TODD V. FAYETTE CNTY. SCH. DIST.: ELEVENTH CIRCUIT HOLDS SCHOOL DISTRICT'S RESPONSIBILITY TO KEEP STUDENTS AND STAFF SAFE FROM VIOLENCE SUPERSEDES ADA AND FMLA OBLIGATIONS

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In *Todd v. Fayette County School District*,[1] the United States Court of Appeals for the Eleventh Circuit addressed claims brought by a terminated teacher against Fayette County School District ("District") administrators alleging unlawful discrimination under the Americans with Disabilities Act ("ADA")[2] and the Rehabilitation Act,[3] interference with her medical leave rights under Family and Medical Leave Act ("FMLA"),[4] and retaliation in violation of all three statutes.[5] On appeal, the Eleventh Circuit affirmed the United States District Court for the Northern District of Georgia's grant of summary judgment in favor of the employer after considering whether it is wrongful to terminate an employee who engaged in threatening and dangerous behaviors stemming from her major depression disorder.[6]

The appellant, Jerri Todd, began teaching at Whitewater Middle School in 2009.[7] In the following years, Todd was diagnosed by a mental-health professional, Dr. Linda Weigand, with major depressive disorder and anxiety.[8] Todd discussed her diagnosis, medication, and treatment with the school's principal, Connie Baldwin, who consistently supported Todd and accommodated Todd's work schedule so she could attend appointments with Dr. Weigand.[9] Todd also often confided in her co-workers, Katy Sweat and

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[1] Todd v. Fayette Cnty. Sch. Dist., 998 F.3d 1203 (11th Cir. 2021).

[2] *See* 42 U.S.C. §§ 12101 *et seq.* The ADA prohibits an employer from "discriminat[ing] against a qualified individual on the basis of disability in regard to . . . discharge of employees . . . and other terms, conditions, and privileges of employment." 29 U.S.C. § 12112(a).

[3] *See* 29 U.S.C. §§ 701 *et seq.* Like the ADA, the Rehabilitation Act makes it unlawful for federally funded programs to discriminate against a qualified individual because of a disability. 29 U.S.C. § 791

[4] *See* 29 U.S.C. §§ 2601 *et seq.* Under the FMLA, eligible employees may receive up to "twelve workweeks of leave during any twelve-month period for 'a serious health condition that makes the employee unable to perform the functions of her job.'" *Todd*, 998 F.3d at 1220 (quoting 29 U.S.C. § 2612(a)(1)(D)). An employee returning from FMLA leave "is entitled to be restored to her former position or an equivalent position." *Id.* (quoting 29 U.S.C. § 2614(a)(1)).

[5] *Id.* at 1209.

[6] *Id.* at 1209–10.

[7] *Id.* at 1210.

[8] *Id.*

[9] *Todd*, 998 F.3d at 1210.

Deanise Myers, revealing her struggle with mental illness and suicidal thoughts.[10]

However, one Friday in January 2017, Todd's conversations with Sweat and Myers raised red flags.[11] Sweat and Myers both recalled Todd expressing suicidal and homicidal thoughts during their separate conversations with her.[12] While at school the following Monday, "Todd [allegedly] ingested multiple Xanax pills during school, appeared agitated, and threatened to kill herself and her son—who was a student at the school" during another conversation with Sweat and Myers.[13] Concerned for the welfare of Todd and her son, Sweat and Myers reported Todd's comments and behavior to Principal Baldwin.[14] Principal Baldwin then consulted the school's resource officer, Officer Vazquez, who removed Todd from her classroom as a "safety precaution."[15] Despite her insistence that she had not "threatened or planned to kill herself or her son," Principal Baldwin and Officer Vazquez made arrangements for Todd to attend her standing appointment with Dr. Weigand that same day.[16]

Unaware of the alleged events earlier that day, Dr. Weigand concluded after the appointment that Todd "lacked a plan or intent to kill herself or her son and showed no signs of intoxication."[17] Because of this, Dr. Weigand told Sweat—who had driven Todd to her appointment—that Todd was permitted to return to work.[18] However, Sweat recalled that on the drive back to the school, Todd stated that "it was her right as a mother to be able to kill her son."[19] Todd denied making such a statement, yet this allegation caused Whitewater administrators to grow more concerned for the safety of Todd's son.[20] School personnel convinced Todd to authorize Amy Cannady, a fellow teacher, to take Todd's son home with her, and encouraged

