

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13552
Non-Argument Calendar

NILSA IVETTE AGRAIT,

Plaintiff-Appellant,

versus

HILLSBOROUGH COUNTY PUBLIC SCHOOLS,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:23-cv-01555-SDM-SPF

Before ROSENBAUM, NEWSOM, and BRASHER, Circuit Judges.

PER CURIAM:

Nilsa Agrait, proceeding pro se, appeals summary judgment for her former employer, Hillsborough County Public Schools (“HCPS”), on her discrimination and retaliation claims under the

Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.* After careful review, we affirm.¹

I. Background

Agrait worked at HCPS from 1993 to 2022 as a speech-language pathologist, or an “SLP.” In 1998, a doctor diagnosed her with multiple sclerosis (“MS”), a chronic autoimmune disease affecting the central nervous system. Her MS caused significant mobility and vision problems. Despite her medical challenges, Agrait continued to work with the aid of eyeglasses, a walker, or an electric scooter. She also used a school-provided handicapped parking space. During her tenure at HCPS, Agrait took several leaves of absence due to MS flareups.

As an SLP, Agrait addressed speech and language issues with HCPS students from kindergarten to twelfth grade. The job description for her role includes an expectation that all district employees must “[d]emonstrate regular and predictable attendance.” It also states, “[p]hysical presence is a part of a reliable and predictable pattern of attendance.” HCPS policy documents likewise provide that regular attendance is an essential function of employment. The physical presence of instructional and support staff is necessary to maintain appropriate supervision, control, and protection of students.

¹ Agrait’s two motions to amend her reply brief are DENIED. Her renewed motion to correct the appendix tables of contents is GRANTED, and her earlier motion seeking the same relief is DENIED AS MOOT.

25-13552

Opinion of the Court

3

During the COVID-19 pandemic, HCPS temporarily shifted to online learning. This meant that students and staff worked from home. During the 2020–2021 school year, Agrait therefore conducted sessions with students virtually.

By the 2021–2022 school year, HCPS returned to in-person classes full time. HCPS assigned Agrait to Durant High School and Marshall Middle School, where she was the sole SLP for in-person students. On December 31, 2021, and again on January 20, 2022, Agrait submitted requests to indefinitely work remotely. She submitted these requests to Danielle Shotwell, the General Manager of Employee Relations, and Deborah Llewellyn, the Supervisor of the Speech-Language Program. HCPS denied those requests on January 13, 2022, and again on January 25, 2022, concluding that the in-person requirement is an essential function of Agrait’s position. HCPS also determined that Agrait’s proposed remote arrangement would require another adult to remain physically present with each student during her virtual sessions, increasing the staffing demands on HCPS.

HCPS staff encouraged Agrait to discuss other possible accommodations with her medical team. If she was unable to return in person, staff instructed Agrait to consider her available leave options.

HCPS also manages the Hillsborough Virtual School (“HVS”), which is a virtual alternative to in-person public school. HCPS staff offered to transfer Agrait to an SLP position with HVS

if one were to become available. But none became available during the relevant period.

Between February 4 and February 11, 2022, Agrait persisted in her attempt to work remotely and arranged remote sessions through school personnel who were unaware of the denials. Specifically, Agrait contacted teachers and told them to provide her students with a computer so she could conduct her SLP sessions virtually. One teacher aware of this impromptu plan complained that the arrangement failed to address students' needs and required additional staff to supervise the children.

On February 16, 2022, Supervisor Llewellyn emailed Agrait to ask for a "plan" going forward. "To help in the transition," Llewellyn asked her to complete a few tasks so that she and HCPS could understand Agrait's caseload and shift assignments if needed.

Agrait later complained that she was not paid her full salary for the week of February 7 through 11, 2022. Agrait did not receive payment for this period because HCPS marked her absent for not showing up to work. HCPS later reviewed the matter and paid Agrait her full salary for each day she performed work, specifically, February 8, 9, and 11, 2022.

