

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ALANA ORR,

Plaintiff,

-against-

ANTHONY MCGINTY,

17-CV-1280 GLS/TWD

Defendant.

MEMORANUDM OF LAW IN OPPOSITION TO DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT

PRELIMINARY STATEMENT

This memorandum of law is submitted on behalf of the Plaintiff, Alana Orr, in support of her opposition to Defendant’s motion, pursuant to Fed. R. Civ. P. 56, seeking summary judgment and dismissal of the remaining cause of action, with prejudice.

Aside from Defendant attempting to cloud this Court’s perception of what this case is about, Defendant also erroneously states that “Plaintiff has failed to establish an ongoing prima facie violation under Title II of the ADA.” Defendant’s Memorandum of Law p. 1. At this juncture, this matter is concerned exclusively with the issue of whether Plaintiff’s rights under the Americans With Disabilities Act (hereinafter “ADA”) were adequately protected by Defendant. Plaintiff is right to assert that the law does, and must, stand for the proposition that a State court judge is required to adequately respond when a litigant makes him aware that she is seeking accommodations under the ADA.

Defendant testified as follows about a letter that Plaintiff sent him:

Q: “Do you remember a letter that Alana wrote to you asking you for assistance for her emotional issues?” A. “To the Court.” Q. “Correct.” A. “Not to me.” Q. “To the Court.” A. “Correct.” Q. “Do you remember that?” A. “Yes.” Q. “Do you remember responding to that question?” A. “Yes.” Q. “And what was your response?” A. “The response was that we would not provide audio files of our proceedings but that she was welcome to request written transcripts of the proceedings.” 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.”

Q. “So the letter could have been construed to mean other things other than the audio recording?” A: “Counsel, I can only provide accommodations if I know what the request is.”

Defendant Anthony McGinty Examination Before Trial transcript dated August 20, 2021, (hereafter “Defendant EBT”) pp. 24-26.

There is no need to “get into the head” of the Defendant herein in order to determine what he was thinking when he made certain Decisions. The only task this Court has is to make a determination that when Defendant received a letter requesting accommodations under the ADA, he had an obligation under the law to concern himself with that general request. As counsel’s Memorandum of Law in Support of Defendant’s Motion for Summary Judgment points out on page 14, “Meaningful access’ to family court has been held to be consistent with the due process principle that, within the limits of practicability, all individuals must be afforded a meaningful opportunity to be heard.” *Citing* Dkt. No. 73 pp. 11, *citing* Lane, 541 U.S. at 532-33; cf. Tenenbaum v. Williams, 193 F.3d 581, 593 (2d Cir. 1999) (“As a general rule . . . before parents may be deprived of the care, custody or management of their children without their consent, due process— ordinarily a court proceeding resulting in an order permitting removal— must be accorded to them.”) (internal citations omitted).

This Court should not abdicate its responsibility of mandating that State courts follow the spirit of the ADA. The ADA places a simple requirement on an employer which is to “make a reasonable effort to determine the appropriate accommodation. The appropriate reasonable accommodation is best determined through a flexible, interactive process that involves both the employer and the [employee] with a disability.” 29 C.F.R. Pt. 1630, App. § 1630.9; *see also* Brady v. Wal-Mart Stores, Inc., 531 F.3d 127, 135 (2d Cir.2008) (“We have held that the ADA contemplates that employers will engage in an ‘interactive process’ with their employees and in that way work together to assess whether an employee’s disability can be reasonably accommodated.” (citation and quotation marks omitted)). The Third Circuit has described the operation of this process: “meet[ing] with the employee who requests an accommodation, request[ing] information about the condition and what limitations the employee has, ask[ing] the employee what he or she specifically wants, show[ing] some sign of having considered [the] employee’s request, and offer[ing] and discuss[ing] available alternatives when the request is too burdensome.” Taylor v. Phoenixville Sch. Dist., 174 F.3d 142, 162 (3d Cir.1999).

