SHAMEKA BROWN	*	**NO. 2017-CA-0750**
VERSUS	*	**COURT OF APPEAL**
THE BLOOD CENTER	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2015-07008, DIVISION "0"
Honorable Paulette R. Irons, Judge
* * * * * *
Judge, Dennis R. Bagneris, Sr., Pro Tempore
* * * * * *
(Court composed of Judge Terri F. Love, Judge Joy Cossich Lobrano, Judge Dennis R. Bagneris, Sr., Pro Tempore)
LOBRANO, J., CONCURS IN PART, DISSENTS IN PART, AND ASSIGNS REASONS

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AFFIRMED

MARCH 15, 2018

Plaintiff, Shameka A. Brown, appeals a judgment of the district court granting a motion for summary judgment in favor of defendant, The Blood Center (TBC), and dismissing all claims asserted by Ms. Brown against TBC. For reasons that follow, we affirm.

PROCEDURAL HISTORY

On July 22, 2015, Shameka Brown filed a lawsuit seeking damages for unlawful termination from her job as a supervisor of a mobile blood center operated by defendant, TBC. Ms. Brown makes claims for damages pursuant to the Louisiana Employment Discrimination Law embodied in La. R.S. 23:301 *et seq*., and the Louisiana Pregnancy Discrimination Act set forth in La. R.S. 23:341 *et seq*. TBC answered the petition and asserted several affirmative defenses including the inability of plaintiff to establish a *prima facie* case of discrimination under either the Louisiana Employment Discrimination Act or the Louisiana Pregnancy Discrimination Act.

In the petition Ms. Brown asserts that on August 9, 2014, she became ill at work due to a difficult pregnancy and vomited and urinated on herself. The petition alleges that, because of this incident, she was terminated for abandonment of her job before her next shift despite the fact that a medical emergency required her to leave work temporarily to shower and change her clothes.

The parties conducted discovery, after which TBC filed a motion for summary judgment on September 23, 2016. The trial court denied that motion, but allowed TBC to re-urge the motion after the taking of a deposition of a TBC representative regarding the work rule allegedly violated by Ms. Brown.

On February 8, 2017, TBC filed a second motion for summary judgment. After a hearing on the motion, the trial court rendered judgment on May 4, 2017, granting the summary judgment and dismissing all of Ms. Brown's claims against TBC with prejudice. Ms. Brown filed a timely appeal from that judgment.

FACTS

Shameka Brown is a whole blood apheresis technician who held the title of mobile supervisor with TBC since 2010. On August 9, 2014, Ms. Brown was the supervisor on duty at the Slidell blood donation center. At that time she was about seven months pregnant with her first child. Due to the difficult pregnancy, Ms. Brown suddenly became ill with nausea and dizziness, causing her to vomit and urinate on herself. Ms. Brown left the blood center and went home to shower and change. She called her supervisor about two hours later to explain what happened and why she left her job without permission. After that conversation, Ms. Brown returned to work and completed the remainder of her shift.

A few days later Ms. Brown was terminated for abandoning her assigned duty as the scheduled supervisor without appropriate notification in violation of company policy. This policy is incorporated in the company manual introduced into the record. The manual specifically states that employment at TBC is at-will

and that leaving a work station without permission while on duty is cause for immediate dismissal.

In her deposition, Ms. Brown admitted she left her post without notifying her supervisor. She also admitted she knew that behavior was grounds for immediate termination. Ms. Brown testified that she was embarrassed by the incident and could not continue working in her soiled clothing. Ms. Brown told a co-worker she was leaving, but did not notify her immediate supervisor about the incident until about two hours after she left her job. In the interim, the TBC facility was without supervision.

The report supporting the decision to terminate Ms. Brown's employment shows that Jerry Himel, the marketing manager, went to the Slidell donor center at about 2:30 p.m. He found two fire trucks outside and five donors waiting to give blood. The "bleeding area" was empty. When Mr. Himel questioned staff, he learned that the supervisor, Shemeka Brown, left about 1:00 p.m. due to an illness. Mr. Himel notified Antonio White, Ms. Brown's immediate supervisor, of the problem. It was about this time that Ms. Brown called Mr. White to tell him she left her post. After speaking with Mr. White, Ms. Brown returned to her job at about 3:00 p.m. Ms. Brown did not dispute any of these facts; although she did state that she told a co-worker she was leaving, but not her supervisor.

