

NA 05-0144-C B/H Sipe v Indiana BMV
Judge Sarah Evans Barker

Signed on 02/08/07

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

DONNA SIPE,)	
)	
Plaintiff,)	
vs.)	NO. 4:05-cv-00144-SEB-WGH
)	
INDIANA BUREAU OF MOTOR)	
VEHICLES,)	
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

DONNA SIPE,)
Plaintiff,)
)
vs.) 4:05-cv-144-SEB-WGH
)
INDIANA BUREAU OF MOTOR VEHICLES,)
Defendant.)
)

ENTRY GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

This cause comes before the Court on the Motion for Summary Judgment [Docket No. 28] filed by Defendant, the Indiana Bureau of Motor Vehicles (“the BMV”), pursuant to Federal Rule of Civil Procedure 56. Plaintiff, Donna Sipe, brings this suit against Defendant, her former employer, alleging that it violated the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2602 *et seq.*, and the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.*, when it terminated her employment after she took leave following medical problems. Defendant asserts sovereign immunity pursuant to the Eleventh Amendment, claiming that it is not subject to suit in federal court on any of Plaintiff’s claims. For the reasons detailed in this entry, we hold that Defendant is immune to Plaintiff’s claims here, and therefore GRANT Defendant’s Motion for Summary Judgment as to all claims.

Factual Background

Sipe began her employment with the Bureau of Motor Vehicles Commission (“BMVC”)

in 1984,¹ at which time she served as a clerk at the Sellersburg, Indiana, license branch. She later held the position of team leader. Sipe Dep. at 5-7; Anderson Dep. at 7-8.

Sipe suffered a cerebral aneurysm in March 2004, which required brain surgery. Anderson Dep. at 14-15; Sipe Dep. at 16. Shortly thereafter she submitted an application to her employer for leave pursuant to the FMLA. On May 27, 2004, Sipe was approved for family and medical leave (“FML”) beginning April 4, 2004, and ending June 27, 2004. Tunget Decl. ¶ 8. Sipe returned to work part-time in July 2004 and later returned to full-time work. Sipe Dep. at 16, 20-21.

On February 24, 2005, Sipe injured her shoulder. She submitted to her employer an application for FML due to this injury. Her leave application was denied on the basis that she had exhausted her twelve-week FML allowance in the preceding twelve-month period.² Tunget

¹ The BMVC took over the operation of the BMV in 1987. Prior to that time, the BMV was run by an independent entity. Sipe Dep. at 6-7.

² The family and medical leave policy in effect at that time provided BMVC employees with twelve weeks of FML in any twelve-month period. Tunget Decl. ¶ 10. This policy was enumerated in a BMV Policy and Procedure Manual. Pl.’s Ex. I.

The parties dispute whether Plaintiff had exhausted her twelve-week allowance in the preceding twelve-month period. Sipe contends that the leave time she took in 2004 was miscalculated by Defendant. See Pl.’s Resp. ¶ 13. Defendant argues that Sipe had exhausted her available FML. See Def.’s Mem. ¶ 13. Because we do not reach the merits of Plaintiff’s claims, we need not decide whether the denial of additional leave time was appropriate in this instance.

Similarly, the parties dispute whether “special sick leave,” which BMVC offered to qualified employees, should have been granted to Plaintiff after her shoulder injury. Sipe submitted a request for special sick leave in March 2005. BMVC maintains that Sipe was ineligible for this leave because it was available to be used only for the same condition as FML and had to commence immediately upon FML termination. See Def.’s Mem. ¶¶ 14-19. Sipe maintains that human resources employees told her that she had seventeen or eighteen weeks of unused sick leave available to her. See Pl.’s Resp. ¶¶ 15-19. As above, because we do not reach the merits of Plaintiff’s claims here, we need not (and do not) determine whether special sick leave should have been available to Sipe.

(continued...)

Decl. ¶ 11.

Sipe was absent from work in March and April 2005. Because the BMV had determined that she was ineligible for FML and special sick leave, and had exhausted all accrued sick, personal, and vacation time, the BMV considered these absences “unauthorized” and subsequently terminated Sipe’s employment on the basis of unauthorized leave. Tunget Decl. ¶ 16, Def.’s Mem. ¶¶ 20-21.

Sipe filed a complaint against the BMV on September 19, 2005 [Docket No. 1; amended October 18, 2005, Docket No. 13]. Plaintiff’s Amended Complaint asserts claims against Defendant based upon violation of the ADA and FMLA, as well as a promissory estoppel claim. Defendant filed its Motion for Summary Judgment on September 15, 2006, upon which we now rule.

Legal Analysis

I. Standard of Review

Summary judgment is appropriate 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); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Disputes concerning material facts are genuine where the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In deciding whether genuine issues of material fact exist, the court construes all facts in a light most favorable to the non-moving party and draws all reasonable inferences in favor of the

²(...continued)

non-moving party. See id. at 255. However, neither the “mere existence of some alleged factual dispute between the parties,” id., 477 U.S. at 247, nor the existence of “some metaphysical doubt as to the material facts,” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986), will defeat a motion for summary judgment. Michas v. Health Cost Controls of Ill., Inc., 209 F.3d 687, 692 (7th Cir. 2000).

