

Federal Court in North Carolina Tackles Associational Discrimination Claim Brought by Teacher With Disabled Son

Article By:

Stacy M. Bunck

Kelly S. Hughes

On February 26, 2020, in the case of *Schmitz v. Alamance-Burlington Board of Education*, the United States District Court for the Middle District of North Carolina granted in part and denied in part a motion to dismiss claims for associational discrimination under the Americans with Disabilities Act (ADA), retaliation under the ADA, and wrongful termination in violation of public policy. In the opinion and order, the court paved the way for the plaintiff to pursue associational discrimination claims.

Background

Theresa Schmitz worked as a fourth-grade teacher for the Alamance-Burlington Board of Education from October 2016 through May 2017. Shortly after she started, Schmitz's son "was diagnosed with a brain tumor and required emergency surgery," which rendered her son "unable to walk or care for himself." Schmitz returned to work one week after her son's surgery. Upon her return to work, Schmitz requested permission to leave work 45 minutes early, at 2:30 p.m. daily, "to care for her son." The principal gave Schmitz permission to leave early for one week, until December 5, 2016.

On December 5, 2016, Schmitz's son's doctor informed her that her son "would not be able to return to school for several weeks." As a result, Schmitz asked permission "to leave [work] at 2:30 p.m. for another week." The principal stated he could not discuss the request at the time, but that he would discuss it with Schmitz on December 6, 2016. No such discussion occurred, and Schmitz left at 2:30 p.m. on December 6, 2016. The principal later inquired why she left early, and Schmitz explained that she "thought it was okay to leave at 2:30 p.m." and that she would not be at work the following day.

On December 7, 2016, Schmitz contacted the human resources (HR) department "to express concern that [the principal] was 'bullying her and retaliating against her for caring for her disabled son.'" HR informed her that "she was not permitted to leave at 2:30 p.m." and needed "to take leave in half-day increments." Schmitz "complied with HR's instruction and took leave in half-day increments . . . until December 16," despite her allegation that other employees not associated with disabled family members were regularly permitted to take sick leave in less-than-half-day increments on temporary bases. Thereafter, Schmitz did not request or "take any other time off to care for her

son.”

Schmitz alleged that the principal retaliated against her from mid-December 2016 through March 2017 by “nitpicking” her, holding her “to a higher standard,” and placing her on a performance improvement plan (PIP). Schmitz “successfully completed her PIP” and, in April 2017, received a positive performance review.

On May 12, 2017, Schmitz “was called into a meeting with [the principal] and HR” and was presented with “a pre-drafted letter of resignation.” According to Schmitz, she “was told to sign the letter, or she would be ‘put on a list she did not want to be on.’” Thereafter, Schmitz filed suit, alleging she was “discriminated against because of her association with her disabled son;” “retaliated against in the form of changes to her schedule and responsibilities, being placed on a PIP, [and] being forced to resign;” and “terminated in violation of North Carolina’s public policy.” The court dismissed her retaliation and public policy claims, but it held that her associational discrimination claims could proceed.

Opinion and Order

In support of her associational discrimination claims, Schmitz alleged that “she was treated differently in the way in which she was allowed to take leave” and that “she was terminated based on [the Board of Education’s] unfounded beliefs about her future availability for work.” The Board of Education responded that the associational discrimination claim does not fit the mold for such claims and that Schmitz “did not plausibly allege an adverse employment action.” The court dismissed the first argument, noting that Schmitz was not required to fit her claim into a specific associational discrimination model. The court disagreed with the Board of Education on its second argument, finding that Schmitz “plausibly alleged that she was constructively discharged” by coercion because there was sufficient evidence that the Board of Education “lacked a good faith reason for the termination,” effectively coercing her resignation. In so holding, the court cited Schmitz’s successful completion of the PIP and positive performance review.

Next, the court concluded that Schmitz presented sufficient evidence that her resignation “occurred under circumstances that raise a reasonable inference of unlawful discrimination.” The court confirmed the appropriate standard is a “but-for” standard: “Discriminatory motivation need not be conclusively proved at a motion to dismiss stage, but a plaintiff must allege enough facts to draw an inference that . . . the [Board of Education] took the adverse action . . . because of [Schmitz’s] association with [her disabled son].” Here, the court found evidence that Schmitz was “performing her job satisfactorily and her only issues with her employer revolve[d] around her association with [her son].” Cognizant that Schmitz was a teacher who missed class to care for her son, the court noted that such “absences were approved” and ceased in December 2016, after which time she was “treated differently.” Although several months passed between her leave for her son and her forced resignation, the court noted that the Board of Education “was aware of the chronic nature of [her] son’s disease and that, during the intervening period, Schmitz was submitted to “other acts evincing discriminatory animus,” including “holding [her] to a higher standard . . . and placing her on a PIP.” Finally, the court noted that “[t]hrough the ADA does not require an employer to provide a reasonable accommodation to the nondisabled associate of a disabled person, an employer’s reaction to such a request for accommodation can support an inference that a subsequent adverse employment action was motivated by associational discrimination.”

As to her retaliation claim, Schmitz “alleges it was reasonable for her to think the ADA [] allowed her to request accommodations to care for her son and [] to report any retaliation based on those

requests.” The court disagreed, finding that it was “not reasonable for [Schmitz] to think she was engaged in protected activity.” In so holding, the court noted that “[t]he statute, administrative guidance, case law, and even the EEOC’s own website all declare that the ADA does not require an employer to make any accommodations to those associated with disabled persons.” Further, the court held that Schmitz’s “first complaint to HR . . . about her need to leave school early could not have led to a reasonable belief that she was opposing conduct prohibited by the ADA,” because she “never complained about discrimination based on her association with her son.”

Finally, the court dismissed Schmitz’s public policy claims, noting that “no private cause of action exists for . . . constructive discharge in violation of public policy.”

Key Takeaways

There are a few key takeaways for employers from this decision. First, while employers are not legally required to provide a reasonable accommodation to a nondisabled associate of a disabled person, they may want to keep in mind that the denial of such a request could call into question the motivation for a later adverse action. Consistency is key, and it may prove helpful to be cognizant of how policies and procedures have been applied in the past to ensure that similarly-situated individuals are treated the same with respect to application of those policies and procedures. Second, if employers are not truthful when conducting a performance review and they fail to consider the content and substance of that review before subjecting an employee to subsequent adverse action, if the review does not align with the proposed action, they may risk facing heightened scrutiny, even when the underlying motive is free from discriminatory animus.

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