

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Equal Employment Opportunity Commission,

Plaintiff,

v.

Case No. 2:07-CV-14124
Hon. Patrick J. Duggan
Mag. Judge Steven D. Pepe
.

Hosanna-Tabor Evangelical Lutheran
Church and School,

Defendant,

and

Cheryl Perich,

Plaintiff/Intervenor

v.

Hosanna-Tabor Evangelical Lutheran
Church and School,

Defendant.

_____ /

COMPLAINT

Plaintiff/Intervenor Cheryl Perich, by and through her attorneys Vercruysse Murray & Calzone, P.C., submits its following Complaint against defendant Hosanna-Tabor Evangelical Lutheran Church and School.

JURISDICTION

1. The Equal Employment Opportunity Commission (“EEOC”) has filed a lawsuit against defendant Hosanna-Tabor Evangelical Lutheran Church and School (“Hosanna-Tabor”) asserting retaliation in violation of the Americans with Disabilities Act of 1990 (“ADA”).

2. Pursuant to Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5(f)(1), Perich has a right to intervene as a plaintiff in this lawsuit asserting retaliation in violation of the Americans with Disabilities Act of 1990 (“ADA”).

3. Accordingly, this Court has jurisdiction over Perich’s ADA claim.

4. Pursuant to 28 U.S.C. §1367, this Court has supplemental jurisdiction over Perich’s state law claims.

STATEMENT OF FACTS

5. In 1999, intervenor plaintiff Cheryl Perich began her employment with defendant Hosanna-Tabor as a grade school teacher.

6. In the summer of 2004, Perich became ill and underwent a number of medical tests to determine the cause. The principal, Stacey Hoeft, informed Perich that she should go out on a disability leave, but she would “still have a job with us” when she returns.

7. In or about December, 2004, a neurologist determined that Perich was suffering from narcolepsy, and was able to successfully treat Perich utilizing drugs.

8. In January, 2005, Perich informed Hoeft that she would be able to return work in the last two weeks of February, 2005. Shortly thereafter, Hoeft informed a co-worker that “I’m not a doctor, but as sick as she’s [Perich] been I don’t think that she’ll be back this year and probably not next year.”

9. On or about January 30, 2005, a meeting was held between the Board and certain members of the congregation. During that meeting, the Board and the congregation decided to ask Perich to resign if Hosanna-Tabor was willing to partially pay her medical insurance for a limited time.

10. On February 8, 2005, Perich's neurologist released Perich to return to work without restrictions effective February 22, 2005, which is prior to the expiration of Perich's disability leave.

11. On February 10, 2005, Scott Salo, the President of the School Board for Hosanna-Tabor, called Perich to meet with her to discuss her job and her medical insurance. Perich requested a meeting with the Board to plead that she had been released to work and she was able to do so. Salo later informed Perich that the Board would meet with her on February 13, 2005.

12. Perich's meeting with the Board took place as scheduled on February 13, 2005. At the beginning of the meeting, Salo gave Perich a written proposal wherein Perich would resign if the Church paid part of her medical insurance for a limited time. In response, Perich provided the Board with a copy of the return to work signed by her neurologist and informed the Board that she was willing and able to return to her job.

13. The Board, however, chose to reject Perich doctor's decision that Perich could return to work without restrictions. Board member Kurt Ostrander opined that he "wouldn't drive if I were you, not even if the doctor says you can." Board member Sheila Simpson informed the Board that "I have a medical background and I know that you have to be without symptoms for at least three months before you can be sure that the medicine is working well enough that you won't have symptoms again. . . . If I were a parent who has a child in this school, I'd want you to be without symptoms for 6 months with no episodes for 6 months or maybe even a year before I'd want my child in your class."

14. Perich responded that the Board's decision to reject her doctor's authorization to return to work would cause a real problem because she was no longer eligible for disability

insurance coverage since she could work. The Board's response was that "[a]ll you have to do is call your doctor and tell them that your employer has a rule that you have to be symptom free for three months before you can return to work. He'll take his copy of the return to work slip out of your file and change things in his file to say that you can come back later. I know doctors."

15. The next day, February 14, 2005, Perich spoke with Board member Jim Pranske and told him that she thought it would be against the law to ask her doctor to falsify her return slip. Pranske told Perich that she should ask her doctor, and if he refuses, all she can do is to resign from her employment.