Summary judgment is not a substitute for a trial on the merits, nor is it a vehicle for resolving factual disputes. Waldrige v. Am. Hoechst Corp., 24 F.3d 918, 920 (7th Cir. 1994). Therefore, after drawing all reasonable inferences from the facts in favor of the non-movant, if genuine doubts remain and a reasonable fact-finder could find for the party opposing the motion, summary judgment is inappropriate. See Shields Enterprises, Inc. v. First Chicago Corp., 975 F.2d 1290, 1294 (7th Cir. 1992); Wolf v. City of Fitchburg, 870 F.2d 1327, 1330 (7th Cir. 1989). But if it is clear that a plaintiff will be unable to satisfy the legal requirements necessary to establish his or her case, summary judgment is not only appropriate, but mandated. See Celotex, 477 U.S. at 322; Ziliak v. AstraZeneca LP, 324 F.3d 518, 520 (7th Cir. 2003).

II. Sovereign Immunity to FMLA Claim

The FMLA is intended to “help working men and women balance the conflicting demands of work and personal life.” Price v. City of Fort Wayne, 117 F.3d 1022, 1024 (7th Cir. 1997). It entitles eligible employees to take up to twelve work weeks of unpaid leave annually for several reasons, including the onset of a “serious health condition that makes the employee unable to perform the functions of the position of such employee” – a provision known as the “self-care” provision. 29 U.S.C. § 2612(a)(1)(D); see also Nev. Dept. of Human Resources v. Hibbs, 538 U.S. 721, 724 (2003). In order to ensure this entitlement, [the FMLA] makes it

unlawful for employers to “interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided,’ . . . including the right to reinstatement upon return from leave[.]” Kauffman v. Fed. Express Corp., 426 F.3d 880, 884 (7th Cir. 2005).

Defendant argues that Plaintiff’s FMLA claim is barred by the doctrine of sovereign immunity pursuant to the Eleventh Amendment to the United States Constitution. The Eleventh Amendment is “a fundamental feature of the constitutional design” (Toeller v. Wisc. Dept. of Corrections, 461 F.3d 871 (7th Cir. Aug. 25, 2006)) and provides “[t]he ultimate guarantee . . . that nonconsenting States may not be sued by private individuals in federal court.” Bd. of Trs. of the Univ. of Ala. v. Garrett, 531 U.S. 356, 363 (2001); see also Nev. Dept. of Human Resources v. Hibbs, 538 U.S. 721, 726 (2003) (“For over a century now, we have made clear that the Constitution does not provide for federal jurisdiction over suits against nonconsenting States”).

However, the Supreme Court has recognized that “Congress may abrogate the States’ Eleventh Amendment immunity when it both unequivocally intends to do so and ‘act[s] pursuant to a valid grant of constitutional authority.’” Garrett, 531 U.S. at 363 (quoting Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 73 (2000)). If Congress has made such a “clear statement” of intent under proper authority, then “a private party is entitled to sue the State under the federal law in question.” Toeller, 461 F.3d at 875.

The Hibbs Case

In Hibbs, the Supreme Court recently considered whether Congress validly abrogated the States’ sovereign immunity to suit under the FMLA. In Hibbs, the Supreme Court examined a claim arising under section 2612(a)(1)(C) of the FMLA, which provides eligible employees with

up to twelve workweeks of leave during a twelve-month period “[i]n order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.” This provision is known as the “family-care” provision of the FMLA.

The Hibbs Court observed that Congress had clearly evinced an intent to abrogate sovereign immunity in enacting the FMLA, noting that the statute permits suit against “any employer (including a public agency) in any Federal or State court of competent jurisdiction,” (29 U.S.C. § 2617(a)(2) (quoted in Hibbs, 538 U.S. at 726)), and that Congress had defined “public agency” to include governments of States, as well as political subdivisions and agencies thereof. Hibbs, 538 U.S. at 726.

Regarding the second requirement – that Congress act pursuant to constitutional authority – the Court held that Congress had acted within its power under Section 5 of the Fourteenth Amendment. Congress’s Section 5 power enables it to enforce substantive constitutional guarantees (including equal protection of the laws) via “appropriate legislation,” including “prophylactic legislation that proscribes facially constitutional conduct, in order to prevent and deter unconstitutional conduct.” Id. at 727-28.

The Court stated that “the FMLA aims to protect the right to be free from gender-based discrimination in the workplace,”³ and that statutory classifications that distinguish based on

³ The Court noted that one of the Congressional findings stated in the text of the FMLA is that “due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men” (29 U.S.C. § 2601(a)(5)), and that one of the Act’s stated purposes is to accomplish the [Act’s other] purposes . . . in a manner that, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available . . . on a gender-neutral basis; and . . . to promote the goal of equal employment opportunity for women and men[.]” 29 U.S.C. § 2601(b)(4) and (5).

gender are subject to heightened scrutiny. Id. at 728. The Court determined that “Congress had evidence of a pattern of constitutional violations on the part of the States,” with respect to gender in employment which warranted congressional abrogation of sovereign immunity here. Id. After extensive discussion of the Congressional fact-finding underlying the legislation, the Court concluded that “the States’ record of unconstitutional participation in, and fostering of, gender-based discrimination in the administration of leave benefits is weighty enough to justify the enactment of prophylactic §5 legislation.” Id. at 735. Thus, Congress had validly abrogated the States’ sovereign immunity with respect to the family-care provision of the FMLA.

