

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

KRISTIE HILTON,

Plaintiff,

v.

BROOKS COUNTY SCHOOLS, and
BROOKS COUNTY BOARD OF
EDUCATION,

Defendants.

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Kristie Hilton (“Plaintiff” or “Mrs. Hilton”) submits the following Complaint against Defendants Brooks County Schools and Brooks County Board Of Education (hereinafter collectively referred to as “Defendants”):

INTRODUCTION

Plaintiff Kristie Hilton was a wonderful educator who received positive, glowing performance evaluations from her employer until she was terminated after taking medical leave to save her life by undergoing emergency surgery to remove her dead baby from her womb. Her employer then terminated her because she was regarded as disabled, because of her pregnancy related condition, and in retaliation

and interference of her taking FMLA. Her employer terminated her executed written contract without lawful cause and in violation of her Constitutional due process rights.

JURISDICTION AND VENUE

1.

This Court has jurisdiction over this case pursuant to 28 U.S.C. §1331 (federal question), 29 U.S.C. §2617(a)(2) (FMLA), 42 U.S.C. § 2000e(k) (Pregnancy Discrimination Act), 42 U.S.C. §2000e-5(f)(3) (ADA), and the U.S. Const. amend. XIV, § 1.

2.

Venue is proper in the Middle District of Georgia, Valdosta division, pursuant to 28 U.S.C. § 1391(b) and L.R. 2.1, because the events and omissions giving rise to Plaintiff's claims occurred within this district and division, and Defendants transact business in this district and division.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

3.

Plaintiff Kristie Hilton filed a charge of discrimination against both Defendants with the Equal Employment Opportunity Commission ("EEOC") within 180 days of the occurrence of the acts of which she complains.

4.

On August 12, 2020, the EEOC issued to Plaintiff a Notice of Right to Sue relating to her charge of discrimination against Defendants, charge number 410-2019-06095.

5.

Plaintiff brings this suit within ninety days of the receipt of her Notice of Right to Sue.

PARTIES

6.

Plaintiff Kristie Hilton is an adult citizen of the United States and a resident of Lowndes County, in the State of Georgia. Mrs. Hilton submits herself to the jurisdiction of this Court.

7.

At all times relevant to this Complaint, Plaintiff was an employee of the Brooks County Schools, by and through the Brooks County Board of Education.

8.

Pursuant to the FMLA, Plaintiff is an eligible employee because she had worked for more than 12 months at North Brooks Elementary and during that time period had worked more than 1,250 hours. 29 U.S.C. § 2611(2)(A).

9.

Pursuant to the PDA, Plaintiff can seek relief because she is an employee of a covered employer. 2000e(f) 42 U.S.C.A. § 2000e(a)-(b).

10.

Pursuant to the ADA Plaintiff is a qualified individual regarded as having a disability. 42 U.S.C. §12102(3) and §12111(8).

11.

Defendants also regarded Plaintiff as disabled as defined by the ADA.

12.

Plaintiff was a Georgia educator who held a constitutionally, protected property interest in her job by having written, executed contracts of employment for the 2018-2019 and 2019-2020 school years.

13.

Defendant Brooks County Schools (also known as Brooks County School District) is a public school district based in Quitman, Georgia.

14.

Defendant Brooks County Schools may be served with process by serving its Superintendent, Dr. Vickie Reed, at the J.H. Wells Education Center 1081 Barwick Road, Quitman, GA 31643.

15.

Defendant Brooks County Schools was Plaintiff's employer within the meaning of the FMLA. 29 C.F.R. § 825.108.

16.

Defendant Brooks County Schools was an employer within the meaning of the PDA, 42 U.S.C.A. § 2000e(a)-(b) and ADA, 42 U.S.C. 12111(5), because it has more than 15 employees for each working day in each of 20 or more calendar weeks during the material time.

17.

Defendant Brooks County Board of Education is the official governing body of Brooks County Schools and also an employer within the meaning of the PDA, 42 U.S.C.A. § 2000e(a)-(b), ADA, 42 U.S.C. 12111(5), and FMLA. 29 C.F.R. § 825.108. It may be served, pursuant to O.C.G.A. § 20-2-109 and Fed. R. Civ. P. 4(j)(2)(A), with process by serving Superintendent Dr. Vickie Reed, at the J.H. Wells Education Center 1081 Barwick Road, Quitman, GA 31643.

18.