Antonio White, Ms. Brown's immediate supervisor, testified that he learned of her absence when he got a phone call from another employee who told him the blood center was busy and there was no supervisor on duty. Mr. White later

received a call from Ms. Brown, who told him she left her post because she wasn't feeling well. She also stated she knew the blood center was busy, but she could not return because she was not wearing her uniform. At that time, Ms. Brown did not provide any details of her illness.

DISCUSSION

"After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law."[1] A motion for summary judgment should be granted when there is no genuine issue of fact remaining to be decided for all or part of the relief sought by a litigant.[2] In determining whether summary judgment is appropriate, appellate courts review the evidence *de novo* using the same standard applicable to the trial court.[3] This standard of review requires this Court to consider evidence presented in the record, and to make an independent determination that there is no genuine issue of material fact, and that the mover is entitled to judgment as a matter of law.[4] Generally, the burden of proof rests with the mover. However, "if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the

[1] La. C.C.P. art. 966 A(3).
[2] La. C.C.P. art. 966.
[3] *Samaha v. Rau*, 2007-1726 (La. 2/26/08), 977 So. 2d 880, 882.
[4] *Marigny v. Allstate Ins. Co*., 95-0952 (La. App. 4 Cir. 1/31/96), 667 So.2d 1229, 1231, *writ denied*, 96-0693 (La. 4/26/96), 672 So.2d 910.

absence of factual support for one or more elements essential to the adverse party's claim, action, or defense." [5]

Claimant makes two claims in her action against TBC for wrongful termination from her employment. She asserts she was discriminated against because of a disability and/or a pregnancy-related condition.

Our Louisiana law follows the Americans with Disabilities Act, set forth in 42 USC § 12101, et seq.[6] Accordingly, we are guided by federal jurisprudence interpreting discrimination cases and our review of Ms. Brown's claims will follow the analysis set forth under federal law.[7] The requirements for a discrimination claim were articulated in *McDonnell Douglas Corp. v. Green*[8]. Under the *McDonnell Douglas* test, a plaintiff is required to show that: (1) she was a member of a protected class, (2) she was qualified for the position she lost, (3) she suffered an adverse employment action, and (4) that others similarly situated were more favorably treated.[9]

La. R.S. 23:323A provides that, "(n)o otherwise qualified person with a disability shall, on the basis of a disability, be subjected to discrimination in employment." "To defeat a motion for summary judgment against an employment disability claim, the claimant must establish a *prima facie* case that: (1) he has a disability, as defined by the statute, (2) he is qualified for the job, and (3) an

[5] La. C.C.P. art. 966 D(1).
[6] *Thomas v. Louisiana Casino Cruises, Inc.*, 2003-1937, p. 3 (La. App. 1 Cir. 6/25/04), 886 So.2d 468, 470, *writ denied,* 2004-1904 (La. 10/29/04), 885 So.2d 598.
[7] *Id.* Wrongful termination because of pregnancy is also prohibited by Title VII of the Civil Rights Act of 1964.
[8] 411 U.S. 792, 93 S.Ct. 1817 (1973).
[9] *McDonnell Douglas Corp. v. Green*, *supra.*

adverse employment decision was made solely because of the disability."[10] Thus, our first inquiry is whether Ms. Brown meets the statutory definition of "disabled."[11]

An 'otherwise qualified disabled person' is defined "a disabled person who, with reasonable accommodation, can perform the essential functions of the employment position that such person holds or desires."[12] A disabled person "means any person who has a physical or mental impairment which substantially limits one or more of the major life activities ..." [13] "'Major life activities' means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." [14]

Claimant's only assertion in support of her disability claim is that she was experiencing a difficult pregnancy and that she was unable to stay at work on the day she was terminated due to a pregnancy-related illness. While that fact is not disputed, this assertion does not establish the threshold requirement of a *prima facie* case under the disability act in that it does not show the claimant had a disability as defined in the relevant statute.