On February 17, 2022, HCPS again informed Agrait that she was not approved for remote work, and that she was marked "absent" on days she did not report to her assigned schools. On March 7, Agrait submitted another doctor's note supporting remote work. On March 8, Craig Horstman, the General Manager of Personnel Services, informed Agrait that she was not in compliance with

25-13552

Opinion of the Court

5

HCPS's attendance policy. On March 21, 2022, Agrait spoke to Horstman and learned that her options were to return to work in person, take a leave of absence, retire, or resign. If she rejected all those options, HCPS would terminate her employment. Agrait refused the other options and insisted that she be allowed to work from home. On April 1, 2022, HCPS terminated Agrait's employment.

After HCPS terminated her, Agrait sued, alleging disability discrimination and retaliation under the ADA. The district court granted HCPS summary judgment.

II. Standard of Review

We review a district court's grant of summary judgment *de novo* and apply the same legal principles as the district court. *Ismael v. Roundtree*, 161 F.4th 752, 758 (11th Cir. 2025). "Summary judgment is appropriate 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* (quoting Fed. R. Civ. P. 56(a)). In conducting the summary-judgment analysis, "[a]ll reasonable inferences must be drawn in favor of the nonmoving party." *Id.* Yet "a 'mere scintilla of evidence . . . will not suffice to overcome a motion for summary judgment.'" *Id.* (quoting *Young v. City of Palm Bay*, 358 F.3d 859, 860 (11th Cir. 2004)). We may affirm the district court's judgment on any ground supported by the record. *LeCroy v. United States*, 739 F.3d 1297, 1312 (11th Cir. 2014).

III. Discussion

Agrait raises three arguments. She contends that the district court (1) applied the wrong summary-judgment standard, (2) incorrectly treated physical presence as an essential function of her position, and (3) overlooked evidence that HCPS retaliated against her. None succeeds.

A. The district court applied the correct summary-judgment standard.

Agrait first contends that the district court confused Rule 12(b)(6)'s pleading standard with Rule 56's evidentiary standard and converted an unannounced motion to dismiss into one for summary judgment. She also says the court excluded evidence and failed to consider the record as a whole.

Agrait's arguments rest on a mistaken premise. HCPS never moved to dismiss her complaint. It moved for summary judgment, clearly designated as such. So the district court neither applied Rule 12(b)(6) nor converted a motion to dismiss into one for summary judgment. And Agrait had notice that the court would resolve the motion under Rule 56: she filed multiple responses that identified and applied the summary-judgment standard.

Agrait fares no better in arguing that the district court improperly excluded evidence and resolved facts in HCPS's favor. As we've noted, at summary judgment, we view the evidence and draw all reasonable inferences in favor of the nonmoving party. *Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1164 (11th Cir. 2003). But an asserted factual dispute must be supported by citations to particular materials in the record. Fed. R. Civ. P. 56(c)(1).

HCPS supported its account with affidavits, exhibits, and Agraït's deposition. Much of Agraït's responsive material duplicated that evidence. The rest created no material dispute. A school-secretary job description she submitted did not establish an SLP's duties; Agraït's tax return concerned damages, not liability; and calling HCPS's facts "false" without contrary evidence did not create a dispute. The district court thus neither resolved conflicting evidence nor drew inferences against Agraït.

B. Physical presence was an essential function of Agraït's SLP position.

Agraït argues that the district court improperly elevated HCPS's internal policies over the ADA and failed to conduct an individualized inquiry into whether she was a qualified individual. She advances three related arguments: (1) physical presence was not an essential function of her SLP position; (2) the district court relied on an outdated job description; and (3) her successful performance of her duties throughout her tenure showed that she could perform the position remotely. None creates a genuine dispute of material fact.