Defendants, both governmental entities, are subject to following the Fourteenth Amendment of the United States Constitution and Georgia Constitution Article I concerning due process. U.S. Const. amend. XIV, § 1; Ga. Const. art. I, § 1, ¶ I.

19.

Defendants waived sovereign immunity for state claims for breach of contract by having entered into a written contract with Plaintiff.

20.

Defendants are subject to the Georgia Open Records Act.

RELEVANT FACTS

21.

Plaintiff Kristie Hilton started working for Defendants in Fall 2017, as a special education teacher at North Brooks Elementary, where she received stellar, glowingly positive reviews and job performance evaluations by her then school principal.

22.

On March 25, 2019, Plaintiff was offered and accepted a contract for employment for the 2019-2020 for the following school year that was executed by the Parties.

23.

Defendants decided to terminate Plaintiff because it regarded her as disabled due to her pregnancy related conditions and due to her frequent need for medical leave; and in interference and retaliation for taking medical leave.

24.

While Ms. Tina Nunn was the newly hired Principal of North Brooks Elementary in March 2019, she was not new to Plaintiff. Ms. Nunn had worked at previous school districts with Plaintiff and regarded her as disabled. Plaintiff knows this to be true because Ms. Nunn had previously discriminated and retaliated against her while they both worked at a previous school district.

25.

Notably, while working at a previous school district with Ms. Nunn, Plaintiff did in fact suffer from long term disabilities which required medical leave and often stemmed from repeated pregnancies, so much so that Plaintiff's husband decided to get a vasectomy to protect her from future suffering.

26.

Despite her husband's vasectomy, Plaintiff still got pregnant.

Plaintiff's Medical Absences In 2019 And Her Compliance With Leave Requirements

27.

In early 2019, Plaintiff took a home pregnancy test that showed she was pregnant.

28.

Plaintiff informed Defendants that she was pregnant.

29.

In March 2019, Plaintiff informed Defendants that she needed to take an emergency medical leave due to a life-threatening situation.

30.

This was due to the fact that sadly, in March 2019, she had yet again become ill due to her pregnancy and began suffering the symptoms of miscarriage.

31.

Plaintiff's doctor confirmed that she was carrying a dead baby inside of her and required emergency surgery to save her life.

32.

Defendants knew that the emergency medical leave she required from April 3-5, 2019 was due to a pregnancy related condition.

33.

Plaintiff followed the school's procedure to obtain approval for such leave.

34.

All leaves taken by Plaintiff with the Defendants were approved and were timely submitted with the reasons for leave indicated.

35.

The school has no policy or procedure requiring excuses for leave to be submitted.

36.

In March 2019, Ms. Tina Nunn, after being named Principal for the following year at Plaintiff's school, learned that pregnant Mrs. Hilton was also assigned there.

37.

On March 29, 2019, Ms. Nunn, who had previously discriminated against Plaintiff at another job, wrote a letter to the Superintendent and Human Resources claiming that Plaintiff: (1) "has a history of chronic absenteeism" from 2009-2016

at a different school, W.G. Nunn Elementary [where Plaintiff and Ms. Nunn had both worked, and where Plaintiff had to take medical leave during that time], and (2) “currently has 19 days absent as of March.”

38.

Ms. Nunn asked for documentation of Plaintiff’s absences from Assistant Principal Mr. Charles Martin, and emailed Human Resources Director Dr. Bill Cason and Superintendent Dr. Vickie Reed stating: “I do not want to offer a contract to Kristie next school year if at all possible” and requested that “someone from the district request that documentation from her ... and will that be enough to not renew her?”

39.

Prior to taking medical leave, Plaintiff learned from her current principal Ms. Tara Moss that incoming administrator Ms. Nunn had been asking about Plaintiff’s absences. Plaintiff requested that Ms. Moss make sure to inform the administration and Assistant Principal Mr. Martin of her medical leave.

40.

Plaintiff returned to work on April 15, 2019 after being out on medical leave and the District’s subsequent spring break.

41.

On April 15, 2019, Assistant Principal Mr. Martin called Plaintiff into his office stating that Human Resources Director Dr. Cason needed doctor excuses for her absences and handed gave her a print-out of eleven dates she had missed from February 25 through April 5, 2019.

42.

Plaintiff emailed Dr. Cason, within two days of his request, the doctor notes/excuses as supporting documentation for all eleven dates that had previously been approved, including eight which were pregnancy related (March 1, 11, 28-29, April 1 for an ultrasound, and April 3-5 for surgery), one for her sick child (February 25), one for a family funeral (February 27), and one when her husband was in the emergency room with pneumonia (March 27).

