

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BERNADETTE SHAFFER, As Parent	:	CIVIL ACTION
and Natural Guardian for	:	
CHRISTINE SHAFFER,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 99-2562
	:	
BURGER KING CORPORATION and	:	
WILLIAM O'BRIEN,	:	
	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, J.

SEPTEMBER 28, 2001

Plaintiff, Bernadette Shaffer, as parent and natural guardian for Christine Shaffer, initiated this action alleging that plaintiff, Christine Shaffer ("Shaffer"), was the victim of discrimination based upon her disability. In her complaint Shaffer alleges: (1) ADA violations; (2) assault and battery¹; and (3) intentional infliction of emotional distress. Pending before this Court is the Motion for Summary Judgment on all counts of the Complaint filed by defendants, Burger King Corporation ("BKC") and William O'Brien ("O'Brien"). For the reasons stated within, Defendants' Motion will be granted in part and denied in part.

I. Background

Shaffer is a twenty-six year old woman who has been diagnosed with a neurological disorder consistent with organic brain syndrome that is both chronic and non-

¹ Plaintiff has not challenged Defendants' Motion with respect to her claims for civil assault and battery. Accordingly, summary judgment is granted on those claims.

progressive. In addition, she suffers from impaired motor function, poor balance attention deficit disorder with hyperactivity and is learning disabled with an IQ of 57. Shaffer alleges that she was subjected to a pattern and practice of disparate treatment and harassment based upon her disability during her employment at a BKC restaurant. In support of her claims, Shaffer alleges that she was subjected to conduct by O'Brien, her supervisor, which included slurs, disparaging remarks about her and her personal life, heightened scrutiny of her work and yelling and screaming at her. In response to this behavior, Shaffer, through her mother, lodged a series of complaints with the restaurant manager at BKC, Linda Mattero. Shaffer alleges that Defendants then retaliated against her for making these complaints by discharging her. As a result of Defendants' conduct, Shaffer alleges that she has suffered severe emotional distress including extreme depression, loss of appetite, headaches, upset stomach, sleep disturbance and a near total loss of self esteem.

II. Discussion

A. Summary Judgment Standard

Summary judgment is proper when the record shows “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” FED. R. CIV. P. 56(c). This Court's role is to determine “whether there is a genuine issue for trial.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). In considering a motion for summary judgment, a court does not resolve factual disputes or make credibility determinations and must view facts and inferences in the light most favorable to the party opposing the motion. Siegel Transfer, Inc. v. Carrier Express, Inc., 54 F.3d 1125, 1127 (3d Cir. 1995). The moving party has the burden of demonstrating that no genuine fact issue exists.

Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once it has done so, the nonmoving party cannot rest on its pleadings, rather, the nonmovant must come forward with facts showing that a genuine issue exists. Anderson, 477 U.S. at 242; FED. R. CIV. P. 56(e). If the non-moving party fails to produce sufficient evidence in connection with an essential element of a claim for which it has the burden of proof, then the moving party is entitled to summary judgment. Celotex, 477 U.S. at 322-23.

B. Intentional Infliction of Emotional Distress

To establish a claim of intentional infliction of emotional distress, Shaffer must show that Defendants' conduct was: (1) extreme and outrageous; (2) intentional or reckless; and (3) caused severe emotional distress. Wisniewski v. Johns Manville Corp., 812 F.2d 81, 85 (3d Cir. 1987). Defendants argue that summary judgment is appropriate because: (1) Defendants did not engage in any acts that were egregious and intolerable; (2) discrimination alone is an insufficient basis to support this claim; and (3) Plaintiff did not experience severe distress or physical injury. Shaffer retorts that Defendants' conduct of discrimination/harassment coupled with her allegation of retaliation is sufficient to sustain her claim for intentional infliction of emotional distress. Shaffer alleges that O'Brien frequently called her names such as "slow", "retard", "dumb" and/or "ignorant", as well as teased her about her disability. (Pls.' Am. Resp. to Defs.' Mot. for Summ. J., 4-5). On one occasion, Shaffer alleges that O'Brien "instructed her to remove a blockage from a toilet with her hands and then threw her into his office when she refused to do so". (Id. at 38). Shaffer further avers that BKC terminated her in retaliation for her complaints about O'Brien's conduct towards her.