This Court should deny the Summary Judgment Motion of the Defendant as doing otherwise would reward him for being altogether flippant with the due process rights of the Plaintiff. Defendant has admitted that Plaintiff was seeking ” additional relief” under the ADA but that, although it is his responsibility to ensure that litigants have access to his court, in regards to the ADA, it is not his responsibility to provide accommodations to litigants he has become aware have significant mental health issues. Defendant EBT pp. 34. Put simply, it is very apparent that Defendant does not consider mental health to be covered under the ADA and that is unacceptable and dangerous.

STATEMENT OF FACTS

Plaintiff respectfully refers the Court to Plaintiff’s accompanying Response to Defendant’s statement of material facts, Pursuant to Rule 56.1(a) of the Local Rules of this Court, and fully incorporates the contents herein by reference.

ARGUMENT

Defendant's claim for Summary Judgment is entirely reliant on the argument that Plaintiff has failed to make a prima facie case by showing: (1) that she is a qualified individual with a disability under the definition of 42 U.S.C. § 12102; (2) that Defendant is a public entity that is subject to the ADA; (3) that she has been denied meaningful access to the Ulster County Family Court due to her disability; and (4) that her requested accommodation was necessary for her meaningful access to the Ulster County Family Court.

Defendant somehow argues that Plaintiff failed to allege that she is a qualified individual despite the fact that she stated in her Complaint that her disability has made her "unable to sleep at night" and "unable to work." Amended Complaint at p. 10 (Document 50). Counsel's arguments regarding Plaintiff's abilities should be paid absolutely no heed by this Court as Defendant's attorney is not a mental health professional and can not make unsubstantiated arguments about what Plaintiff should, or should not, be able to do with her stated disability.

Plaintiff need not show ill will nor animus to defeat the instant motion as "in order to succeed on a failure to accommodate theory—as opposed to an intentional discrimination theory—Orr does not need to allege that defendants made the decision to deny her requests because of her PTSD." Quite simply, the demonstration that a disability makes it difficult for a plaintiff to access benefits that are available to both those with and without disabilities is sufficient to sustain a claim for a reasonable accommodation." Document 73 p. 9.

Defendant seeks summary judgment based on the argument that "Plaintiff has asserted several alternative reasons why she has not gotten 'justice' in family court, including ineffective assistance of counsel. Defendant's Memorandum of Law p. 15. This is not sufficient for purposes of this motion by Defendant. All this argument does is show that the failure of the judge to uphold Plaintiff's ADA rights might not be the sole reason for the injustice- but it is up to the fact finder to determine if this failure is sufficient for a new trial.

Plaintiff has certainly shown a prima facie case for the third and fourth elements. Plaintiff has shown via discovery that the refusal of Defendant to provide her with her rightful accommodations under the ADA led to her being traumatized in Defendant's court room before she was Ordered to stay away from her own daughter for a year based on one comment in Defendant's court room and she has been forced to further allege that she was not capable of taking the stand in her last Fact Finding hearing when Defendant attempted to close this case out through his 56.1(a) Statement. This case is certainly not moot as the violations of Plaintiff's ADA rights have caused the injustices against Plaintiff and her daughter to be compounded throughout the process and continue today as Plaintiff's daughter resides with an abusive father because Alana was not able to take the stand in her last hearing and therefore could not show what a good mother she was through her own testimony.

All of the other arguments put forward by Defendant are academic as they rely on a false notion that Plaintiff seeks to have this Court meddle in the affairs of the State court system and the issues of custody which are mostly the business of the States. These arguments are academic

because the issue is solely about ADA rights and whether Defendant properly protected those rights.

CONCLUSION

Defendant has left open too many issues concerning the ADA to have this case dismissed on summary judgment grounds. Plaintiff requests that Defendant's Motion be dismissed in its entirety.

Dated: Millerton, New York
February 22, 2022

s/ Joshua A. Douglass
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