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[10] *Id.*
[11] *Id.*
[12] *Todd*, 998 F.3d at 1210. According to Sweat, Todd said that "'if she had a gun, she and [her son] would not have come back' from winter break." *Id.* While speaking with Myers later that same evening, Todd allegedly detailed various ways she had contemplated killing herself and her son. *Id.*
[13] *Id.* During the conversation on Monday, Todd allegedly yelled that "she had every right to kill her son" and insinuated that she was taking her son with her when Todd killed herself. *Id.* at 1210–11.
[14] *Id.* at 1211
[15] *Todd*, 998 F.3d at 1211 (noting that the resource officer considered Todd's statements to present "potential danger" and "definite safety concern[s]").
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.* at 1211–12.
[20] *Id.* at 1212.

Todd to be evaluated at Piedmont Fayette Hospital.[21] The next day, Todd was involuntarily admitted to Lakeview Behavioral Health, a mental-health facility, with permission from Dr. Weigand and released four days later.[22]

Because of the ongoing investigation into Todd's alleged statements and conduct, and the fact that her doctors had yet to provide a work release on her behalf, Todd was not allowed to return to work the Monday following her release from Lakeview.[23] Todd instead met with the school district's Director of Human Resources, Erin Roberson, and admitted to making suicidal and homicidal statements, but explained that "the statements she made were due to depression and not taking her medications."[24] The following day, Dr. Weigand and the staff at Lakeview cleared Todd to return to work while the Department of Family and Child Services ("DFCS") informed Roberson that Todd was temporarily denied access to her son.[25]

Despite being cleared to return to work, the District superintendent, Dr. Joseph Barrow, did not permit Todd to return while the school's investigation into the matter was ongoing.[26] Dr. Barrow did not feel comfortable allowing Todd to return to work unless the investigation revealed that the reports about Todd's behavior were inaccurate and until DFCS gave her permission to be around her son.[27] However, Dr. Barrow directed Roberson to consult with the Lakeview "to learn whether the District could implement any protocols to prevent Todd from engaging in similar behavior upon returning to work."[28]

Subsequently, Todd's petition for custody of her son was denied by the juvenile court judge, meaning her son was to remain with Cannady.[29] Todd was also placed on administrative leave, to which she responded by "[telling] Roberson that she was covered by the ADA."[30] A few days later, Roberson informed Todd that she was barred from returning to school due to her previous threats, and the juvenile court's ruling.[31] Roberson also communicated that the superintendent was likely going to terminate Todd's

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[21] *Todd*, 998 F.3d at 1212.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.* Specifically, Dr. Weigand had indicated that Todd presented no threat to herself or others. *Id.*
[26] *Todd*, 998 F.3d at 1212.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.* at 1212–13.

employment unless she resigned.[32] Rather than resigning, Todd requested FMLA leave, which was granted through the end of April 2017.[33]

In late February and early March, Todd received custody of her son and Dr. Weigand wrote a letter on her behalf indicating that "Todd's behavior had stabilized and she had no concern Todd's behavior would recur."[34] However, later that month, Roberson was informed that Todd had made threats against other Whitewater employees, which Todd denied.[35] Roberson communicated this information to Dr. Barrow, who then sent a notice of nonrenewal to Todd determining that because of her various threats and behaviors, she "could [no longer] effectively work in the District[.]"[36] Todd's employment was officially terminated at the end of the school year as Todd did not contest the nonrenewal of her contract.[37]

In April 2017, Todd sued the school district alleging violations of the ADA, Rehabilitation Act, and FMLA.[38] The district court adopted the Report and Recommendation of the magistrate judge and granted summary judgment in favor of the district.[39] Todd then appealed, claiming that the district court erred in granting summary judgment with respect to her claims.[40]

The Eleventh Circuit reviewed the district court's decision de novo, first addressing Todd's disability-discrimination claims under the ADA and Rehabilitation Act.[41] To survive a motion for summary judgment, the court noted that "Todd must cite evidence [direct or circumstantial] that would allow a reasonable jury to find that the District terminated her employment and thus discriminated against her because of her disability (major depressive disorder)."[42] On appeal, Todd argued she had both direct and circumstantial evidence to support her claims.[43] First, Todd pointed to Dr. Barrow's statement in his deposition that the "primary driver" for Todd's termination was "the risk of harm arising from [her] mental impairment" as direct evidence of discrimination.[44] The Eleventh Circuit, however, concluded that

