the Court to say I need help?
Q: "Absolutely."

Q: "And there was no help that was Correct. No response -- let me -- let me rephrase. The only response to this letter was a refusal to do anything?
A: "Right. That's absolutely right." (Plaintiff EBT, pp. 124-125; Ex. "A"; Dkt. 50, ¶ 37).

The Examination Before Trial of Defendant similarly refutes his 56.1(a) Statement that the letter at issue was solely a request for 'audio recordings" as follows:

Q. "Do you remember Alana requesting for more general help other than audio recordings to deal with her emotional issues?"
A. "The letter indicated that she was seeking -- she may be seeking additional relief -- let's use that word. But she didn't specify anything other than access to audio recordings." Defendant EBT, pp. 25.

5. Admits that the allegations in paragraph 5 of Defendant Anthony McGinty's Statement are true.

6. `Admits that the allegations in paragraph 6 of Defendant Anthony McGinty's Statement are true .

7. Admits that the allegations in paragraph 7 of Defendant Anthony McGinty's Statement are true.

8. Denies that the allegations in paragraph 8 of Defendant Anthony McGinty's Statement are true. Plaintiff requested audio tapes as an accommodation for her PTSD.

9. Admits that the allegations in paragraph 9 of Defendant Anthony McGinty's Statement are true.

10. Admits that the allegations in paragraph 10 of Defendant Anthony McGinty's Statement are true.

11. Admits that the allegations in paragraph 11 of Defendant Anthony McGinty's Statement are true and adds the fact that the letter was signed by the Defendant himself..

12. Denies that the allegations in paragraph 12 of Defendant Anthony McGinty's Statement are true. Defendant's statement that "Plaintiff did not address any written requests for the audio recordings of her family court proceedings to Defendant McGinty." (*citing* Plaintiff EBT, pp. 74) is undermined by the fact that Defendant testified that:

"As an elected judge, I am responsible mostly to myself. I have had at times in the past supervisor judges who are responsible for the operations in the Family Court and the third judicial district. I am currently the supervising judge for the third JD or Family Court. So in

some senses I report to myself at this point." Defendant EBT, pp. 9. Thus, letters to the Family Court should be deemed as having been sent to the Defendant.

13. Denies that the allegations in paragraph 13 of Defendant Anthony McGinty's Statement are true. Plaintiff states that there is evidence that Defendant had further knowledge that Plaintiff had a disability for which he should have conducted an interactive process. This evidence is not in the record but should be admitted at this juncture as rebuttable evidence to Defendant's stated ignorance of what the interactive process is and the allegation that he should have utilized such in a situation where a party in his Court suffers from an ongoing psychiatric injury. Defendant testified as follows: "I would say emotional disturbance is not necessarily the same thing as a disability." Defendant EBT, pp. 28. Defendant further testified that: Q. "So if a party provides you with information that says that they suffer clinically from an emotional issue, does that trigger you to do certain things as a judge?" A: "Emotional issue, not necessarily." Defendant EBT, pp. 28. And further as follows: "Do you understand what the interactive process is or no?" A. "Not in that sense." "So you've never heard the term before in relation to the ADA?" A. "No in connection with the ADA" Q. "So in all your trainings they've never used the term interactive process under the ADA?" A. "Not that I can recall." Defendant EBT pp. 30. Defendant's Statement in his paragraph 13 could lead this Court to understand that Plaintiff was remiss in not following up with Defendant as to her requests for accommodations, however, there is evidence in the record as well as outside of the record which shows that this is entirely misleading and that Defendant should have brought Plaintiff in for a thorough conversation regarding how to safeguard her rights under the ADA and Defendant violated Plaintiff's ADA rights by refusing to do so and by utilizing her emotional disabilities against her.

14. Admits that the allegations in paragraph 14 of Defendant Anthony McGinty's Statement are true as to the sole issue of audio recordings.

15. Admits that the allegations in paragraph 15 of Defendant Anthony McGinty's Statement are true.

16. Admits that the allegations in paragraph 16 of Defendant Anthony McGinty's Statement are true, however, further clarifies that the specific testimony to this point is as follows: Q: "Okay. So is it fair to say that 2017 was the last time you were treated by a medical professional for P.T.S.D.?" A: "Yes." Q: "Do you have any upcoming scheduled treatments with a medical professional for P.T.S.D.? A. "Not yet." Plaintiff EBT pp. 126. This clarification is necessary because this Court should not be led to understand that Plaintiff does not suffer from an emotional disability. Her course of treatment is not at issue here and she has the right to seek

any sort of treatment she so desires without being questioned about that by the Defendant. The facts in the record show that Plaintiff was indeed diagnosed as having an ongoing psychiatric injury.which is covered under the ADA and that Defendant was aware of such.

17. Admits that the allegations in paragraph 17 of Defendant Anthony McGinty's Statement are true.

18. Admits that the allegations in paragraph 18 of Defendant Anthony McGinty's Statement are true.

19. Admits that the allegations in paragraph 19 of Defendant Anthony McGinty's Statement are true.

20. Denies that the allegations in paragraph 20 of Defendant Anthony McGinty's Statement are true. The recent order modified an "ORDER ON STIPULATION OF CONSENT" to which Plaintiff didn't legally consent, during the course of which her ADA rights were violated, which didn't require a showing of a change in circumstances in order to modify.
The 2018 document was a nullity as it was replaced by an amended order issued Feb 2021, which was still void.

21. Admits that the allegations in paragraph 21 of Defendant Anthony McGinty's Statement are true.

22. Admits that the allegations in paragraph 22 of Defendant Anthony McGinty's Statement are true.

23. Denies that the allegations in paragraph 23 of Defendant Anthony McGinty's Statement are true. This Statement is deliberately misleading. Plaintiff is alleging that her ADA rights have been violated by Defendant. Plaintiff was too intimidated by Defendant to testify at her Fact Finding hearing because Defendant had never properly responded to her requests for accommodations under the ADA and had discriminated against her for such disabilities.
For example, Defendant testified as follows in regards to the fact that he had placed a one year stay away Order against Plaintiff to stay away from her own daughter:

Q: "And you ordered in the document that you signed, September 26, 2016, quote, that a no contact
stay away order of protection was issued against the mother, Alana Orr, prohibiting any contact

with the minor child valid from one year of the date of the this order to August 8, 2017 and it is -- is that right?" A: "Correct" Q: "Do you have any recollection – strike that. Is that a significant thing to do, to order that a mother stay away from a child?" A: "Yes." A: "Do you remember why you made this order that Alana stay away from her own child?" A: "Yes." Q: "Can you elaborate on why?" A: "On that day Miss Orr made an argument that the court had no jurisdiction to be issuing orders with respect to custody or visitation of the child. And then when the application to dismiss all the matters was denied, she said aloud for everyone to hear, then me and my daughter are out of here. And she got up to leave."

Thus, Plaintiff was too intimidated to testify at the recent Fact Finding hearing. *See* Plaintiff's Affidavit in Opposition to Defendant's Motion for Summary Judgment. The result being that this matter is not ripe for Summary Judgment. The most relevant issue in this matter is whether or not Plaintiff was properly afforded her rights under the ADA. Plaintiff is not seeking to have this Court meddle in the affairs of the New York State court system. On the contrary, Plaintiff is simply seeking to guarantee that her ADA rights are upheld.

Dated: Millerton, NY
February 21, 2022

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