43.

Plaintiff also sent the documentation to payroll, asking them to work with her because she could not afford all the deductions from missed days to be taken out at one time, and reminding them that her medical leave was due to being pregnant and miscarrying.

44.

Shortly thereafter, on April 25, 2019, Plaintiff was escorted off the school grounds by Human Resources Director Dr. Cason and Special Education Director Marcus Richardson, and informed for the first time that she would not be permitted to finish teaching her students for the remainder of the semester or at any point ever.

45.

There was no due process provided, no written notice, and no opportunity to be heard to Plaintiff, who had a continued expectation of employment having received an executed contract for the following 2019-2020 school year.

46.

Defendants did not follow any regular policy or process that they would provide an educator with a duly executed contract with Defendants for the following year.

47.

Defendants failed to pay Plaintiff any of the money they had contractually promised her by entering into the 2019-2020 contract and breaching this agreement.

48.

Defendants' written leave policy authorized unpaid sick leave and places no limit as to the amount of absences.

49.

When Defendants received an Open Records Act request on behalf of Plaintiff, Defendants declined to respond.

50.

Defendants caused Plaintiff tremendous harm and suffering, both financially, emotionally, and to her health. She was unable to find work and her family soon lost their home. This experience not only caused her incredible harm and suffering in every aspect of her life, it harmed her family also. Upon information and belief, Defendants also prevented Plaintiff from obtaining new employment at other school districts by providing false and negative information in retaliation against her, thwarting her ability to gain new employment.

COUNT I
FMLA Interference

51.

Plaintiff fully incorporates paragraphs 7, 8, 15, 21-45, *and any paragraph this Court deems relevant*, as fully stated herein to support Plaintiff's Count I.

52.

Plaintiff brings a claim of FMLA interference against Defendants pursuant to 29 U.S.C. § 2615(a)(1), because Defendants fired Plaintiff and rescinded her contract for the 2019-2020 school year in violation of her right to return from FMLA protected leave and be “restored” to her job and her contract for the 2019-2020 school year. 29 U.S.C. § 2614(a)(1).

53.

Plaintiff’s leave requests in 2019 were FMLA protected because Plaintiff was taking leave to attend to a serious pregnancy-related health condition and had not used more than the 12-weeks total leave allowed.

54.

When Plaintiff returned from FMLA-protected leave, she was terminated, and her contract was rescinded or non-renewed in violation of the FMLA’s requirement that employees be entitled to return from FMLA leave to the same or substantially equivalent position.

55.

Plaintiff was qualified for the job and could perform all its essential functions as shown by her good performance reviews and the initial decision on March 25, 2019, to renew her contract for the 2019-2020 school year.

COUNT II
FMLA Retaliation

56.

Plaintiff fully incorporates paragraphs 7, 8, 15, 21-45, *and any paragraph this Court deems relevant*, as fully stated herein to support Plaintiff's Count II.

57.

Plaintiff brings a claim of FMLA retaliation against Defendants who fired her and rescinded or refused to renew her contract for the 2019-2020 school year because she engaged and attempted to engage in protected FMLA leave activity.

58.

Plaintiff engaged in protected FMLA leave activity during the 2019 school year when she requested and took medical leave. Plaintiff's leave at issue from February 25, 2019 through April 5, 2019 is protected because she had "a serious health condition that makes the employee unable to perform the functions of the position of such employee" or she was caring for a family member with "a serious health condition," 29 U.S.C.A. § 2612 (West) (a)(1)(C-D) on: 2/25/19 sick child 3/1/19 pregnancy, 3/11/19 pregnancy, 3/27/19 husband in ER, 3/28/19 – 3/29/19 pregnancy, 4/1/19 pregnancy ultrasound, 4/3/19-4/5/19 pregnancy surgery.

59.

Defendants' decisionmaker Ms. Tina Nunn admitted that "chronic absenteeism" was the reason for getting rid of Plaintiff, showing that Plaintiff's FMLA-protected absences were the cause of her termination and contract non-renewal.

60.

Ms. Nunn was aware that Plaintiff's so-called "chronic" absences were for medical reasons qualifying for FMLA-protected leave because in the past, Ms. Nunn reviewed Plaintiff's leave applications which stated the reasons for medical leave and during the Spring of 2019, in connection with the termination decision, Ms. Nunn specifically requested copies of Plaintiff's leave requests and excuses that Plaintiff submitted showing her protected reason for leave.