The Pennsylvania Supreme Court has enunciated an objective standard for

intentional infliction of emotional distress, permitting recovery only “where a reasonable person normally constituted would be unable to adequately cope with the mental stress engendered by the circumstances of the event.” Mastromatteo v. Simock, 866 F. Supp. 853, 859 (E.D. Pa. 1994)(quoting Kazatsky v. King David Mem’l Park, 527 A.2d 988, 993 (Pa. 1987)). It is the court’s responsibility to determine if the conduct alleged in a cause of action reaches the requisite level of outrageousness. Cox v. Keystone Carbon, 861 F.2d 390, 395 (3d Cir. 1988). Generally, it is insufficient “that the defendant has acted with intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by malice, or a degree of aggravation that would have entitled a plaintiff to punitive damages for another tort.” Hoy v. Angelone, 720 A.2d 745, 754 (Pa. 1998)(citing Rest. (2d) Torts § 46, cmt. d). Liability has been found only when the conduct “is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society.” Id. (citations omitted).

This Court finds that Defendants are entitled to summary judgment on Shaffer’s claim for intentional infliction of emotional distress for two reasons. First, Shaffer is unable to prove that she actually suffered any severe distress. The Pennsylvania Supreme Court has held that a claim of intentional infliction of emotional distress requires “expert medical confirmation that the plaintiff actually suffered the claimed emotional distress”. Kazatsky, 527 A.2d at 995. Shaffer has advanced absolutely no medical evidence to sustain her claim. The only evidence that Shaffer submits is the testimony of her mother, which is not sufficient to sustain her evidentiary burden. Second, the conduct alleged by Shaffer does not rise to a sufficient level of egregious conduct where courts have allowed claims for intentional infliction of emotional

distress to proceed. See, e.g., Pryor v. Mercy Cath. Med. Center, NO. 99-09881999, WL 956376, *3 (E.D. Pa. Oct. 19, 1999)(denying motion to dismiss intentional infliction of emotional distress claim where plaintiff alleged sexual harassment including physical force and retaliation); Regan v. Township of Lower Merion, 36 F.Supp.2d 245, 251 (E.D. Pa. 1999)(upholding claim where plaintiff suffered retaliation for complaining about sexual harassment including sexually offensive comments and inappropriate touching); McLaughlin v. Rose Tree Media Sch. Dist., 1 F. Supp.2d 476, 483 (E.D. Pa. 1998)(upholding claim where plaintiff alleged sexual harassment including assault and threats of retaliation); Hides v. CertainTeed Corp., NO. 94-73521995, WL 458786, *4 (E.D. Pa. July 26, 1995)(denying motion to dismiss plaintiff's allegation that defendant fabricated reason to fire plaintiff and coerced him into signing false confession of criminal activity).

Therefore, summary judgment is granted on Plaintiffs' claim of intentional infliction of emotional distress since she is unable to sustain her evidentiary burden with expert medical proof that she actually suffered severe distress, and since the conduct alleged does not rise to the level of outrageous conduct required in order to sustain such a claim. In addition, summary judgment is granted on Plaintiffs' claim of assault and battery. Defendants' Motion is denied as to Plaintiffs' remaining claims of disparate treatment, hostile work environment and retaliation as issues of material fact remain.

An appropriate Order follows.

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WILLIAM O'BRIEN,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 28th day of September, 2001, in accord with the attached Memorandum and upon consideration of Defendants' Motion for Summary Judgment filed by Burger King Corporation and William O'Brien (Dkt. No. 27), Plaintiffs' Amended Response thereto (Dkt. No. 30) and Defendants' Reply (Dkt. No. 31) it is hereby ORDERED that said motion is GRANTED IN PART AND DENIED IN PART. Summary judgment is GRANTED on Plaintiffs' claims of intentional infliction of emotional distress, assault and battery. Summary Judgment is DENIED on Plaintiffs' remaining claims of disparate treatment, hostile work environment and retaliation. Further, Defendants' Motion for Leave to File a Reply Brief is GRANTED.

BY THE COURT:

Robert F. Kelly, J.