

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted January 31, 2024*

Decided February 1, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 23-2586

LATANYA IVENS,
Plaintiff-Appellant,

v.

GK NORTH CHILDCARE CORP.,
Defendant-Appellee.

Appeal from the United States District
Court for the Northern District of
Indiana, South Bend Division.

No. 3:21-CV-705 DRL

Damon R. Leichty,
Judge.

ORDER

Latanya Ivens, who had been diagnosed with lupus in 2020, was furloughed from her position as a preschool teacher at Growing Kids in March 2020 because of the COVID-19 pandemic. She was scheduled to begin work again in May of that year, but she did not return on the scheduled date because she was concerned about her health. Growing Kids considered her to have voluntarily resigned. Ivens sued Growing Kids for violations of the Family and Medical Leave Act (FMLA), 29 U.S.C. §§ 2601–2654, and

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101–12213, alleging that Growing Kids interfered with her right to take leave and failed to accommodate her disability. The district court granted summary judgment to Growing Kids. Because Ivens has not suffered any damages recoverable under the FMLA and is not a qualified individual under the ADA, we affirm.

We review the grant of summary judgment *de novo* and take all facts in the light most favorable to Ivens, the nonmoving party. *Mahran v. Advocate Christ Med. Ctr.*, 12 F.4th 708, 712 (7th Cir. 2021). Ivens began working at Growing Kids as a preschool teacher in 2002. In 2018, she started to have symptoms of lupus, which required her to modify how she interacted with students. She was diagnosed with lupus in January 2020 and was prescribed medications, which caused side effects like itching and swelling in her lips and tongue. During this time, she also had symptoms from her lupus flare-ups, including joint pain and hand stiffness.

On March 24, 2020, Ivens contacted the Human Resources Director at Growing Kids, Angela Stearns, about taking time off because of her medication side effects and lupus symptoms. Stearns told Ivens to wait a few days because she “may not need to take the time off.” Two days later, Growing Kids furloughed Ivens (and nearly all other teachers) because of low enrollment during the COVID-19 pandemic.

Ivens was scheduled to return to work on May 11, 2020. On May 5, she requested additional time off because she remained at high risk of experiencing serious illness from COVID-19, and because she was continuing to experience lupus symptoms and medication side effects. On May 7, Stearns purportedly mailed Ivens forms about applying for FMLA leave, but Ivens did not receive them. Even though it received no response to the forms (for whatever reason), Growing Kids allowed her to take additional leave until May 26.

On May 21, Ivens requested additional time off until June 1, stating that she continued to feel unsafe returning to work because of the pandemic and wanted time to think through her next steps. Stearns told Ivens that if she did not return to work on May 26, Growing Kids would consider her to be voluntarily resigning. Under pressure from Stearns, Ivens agreed to return to work on May 26.

On the morning of May 26, Ivens still did not feel safe returning to work, and so she did not. She did not inform anyone at Growing Kids that she was not returning to work. Around this time, she texted the president of Growing Kids and asked to speak

with him about her position. When he directed Ivens to the human resources department, she told him she would not be returning to her position at Growing Kids.

After properly exhausting, Ivens sued Growing Kids in 2021, alleging that it violated the FMLA by interfering with her right to take leave and retaliating against her. She also alleged that Growing Kids refused to accommodate her disability in violation of the ADA. (The district court dismissed two claims Ivens brought under Title VII, but she does not appeal that dismissal.) During her deposition, Ivens stated that because of the pandemic she would not have felt comfortable returning to work on her requested return date of June 1, 2020, or by the time of the deposition over two years later in November 2022. She also said that, by November 2022, the side effects from her lupus medications had not subsided to the point that she could return to work at Growing Kids. And Ivens further stated that she was no longer interested in working in childcare or at Growing Kids.

Growing Kids sought summary judgment. The district court granted the motion, finding that Ivens had not suffered any damage that could be remedied under the FMLA and was not a “qualified individual” under the ADA.

Ivens, appearing pro se on appeal, generally challenges the district court’s ruling, arguing that she raised sufficient facts to survive summary judgment. She first contends that Growing Kids violated the FMLA by failing to inform her about her FMLA options and then firing her for seeking leave. Growing Kids replies that these arguments are immaterial because the district court was correct to find that she had not suffered damages recoverable under the FMLA.

We agree with the district court that Ivens has failed to create a genuine dispute that she suffered harm for which the FMLA provides a remedy. To defeat summary judgment, Ivens must present some “evidence from which a jury could conclude that [s]he suffered damages attributable to one of [the] adverse actions for which the FMLA provides relief.” *Hickey v. Protective Life Corp.*, 988 F.3d 380, 388 (7th Cir. 2021). For interfering with Ivens’s ability to take leave under the FMLA, Growing Kids would be liable to her for “any wages, salary, employment benefits, or other compensation” she lost because of the violation, 29 U.S.C. § 2617(a)(1)(A)(i)(I), any other monetary losses because of the violation, *id.* § 2617(a)(1)(A)(i)(II), and equitable relief, including reinstatement or promotion, *id.* § 2617(a)(1)(B).

But Ivens does not point to any lost wages, benefits, or other monetary losses. Indeed, her FMLA leave would have been unpaid, and she presents no evidence that

she lost any other employment benefit or incurred an actual monetary cost because of a denial of FMLA leave. On appeal, Ivens states, without explanation, that she suffered the loss of “forward wage[s].” But even if she received the fullest extent of unpaid FMLA leave, Ivens testified in her deposition that she would not have felt comfortable returning to work at Growing Kids at the end of that leave, meaning she lost no future wages. And although Ivens states in her brief that she is entitled to punitive damages and damages for her pain and suffering, “FMLA damages don’t include emotional distress and punitive damages.” *Arrigo v. Link*, 836 F.3d 787, 798 (7th Cir. 2016). Similarly, equitable relief, which Ivens does not seek, would be inappropriate because Ivens is not interested in returning to work at Growing Kids. Because Ivens presented no evidence that she suffered damages within the remedial scope of the FMLA, summary judgment for Growing Kids was appropriate. See *Hickey*, 988 F.3d at 387.

Next, we agree with the district court that Growing Kids was entitled to summary judgment on Ivens’s claim that it failed to reasonably accommodate her disability. We understand Ivens generally to contend that Growing Kids violated the ADA when it failed to grant her additional leave to accommodate her lupus.

To prevail on this claim, Ivens must first show that she is a “qualified individual” under the ADA—that she, with or without a reasonable accommodation, could perform the essential functions of her job. 42 U.S.C. § 12111(8). If she is a qualified individual, time off can be a proper accommodation, but an employer is not required to accommodate a multi-month or indefinite leave of absence. See *Severson v. Heartland Woodcraft, Inc.*, 872 F.3d 476, 481 (7th Cir. 2017); *Byrne v. Avon Prods., Inc.*, 328 F.3d 379, 381 (7th Cir. 2003).

Ivens is not a qualified individual under the ADA. During her deposition in November 2022, Ivens stated that her lupus symptoms and her heightened risk of serious illness if she contracted COVID-19 still made it unsafe for her to return to work. Her requested leave, as a result, would have lasted over two years, with no definite end date. Because the accommodation would have prevented Ivens from performing the essential function of her job—teaching students in person—she is not a “qualified individual” under the ADA. See *Byrne*, 328 F.3d at 381. And, even if she were a qualified individual, an indefinite-leave accommodation is not reasonable. *Id.*; *Severson*, 872 F.3d at 481.

AFFIRMED