Ms. Brown seeks to incorporate the language of La. R.S. 23:341(B)(1) into the definition of disability contained in La. R.S. 23:323. The text of La. R.S. 23:341(B)(1) provides: "for purposes of this Part." Ms. Brown's attempt to expand

[10]*Thomas v. Louisiana Casino Cruises, Inc.*, *supra*, 886 So.2d at 470, (citing *Hook v. Georgia-Gulf Corporation,* 99-2791, p. 8 (La. App. 1 Cir. 1/12/01), 788 So.2d 47, 53, *writ denied,* 01-1098 (La.6/1/01), 793 So.2d 200.)
[11]*Hook v. Georgia-Gulf Corporation,* 99-2791, p. 8 (La. App. 1 Cir. 1/12/01), 788 So.2d 47, 53, *writ denied,* 01-1098 (La. 6/1/01), 793 So.2d 200.
[12] La. R.S. 23:322(8).
[13] La. R.S. 23:322(3).
[14] La. R.S. 23:322(7).

the definition of disability fails because the definition is contained in La. R.S. 23:323 outside the "Part" for the purposes of La. R.S. 23:341(B(1).

Additionally, even if she were considered disabled, Ms. Brown failed to meet her burden of establishing a *prima facie* case that "an adverse employment decision was made solely because of the disability." *Thomas v. Louisiana Casino Cruises, Inc.*, 03-1937, p. 3 (La. App. 1 Cir. 6/25/04), 886 So. 2d 468, 470. Once TBC demonstrated the "absence of factual support for" Ms. Brown's disability discrimination claim pursuant to La. R.S. 23:323, the burden shifted to Ms. Brown "to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law." La. C.C.P. art 966(D)(1).

Ms. Brown testified that other workers who left work without notifying their supervisor were not terminated, but she was, as a pregnant employee. However, she produced no evidence for corroboration other than her self-serving testimony. While she named a specific employee that she believed was treated differently, she did not attach an affidavit or deposition testimony of said employee. Thus, her assertion was not supported by any corroborating evidence and does not create a genuine issue of material fact. *See Schwarzenberger v. Louisiana State Univ. Sciences Ctr. New Orleans*, 17-0024, p. 14 (La. App. 4 Cir. 8/24/17/226 So. 3d 1200, 1209. Therefore, we find an essential element of Ms. Brown's claim, that she is an individual protected under La. R.S. 23:323, lacks any factual support.

Ms. Brown has also made the claim that she was wrongfully terminated from her employment because of her pregnancy. This cause of action arises under La. R.S. 23:342, which provides in pertinent part that:

> It shall be an unlawful employment practice unless based upon a bona fide occupational qualification:
>
> (1) For any employer, because of the pregnancy, childbirth, or related medical condition of any female employee, to refuse to promote her, or to refuse to select her for a training program leading to promotion, provided she is able to complete the training program at least three months prior to the anticipated date of departure for her pregnancy leave, or to discharge her from employment or from a training program leading to promotion, or to discriminate against her in compensation or in terms, conditions, or privileges of employment.

In the trial court, TBC argued successfully that claimant could not meet the final requirement of the *McDonnell Douglas* test for discrimination, in that she could not show others similarly situated were more favorably treated. Additionally, TBC argued that Ms. Brown was terminated for a legitimate, non-discriminatory reason. Simply put, TBC asserts claimant was fired because she left her job without notifying her immediate superior, not because she was pregnant.

The trial court was persuaded by this argument and determined that summary judgment should be granted. On *de novo* review of the record, we arrive at the same conclusion. TBC has shown, and claimant does not dispute, that the reason for the termination of employment was a violation of a clearly defined company policy. She was not fired because she suffered a pregnancy-related illness that caused her to leave her job, or because she is disabled. Her employment was terminated because she did not notify her immediate supervisor

that an illness required her to leave her duty assignment until two hours after she left. This failure to notify a supervisor before leaving her work station is listed in the employment manual as grounds for immediate dismissal. Ms. Brown was aware of this policy and that her violation of the policy subjected her to termination from her employment.

Additionally, we note that there is no evidence to show that others similarly situated were treated differently. In her deposition, Ms. Brown confirmed that she was unaware of any instance in which a supervisor left a blood center unattended without a supervisor on duty.

For the foregoing reasons, we find no merit in Appellant's assignments of error and we affirm the trial court's judgment granting summary judgment in favor of The Blood Center.

AFFIRMED