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[32] *Todd*, 998 F.3d at 1213.
[33] *Id.*
[34] *Id.* at 1213.
[35] *Id.* The teacher who Todd allegedly communicated these threats to recalled Todd grinning while stating that she "la[id] awake at night trying to thin[k] of things that [she] [could] do to people in [the] building" and she would "just wake[] up in the night and just have these ideas." *Id.* (internal quotation marks omitted).
[36] *Id.* (alterations in original).
[37] *Todd*, 998 F.3d 1213–14.
[38] *Id.* at 1214.
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.* 1214–15.
[43] *Todd*, 998 F.3d at 1215.
[44] *Id.* at 1215.

this statement—cited by Todd out of context—was not direct evidence of unlawful discrimination when considering the entirety of Dr. Barrow's testimony, which indicated that Todd's termination resulted from his belief that "Todd could not be effective in the classroom" due to her numerous alleged threats toward school personnel.[45]

Turning to circumstantial evidence, for the purposes of the *McDonnell Douglas* burden shifting framework, the court assumed that Todd could establish a prima facie case for disability-discrimination and thus considered whether the District identified a "legitimate, nondiscriminatory reason for not renewing Todd's employment."[46] To this point, the District re-asserted that it terminated Todd because she "could no longer be an effective teacher at Whitewater" due to her previous threats and excessive ingestion of Xanax while at school.[47] In evaluating the District's proffered reasons, the Eleventh Circuit stated:

> We recognize that Todd's behavior, including the threats she allegedly made, likely stemmed from her major depressive disorder. But that does not mean the District's proffered reasons for declining to renew Todd's contract were discriminatory: the record does not support the proposition that the District declined to renew Todd's contract because she had been diagnosed with major depressive order . . . the record reflects no genuine dispute that the District ended Todd's employment because it believed she made threats against herself, other employees, and her son, who, again, was a student at the school.[48]

Finding that the District offered a legitimate, non-discriminatory reason for Todd's termination, the court was influenced by the reasoning of other courts: under the ADA, employers are not required to "countenance dangerous misconduct, even if that misconduct is the result of a disability."[49]

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[45] *Id.*

[46] *Id.* at 1215–16. The Eleventh Circuit explained that if a plaintiff employee satisfies its burden of production to establish a prima facie case of discrimination, the burden shifts to the employer who must identify "a legitimate, nondiscriminatory reason for its actions." *Id.* at 1216 (quoting Holland v. Gee, 677 F.3d 1047, 1055 (11th Cir. 2012)). The burden then shifts back to the employee to prove that the reason(s) articulated by its former employer are "merely a pretext for discrimination." *Id.*

[47] *Todd*, 998 F.3d at 1217.

[48] *Id.*

[49] *Id.* (quoting Sista v. CDC Ixis N. Am., Inc., 445 F.3d 161, 172–73 (2d Cir. 2006)).

With the burden shifted back to Todd, she identified evidence that she believed showed that "the District's proffered reason [was] a mere pretext for discrimination based on her disability."[50] In doing so, Todd claimed (1) that she had never threatened her co-workers, (2) that Dr. Barrow's testimony was indicative of "his fear that she posed a future risk of harm—a fear that served as a pretext for her major depressive disorder—instead of her past conduct,"[51] and (3) that the letters approving Todd's return to school proved the pretextual nature of the District's proffered reasons.[52]