To establish a *prima facie* case of discrimination under the ADA, a plaintiff must show that (1) she is disabled; (2) she is a qualified individual; and (3) she was subjected to unlawful discrimination because of her disability. *Holly v. Clairson Indus., L.L.C.*, 492 F.3d 1247, 1255–56 (11th Cir. 2007). To show that she is a qualified individual, a plaintiff must establish that she can perform the essential functions of the employment position that she holds with or

without reasonable accommodations. *Id.* at 1256. An accommodation is reasonable and necessary under the ADA only if it will enable the employee to perform the essential functions of the job. *Id.* The ADA does not require an employer to eliminate an essential function or reallocate that function to another employee. *D’Angelo v. ConAgra Foods, Inc.*, 422 F.3d 1220, 1229 (11th Cir. 2005).

Essential functions “are the fundamental job duties of a position that an individual with a disability is actually required to perform.” *Holly*, 492 F.3d at 1257 (quotation omitted). Whether a function is essential requires a case-specific inquiry. *Id.* at 1258. Relevant evidence includes the employer’s judgment, a preexisting written job description, the time spent performing the function, the consequences of not requiring it, and the work experience of past and current employees in comparable positions. 42 U.S.C. § 12111(8); 29 C.F.R. § 1630.2(n)(3).

Those factors show that physical presence was essential here. To reach that conclusion, the district court did not treat HCPS’s policies as controlling. As the ADA requires, it considered those policies alongside Agrait’s duties, experience, and proposed accommodation.

HCPS’s written policies and job description consistently identified physical presence as a requirement of Agrait’s position. The HCPS Policy Manual provides that “[r]egular attendance is an essential function of all employees” and requires each instructional and support staff member to “maintain a standard of care for the supervision, control, and protection of students commensurate

25-13552

Opinion of the Court

9

with their assigned duties and responsibilities.” The job description for Agrait’s position similarly states that all district employees must “[d]emonstrate regular and predictable attendance” and that “[p]hysical presence is a part of a reliable and predictable pattern of attendance.” Danielle Shotwell, HCPS’s General Manager of Employee Relations, explained that in-person work is necessary to ensure adequate supervision and student safety.

Agrait responds that the district court relied on a 2012 job description rather than a 2018 version that omitted the position’s travel requirement. But the district court did not rely on the travel requirement. It relied on the separate physical-presence language in the job description, along with HCPS’s attendance and student-supervision policies. The 2018 description retained the requirement of regular and predictable attendance, including the statement that physical presence is part of such attendance. Despite her objection to the 2012 description, Agrait testified that it was a “fair and accurate depiction” of her position. The difference between the two descriptions therefore does not create a material factual dispute.

The remaining factors point the same way. Before the COVID-19 pandemic, Agrait performed her SLP duties in person for more than two decades. She regularly met with dozens of students in her office each day. She supervised those students without assistance unless a particular student required a one-on-one aide. Agrait’s physical presence enabled her to provide therapy while supervising and protecting the students placed in her care.

Agrait's experience during the pandemic does not establish otherwise. During the 2020–21 school year, both Agrait and her students participated virtually because HCPS had temporarily shifted to online learning. By the following school year, however, the students were back on campus for in-person instruction. And with their return to campus, student supervision and security issues arose that did not arise when both the students and Agrait were participating in school from home.

The consequences of permitting Agrait to work indefinitely from home also support HCPS's position. Because students attend school in person, in Agrait's physical absence, another employee would have to bring them to a computer, supervise each session, and respond to any behavioral problem or emergency. The requested arrangement would require another employee to perform the position's in-person supervisory component despite a critical shortage of SLP personnel.

Agrait's unauthorized remote-work trial in February 2022 confirmed that problem. School personnel had to bring the students to computers and remain available to facilitate the sessions. A teacher complained that only one paraprofessional was available to assist, questioned whether the arrangement met the students' needs, and expressed concern about the responsibility imposed on other employees. Agrait acknowledged that those concerns were valid. Thus, evidence that Agrait completed some SLP tasks re-

25-13552

Opinion of the Court

11

motely does not show that she could perform every essential function of the position without requiring another employee to assume its in-person component.