61.

When read as a whole, the Complaint additionally shows there was no legitimate reason for terminating Plaintiff because: (1) she had good job performance as recognized in her principal's reviews; (2) her leave requests all complied with her employer's requirements; (3) upon information and belief her absences did not impede her ability or her co-workers to fulfill their teaching duties; (4) her contract was non-renewed or rescinded after it had been approved

by her principal which was an atypical deviance from common procedure; (5) her absences were all approved and/or excusable according to the law and school district policy; (6) in deviation from usual procedure Plaintiff was not placed on a Personal Development Plan before being let go or given any verbal or written warnings; (7) Ms. Nunn sought to use the documentation in a pretextual search to find cover to terminate and non-renew Plaintiff; and, (8) Defendants violated their own policy by interfering and retaliating against Plaintiff for exercising her right to medical leave.

62.

Plaintiff is an eligible employee to bring a FMLA claim because she had worked for more than 12 months at North Brooks Elementary and during that time period had worked more than 1,250 hours. Plaintiff also has standing to bring this FMLA retaliation claim challenging the non-renewal or recession of her 2019-2020 contract, i.e. failure to hire, because she was one of the “prospective employees” who the FMLA protects against an employer’s “taking of FMLA leave as a negative factor in employment actions, such as hiring.” 29 C.F.R. § 825.220(c); Smith v. BellSouth Telecommunications, Inc., 273 F.3d 1303, 1313 (11th Cir. 2001) (deferring to the regulation’s interpretation of the FMLA to apply to prospective employees).

63.

Upon information and belief, Defendants also prevented Plaintiff from obtaining new employment at other school districts by providing false and negative information in retaliation against her, thwarting her ability to gain new employment.

COUNT III
Violation of the Pregnancy Discrimination Act (PDA)

64.

Plaintiff fully incorporates paragraphs 3-5, 9, 16, 17, 21-45, *and any paragraph this Court deems relevant*, as fully stated herein to support Plaintiff's Count III.

65.

Plaintiff brings a Pregnancy Discrimination Act Claim against Defendants who fired her and rescinded or refused to renew her contract for the 2019-2020 school year because of her pregnancy and pregnancy related medical condition when it would not have treated similarly situated non-pregnant employees the same way.

66.

Plaintiff was pregnant and suffering pregnancy-related medical conditions in the Spring of 2019 and, upon information and belief, Defendants received and read the medical excuses that Plaintiff submitted showing her pregnancy-related medical condition and impairment when they decided to terminate and non-renew Plaintiff.

67.

When read as a whole, the Complaint additionally shows there was no legitimate reason for terminating Plaintiff because: (1) she had good job performance as recognized in her principal's reviews; (2) her leave requests all complied with her employer's requirements; (3) upon information and belief her absences did not impede her ability or her co-workers to fulfill their teaching duties; (4) her contract was non-renewed or rescinded after it had been approved by her principal which was an atypical deviance from common procedure; (5) her absences were all approved and/or excusable according to the law and school district policy; (6) in deviation from usual procedure Plaintiff was not placed on a Personal Development Plan before being let go or given any verbal or written warnings; (7) Ms. Nunn sought to use the documentation in a pretextual search to

find cover to terminate and non-renew Plaintiff; and (8) Defendants violated their own policy by terminating Plaintiff.

68.

Plaintiff was qualified for the job as shown by her good performance reviews and the initial decision on March 25, 2019, to renew her contract for the 2019-2020 school year.

COUNT IV
Violation of the Americans with Disabilities Act (ADA)

69.

Plaintiff fully incorporates paragraphs 3-5, 10, 11, 16, 17, 21-44, *and any paragraph this Court deems relevant*, as fully stated herein to support Plaintiff's Count IV.

70.

Plaintiff brings an ADA regarded-as-disabled claim against Defendants who fired her and rescinded or refused to renew her contract for the 2019-2020 school year because Defendants perceived her to be disabled.

71.

Plaintiff was regarded as disabled because Ms. Nunn inferred, from Plaintiff's chronic absences and disabling conditions that required medical leave,

that Plaintiff had a physical impairment preventing her from performing her job with an expected duration of over six months.

72.

Upon information and belief Ms. Nunn received and read the medical excuses that Plaintiff submitted showing her medical conditions and impairment when she decided to terminate and non-renew Plaintiff.