First, the court noted that "at the pretext stage of the inquiry, we are unconcerned with the truth of the allegations that led to Todd's termination[,]" but rather "whether unlawful discriminatory animus motivate[d] the District's decision not to renew Todd's contract."[53] Thus, even if the allegations against Todd were not true, "Todd present[ed] no evidence to suggest that Dr. Barrow did not honestly believe that Todd threatened herself, her son, and other employees, or that she ingested excessive amounts of Xanax while responsible for students at the school."[54] Second, the court reiterated that Dr. Barrow's testimony cited out of context was not evidence of pretext.[55] The court also reasoned the fact that she was terminated after the school district sought guidance on implementing safety protocols in the event Todd were to return to work was not evidence of pretext because "an employer may investigate 'the likelihood of an employee's unacceptable behavior recurring before it decides' to terminate that employee."[56] Lastly, the court concluded that Todd's termination after being cleared to return to work by Dr. Weigand and Lakeview was also not evidence of pretext given the reports of her "concerning behavior" after those letters were issued.[57] Thus, the court affirmed the district court's grant of summary judgment on Todd's disability-discrimination claims under the ADA and Rehabilitation Act.[58]

The Eleventh Circuit then analyzed Todd's retaliation claims under the ADA, Rehabilitation Act, and FMLA also using the *McDonnell Douglas* burden shifting framework.[59] For the purposes of review, the court again assumed Todd established prima facie cases of retaliation and reaffirmed that

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[50] *Id.* at 1217–18 (citing Alvarez v. Royal Atlantic Developers, Inc. 610 F.3d 1253 (11 Cir. 2010).
[51] *Id.* at 1218.
[52] *Id.* at 1219.
[53] *Todd*, 998 F.3d at 1218 (citations and internal quotation marks omitted).
[54] *Id.* at 1218.
[55] *Id.*
[56] *Id.* (citations omitted)
[57] *Id.* at 1219.
[58] *See id.* at 1219, 1221.
[59] *Todd*, 998 F.3d at 1219.

the District's proffered reason that Todd "could no longer be effective in her position based on her threats to herself, her son, and administrators and on her excessive ingestion of Xanax while on duty" was a "legitimate, nondiscriminatory reason for the employment decision."[60] Thus, the burden rested on Todd to show "genuine dispute of material fact" that the District's reasoning was "a pretextual ruse designed to mask retaliation."[61] To carry this burden, Todd relied on the "close temporal proximity between her assertion of her ADA rights . . . and the District's request that she resign" and the temporal proximity between Todd's request for FMLA leave and Roberson's suggestion that her contract not be renewed.[62] The court, however, rejected this argument, reasoning that "the District was already contemplating ending Todd's employment when she asserted her ADA and FMLA rights . . . ."[63] Accordingly, the court affirmed the district court's grant of summary judgment on Todd's retaliation claims under the ADA, Rehabilitation Act, and FMLA.[64]

The Eleventh Circuit lastly ruled that the district court had not erred in granting summary judgment on Todd's FMLA interference claim because the District's reason for terminating Todd's employment was "wholly unrelated to the FMLA leave."[65] The court found that Todd's threats and consumption of Xanax while at school were sufficient to prove that the District's decision to not renew Todd's contract had nothing to do with Todd's FMLA leave, and evidence that the District requested Todd's resignation prior to her taking leave further supported this conclusion.[66]

The Eleventh Circuit in *Todd v. Fayette County School District* recognized that the statutes in question generally protect the millions of Americans suffering from mental illness from discrimination, but the court ultimately concluded that such statutes do not protect individuals who make violent threats against themselves, students, or school administrators.[67] The court recognized that the school district's "responsibility to keep [its] students and staff safe from violence" ultimately justified terminating the employment

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[60] *Id.*
[61] *Id.* (quoting Stewart v. Happy Herman's Cheshire Bridge, Inc., 117 F.3d 1278, 1287 (11th Cir. 1997)).
[62] *Id.*
[63] *Id.* at 1220 (stating that "the writing was already on the wall").
[64] *Todd*, 998 F.3d at 1219–20.
[65] *Id.* at 1220 (quoting Strickland v. Water Works & Sewer Bd. of Birmingham, 239 F.3d 1199, 1208 (11th Cir. 2001)). An employer need not reinstate an employee "if it can demonstrate that it would have discharged the employee had [s]he not been on FMLA leave." *Id.* (quoting Martin v. Brevard Cnty. Pub. Schs., 543 F.3d 1261, 1267 (11th Cir. 2008)).
[66] *Id.*
[67] *Id.* at 1221.

of a teacher who compromises the safety of those individuals.[68] Thus, the Eleventh Circuit affirmed the grant of summary judgment in the District's favor.[69]

[68] *Id.*
[69] *Todd*, 998 F.3d at 1221.