Nor does Agrait's prior satisfactory performance establish that she remained able to perform the position when she could no longer regularly report to her assigned schools and sought to work from home indefinitely. The relevant question is not whether Agrait historically performed well while working in person or whether she could complete some tasks remotely. It is whether, at the time of the challenged employment decision, she could perform all essential functions of the position with or without a reasonable accommodation. Her proposed accommodation would not have enabled her to perform the essential function of in-person attendance. It would have eliminated that function for her and transferred the accompanying supervisory responsibilities to other school personnel.

Because physical presence was an essential function of Agrait's SLP position, indefinite remote work was not a reasonable accommodation. And because Agrait failed to identify a reasonable accommodation that would allow her to perform all the position's essential functions, she failed to establish that she was a qualified individual under the ADA. The district court therefore properly granted summary judgment to HCPS on her disability-discrimination claims.

C. HCPS is entitled to summary judgment on Agrait's retaliation claim.

Agrait argues that HCPS retaliated against her after she requested indefinite remote work as an accommodation in December 2021 and January 2022. She characterizes HCPS's subsequent withholding of her salary and eventual termination as an escalating course of retaliation. For purposes of our analysis, we assume without deciding that the timing establishes the causal element of her prima facie case. Still, though, HCPS articulated legitimate, nonretaliatory reasons for both actions. And Agrait has not presented evidence from which a reasonable jury could find those reasons pretextual or, viewing the record as a whole, that HCPS intentionally retaliated against her because of her accommodation requests. The district court therefore properly granted summary judgment on this claim.

A plaintiff alleging ADA retaliation may proceed under the *McDonnell Douglas* burden-shifting framework.² Under that framework, to establish a prima facie case, the plaintiff must show that she engaged in statutorily protected activity, suffered a materially adverse action, and that a causal relationship existed between the two events. *Berry v. Crestwood Healthcare LP*, 84 F.4th 1300, 1307 (11th Cir. 2023).

Requesting a reasonable accommodation constitutes protected activity under the ADA. *Frazier-White v. Gee*, 818 F.3d 1249, 1258 (11th Cir. 2016). An action is materially adverse if it could “dissuade a reasonable worker from making or supporting a charge

² See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

of discrimination.” *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 57 (2006) (quotation marks omitted). A plaintiff may establish the causal relationship through close temporal proximity between the decisionmaker’s awareness of the protected activity and the adverse action. *Berry*, 84 F.4th at 1309. But when temporal proximity is the only evidence of causation, the proximity must be “very close.” *Clark Cnty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001).

If the plaintiff establishes a *prima facie* case, the employer may articulate a legitimate, nonretaliatory reason for the adverse action. *Berry*, 84 F.4th at 1307. The plaintiff may then establish pretext by presenting evidence from which a reasonable factfinder could find the employer’s explanation “unworthy of credence.” *Gogel v. Kia Motors Mfg. of Ga., Inc.*, 967 F.3d 1121, 1136 (11th Cir. 2020) (en banc). When the employer offers a reason that might motivate a reasonable employer, the plaintiff must address that reason “head on and rebut it,” rather than merely quarrel with its wisdom. *Patterson v. Ga. Pac., LLC*, 38 F.4th 1336, 1352 (11th Cir. 2022) (quotation omitted). She may do so by identifying “weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions” in the employer’s explanation from which a reasonable factfinder could disbelieve it. *Id.*

But the *McDonnell Douglas* framework is not the exclusive means of surviving summary judgment, and the failure to establish pretext does not by itself end the inquiry. The court must also con-

sider the entire evidentiary picture and determine whether the evidence, viewed in the employee's favor, would permit a reasonable jury to find that the employer intentionally retaliated against her because of her protected activity. *Ismael*, 161 F.4th at 762–64; *Berry*, 84 F.4th at 1310–11. Ultimately, an ADA-retaliation plaintiff must present evidence from which a reasonable jury could find that the challenged action would not have occurred but for her protected activity. *Frazier-White*, 818 F.3d at 1258.