73.

Plaintiff was a qualified individual able to perform all essential functions of her job as shown by her good performance reviews and the initial decision on March 25, 2019, to renew her contract for the 2019-2020 school year.

COUNT V
Breach of Contract

74.

Plaintiff fully incorporates paragraphs 12, 19, 46-47, *and any paragraph this Court deems relevant*, as fully stated herein to support Plaintiff's Count V.

75.

Defendants entered into fully executed written contracts with Plaintiff for the 2018-2019 and 2019-2020 school years.

76.

Defendants entered valid binding written, executed contractual agreements, which created all correlating duties, commitments and obligations arising and flowing from the express language of the contracts.

77.

Defendants' actions in terminating the employment of Plaintiff breached the contracts of the 2018-2019 and 2019-2020 school years proximately causing harm to the Plaintiff.

COUNT VI
Violation of Due Process

78.

Plaintiff fully incorporates paragraphs 18, 45, 46, *and any paragraph this Court deems relevant*, as fully stated herein to support Plaintiff's Count VI.

79.

Both Defendants, governmental entities, are subject to following the Fourteenth Amendment of the United States Constitution and Georgia Constitution Article I concerning due process. U.S. Const. amend. XIV, § 1; Ga. Const. art. I, § 1, ¶ I.

80.

Plaintiff had a vested property interest in her government employment through the binding contractual agreements for 2018-2019 and 2019-2020 school years, establishing her right to due process including notice and opportunity to be heard.

81.

Defendants violated Plaintiff's due process rights under the United States and Georgia Constitutions by depriving her of a vested property interest without affording her due process. U.S. Const. amend. XIV, § 1; Ga. Const. art. I, § 1, ¶ I.

COUNT VII
Violation of Georgia Open Records Act

82.

Plaintiff fully incorporates paragraphs 20, 49, *and any paragraph this Court deems relevant*, as fully stated herein to support Plaintiff's Count VII.

83.

Under Georgia law, agencies shall produce for inspection all records responsive to a request within a reasonable amount of time not to exceed **three business days** of receipt of a request. Ga. Code Ann. § 50-18-71.

84.

On October 25, 2019, Plaintiff, through counsel, requested documents through the Open Records Act.

85.

On November 4, 2019, Defendants, through counsel, stated that they decline to respond to Plaintiff's request on such grounds that included the records being part of a personnel file, not a legitimate justification under Georgia law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kristie Hilton, prays for the following:

- (a) Judgment in her favor against Defendants on the above Counts I-VII.
- (b) An Order requiring Defendants to make Plaintiff whole by awarding Plaintiff the lost wages and benefits or other expenses incurred because of Defendants' violations of the FMLA.
- (c) An Order awarding Plaintiff an additional amount as liquidated damages for Defendants' FMLA violations.
- (d) An Order requiring Defendants to make Plaintiff whole by providing for her out-of-pocket losses as well as back pay in an amount equal to the sum of any wages, salary, employment benefits, or other compensation denied or lost as a result of Defendant's violations of

the ADA and PDA.

- (e) An Order requiring Defendants to reinstate Plaintiff or for front pay equivalent to the pay and benefits Plaintiff would likely have earned were it not for Defendants' unlawful and discriminatory acts.
- (f) An Order requiring Defendants to compensate Plaintiff for mental and emotional damages, pain and suffering, and for out of pocket losses suffered as a result of Defendants' unlawful and discriminatory acts pursuant to the ADA and PDA.
- (g) An award of punitive damages to punish Defendants' willful and intentional violations of the ADA as provided by 42 U.S.C. §12117(a) and PDA 42 U.S.C. § 2000e(k).
- (h) An award of all compensatory damages allowable under U.S. Const. amend. XIV, § 1; Ga. Const. art. I, § 1, ¶ I.
- (i) An award of all fines, damages, and attorney fees under the Georgia Open Records Act in an addition to an Order enjoining the Defendants from future violations of the Open Records Act.
- (j) A jury trial on all issues so triable.
- (k) An Order granting Plaintiff reasonable attorney's fees and any and all other costs associated with this action as provided by the FMLA,

ADA, and PDA.

- (l) Such additional relief as the Court deems proper and just, including but not limited to equitable and injunctive relief.

Respectfully submitted this 10th day of November 2020,

WILLIAMS OINONEN LLC

/s/ JULIE OINONEN

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