16. On February 22, 2005, Perich went to the school to report to work upon the expiration of her disability leave. Hoeft told Perich to go home, saying "I'm not the only person that doesn't want you here. Parents have told me that they would be uncomfortable with you in the building." That same day, Salo sent Perich a letter directing her not to return to the school.

17. Later that day, Hoeft called Perich and informed her that she would most likely be fired. Perich responded that she had been talking to an attorney and would assert her legal rights against discrimination even though she had been trying to work out the issue with Hoeft and the Board.

18. On March 19, 2005, Salo sent Perich a letter informing her that they were going to have a vote to terminate her employment. As stated by Salo, "We are also requesting this because we feel that you have damaged, beyond repair, the working relationship you had with the Administration and School Board by threatening to take legal action against Hosanna-Tabor Lutheran Church and School."

19. On or about April 10, 2005, Hosanna-Tabor terminated her employment.

20. On or about May 17, 2005, Perich filed a Charge of Discrimination with the EEOC, alleging that the Hosanna-Tabor terminated her employment because it regarded Perich as being disabled in violation of the American Disabilities Act (“ADA”) and in retaliation for threatening legal action against Hosanna-Tabor to oppose its acts against Perich in violation of the ADA.

21. On or about September 28, 2007, the EEOC filed its Complaint against Hosanna-Tabor alleging that it unlawfully retaliated against Perich in violation of Section 503(a) of the ADA, 42 U.S.C. §12203(a), which is currently pending before the Court.

COUNT I
RETALIATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

22. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-21 above, as if restated word for word herein.

23. Hosanna-Tabor is an employer that is a covered entity under Section 101(2) of the Americans With Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12111(2).

24. Hosanna-Tabor engaged in unlawful employment practices at its Redford, Michigan facility in violation of Section 503(a) of the ADA, 42 U.S.C. §12203(a), including but not limited to terminating Perich’s employment in retaliation for threatening to file an ADA lawsuit against Hosanna-Tabor and opposing Hosanna-Tabor’s unlawful acts.

25. The unlawful employment practices and retaliating against Perich were intentional.

26. The unlawful employment practices and retaliating against Perich were done with malice or with reckless indifference to the federally protected rights of Perich.

COUNT II
RETALIATION IN VIOLATION MICHIGAN'S PERSONS
WITH DISABILITIES CIVIL RIGHTS ACT

27. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-26 above, as if restated word for word herein.

28. Hosanna-Tabor is an "employer" as defined under Michigan's Persons With Disabilities Civil Rights Act ("PDCRA"), M.C.L. §37.1201(b).

29. Pursuant to the PDCRA, an employer is prohibited from retaliating or discriminating against a person because the person has opposed a violation of this Act. MCL §37.1602(a).

30. Hosanna-Tabor terminated Perich's employment by retaliating against her for opposing Hosanna-Tabor's violations of the PDCRA.

RELIEF

Wherefore, Cheryl Perich asks the Court to enter judgment against Hosanna-Tabor for its unlawful acts, including but not limited to the following request for relief:

A. Grant a permanent injunction enjoining its defendant, its officers, successors, assigns, and all persons in active concert or participation with it from engaging in retaliation and any other employment practice which discriminates on the basis of a disability.

B. Order defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices.

C. Award Perich the amount of her losses, including but not limited to her lost earnings and benefits and to reinstate Perich to the position from which she was terminated with

pay and benefits equal to that which she would have attained had she not been terminated or providing Perich with appropriate front pay in lieu of reinstatement.

D. Award Perich whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices as set forth above.

E. Award Perich whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful employment practices as set forth above, including but not limited to mental and emotional distress.

F. Award Perich punitive damages for defendant's malicious and reckless conduct.

G. Grant such other further and/or other relief that is just under the circumstances.

I. Award Perich her attorney fees incurred in brining this action against defendant.

Respectfully submitted,

VERCRUYSSSE MURRAY & CALZONE, P.C.

By: s/James E. Roach

James E. Roach (P51792)

jroach@vmclaw.com

Attorneys for Plaintiff/Intervenor Cheryl Perich

31780 Telegraph Road, Suite 200

Bingham Farms, MI 48025

(248) 540-8019

Dated: April 10, 2008