The district court concluded that Agrait failed to establish *prima facie* causation. Although HCPS principally defends that ruling, its factual arguments supply legitimate, nonretaliatory explanations for the challenged actions. Because we may affirm on any ground supported by the record, we assume without deciding that Agrait established *prima facie* causation and consider whether she produced evidence of pretext or other circumstantial evidence from which a reasonable jury could infer intentional retaliation.

1. *February 16 transition request*

Agrait first contends that retaliation began when Llewellyn requested information about the status of her caseload, which Agrait characterizes as requiring her to assist in replacing herself. But the email sought information HCPS needed to manage and, if necessary, reassign Agrait's caseload while her employment status remained unresolved. Nothing in the record suggests that the request changed Agrait's pay, duties, or employment status or otherwise imposed a tangible consequence. On this record, the request

would not have dissuaded a reasonable employee from requesting an accommodation and therefore was not materially adverse.

2. Withholding Agrait's salary

Agrait contends that HCPS withheld her salary as part of an escalating course of retaliation. We assume that the loss of compensation was materially adverse and that its timing established prima facie causation. But HCPS offered a legitimate, nonretaliatory explanation: it paid Agrait for the days on which it determined she performed work but otherwise stopped paying her because she neither reported onsite nor initiated approved leave.

Agrait identifies no evidence that this explanation was pretextual. The record reflects that HCPS stopped paying her when she neither reported onsite nor took approved leave. And when Agrait asserted that she had worked remotely on February 8, 9, and 11, HCPS reviewed her claim and compensated her for those days. That contemporaneous review supports HCPS's explanation and does not suggest that the explanation was false. Thus, even assuming sufficient temporal proximity, no reasonable jury could find that Agrait's accommodation requests were a but-for cause of the withheld pay.

3. Agrait's termination

Agrait also argues that HCPS terminated her on April 1, 2022, in retaliation for requesting an accommodation.³ We assume

³ Agrait also invokes several other statutes, including the Florida Civil Rights Act, and alleges record tampering and misuse of her professional credentials.

without deciding that the timing establishes prima facie causation. But again, HCPS offered a legitimate, nonretaliatory explanation: it terminated Agrait after she neither returned onsite nor pursued approved leave despite repeated instructions and warnings. Agrait therefore must identify evidence from which a reasonable jury could find that explanation pretextual.

She has not done so. After HCPS denied indefinite remote work, Agrait conducted virtual sessions with students from February 4 through 11. On February 17, HCPS informed her that remote work remained unauthorized and that it would mark her absent unless she reported onsite. Agrait submitted another doctor's note supporting remote work on March 7, but HCPS again directed her to return onsite or pursue leave. On March 21, HCPS offered her the options of returning onsite with accommodations, taking leave, retiring, or resigning, and warned that rejecting every option would result in termination. Agrait continued to insist on indefinite remote work and neither returned onsite nor pursued leave. HCPS terminated her employment on April 1.

This documented sequence supports HCPS's stated explanation for the termination. Agrait identifies no inconsistency in that

To the extent she seeks to raise claims not presented to the district court, those claims are not properly before us. And to the extent she offers those assertions as circumstantial evidence of ADA retaliation, she does not connect them to either challenged action or identify supporting record evidence from which a reasonable jury could infer retaliatory intent.

25-13552

Opinion of the Court

17

explanation, retaliatory statement, comparator evidence, or departure from ordinary procedure suggesting that the explanation was false. She therefore has not shown pretext.

Agrait identifies no additional evidence connecting the termination to her accommodation requests rather than her failure to return onsite or pursue leave. The complete record therefore would not permit a reasonable jury to find that her protected activity was a but-for cause of her termination.

IV. Conclusion

We affirm the district court's grant of summary judgment for HCPS on all claims.

AFFIRMED.