The Toeller Case

More recently, the Seventh Circuit confronted the question of whether sovereign immunity has been similarly abrogated with respect to the “self-care” provision of the FMLA, Section 2612(a)(1)(C) – the provision at issue here. In Toeller v. Wisc. Dept. of Corrections, 461 F.3d 871 (7th Cir. Aug. 25, 2006), the Court of Appeals held that Congress had *not* validly abrogated state sovereign immunity with respect to the self-care provision – though it acknowledged that the question was “a close one.” See Toeller, 561 F.3d at 873. The Toeller Court found that Congress had satisfied the “clear statement” rule, applying the Hibbs ruling as to that element. See id. at 875 (“Nothing in that part of Hibbs suggests that the Court’s ruling covered anything less than the entire statute.”). However, the Seventh Circuit held that Congress did *not* have a valid source of authority to support abrogation with respect to the self-care provision of the FMLA, because “of the emphasis the Hibbs Court placed on the gender-based aspects of the family-care provision and the lack of an analogous rationale for the self-care

provision[.]”⁴ Id. at 878. The Seventh Circuit reasoned that:

[I]t seems obvious that the great majority of requests for self-care leave occur for . . . a short-term medical need (unrelated to pregnancy)⁵ that the individual has that must be addressed. We know of no reason why women would be more likely to have this kind of medical problem than men. Furthermore, whether we know about it is not the point in the end: what counts is that we see nothing in either the text or the legislative history of the FMLA to indicate that Congress found this to be the case.

Id. at 879. Therefore, under Toeller, state sovereign immunity is a viable defense to claims arising under the self-care provision of the FMLA.

Plaintiff's FMLA Claim

Plaintiff argues that “Toeller’s holding that Congress did not validly abrogate the sovereign immunity of the States for self-leave claims under the FMLA is incorrect.” Pl.’s Resp. at 1. Though she acknowledges that we are without power to overrule the Seventh Circuit’s decision, Plaintiff contends “that she has submitted evidence . . . that distinguishes this case from the reasoning adopted by the Seventh Circuit in Toeller.” Id. at fn. 2.

Plaintiff maintains that “[t]he Toeller Court was not presented with sufficient evidence, and thus did not address the fact that self-leave claims afford single-parents, the vast majority of which [sic] are women, job security in the form of unpaid leave time from work to address their

⁴ The Seventh Circuit also notes in Toeller that other Circuits have similarly held that sovereign immunity has not been abrogated with respect to the self-care provision. See Brockman v. Wyo. Dept. of Family Servs., 342 F.3d 1159, 1164 (10th Cir. 2003); Touvell v. Ohio Dept. of Mental Retardation and Developmental Disabilities, 422 F.3d 392, 400-01 (6th Cir. 2005) (also citing First, Second, Fourth, Fifth, and Eleventh Circuit cases – albeit, cases decided before Hibbs – which concluded that sovereign immunity was not abrogated with respect to the self-care provision).

⁵ With respect to pregnancy-related self-care, the Seventh Circuit “express[ed] no opinion about the way in which a request for self-care leave submitted by a pregnant woman, for medical needs associated with her pregnancy, should be assessed for the purpose of state sovereign immunity.” Id. at 879.

own serious health conditions[.]” Id. at 1-2. Plaintiff proceeds to introduce statistical evidence⁶ intended to demonstrate that abrogation of sovereign immunity for the self-care provision of the FMLA *would* be a valid exercise of Congressional power to remedy sex discrimination, as well as legislative history suggesting that Congress intended to abrogate sovereign immunity for self-leave claims. See Pl.’s Resp. at 11-20.

Plaintiff maintains that “the statutory text and legislative history regarding the job security of single parents, and the fact that the majority of single parents are female, was [sic] not addressed by the Toeller Court” and states that the parties’ briefs in Toeller introduced “very little [statistical] evidence” for the Court’s consideration. Id. at 16. However, we have great confidence that our Court of Appeals is fully capable of conducting its own research, and that it properly considered all relevant facts before reaching its conclusion. The statistical evidence and legislative history relied upon by Plaintiff are not new findings; all of this information was readily available when the Seventh Circuit made its ruling in August of 2006. We have no reason to believe that the appellate court was not cognizant of these facts, nor are we in a position to second-guess its reasoning.

Though Plaintiff argues that her case is distinguishable from the Seventh Circuit’s rationale in Toeller, none of the evidence she presents indicates that this is so. The Seventh Circuit *did* explicitly reserve judgment as to sovereign immunity for pregnancy-related self-care leave, but neither Plaintiff’s aneurysm nor her shoulder injury appears to have been connected

⁶ For example, Plaintiff provides U.S. Census data stating that eighty-three percent of custodial single parents are women, and that twenty-three percent of children live with only their mothers, as opposed to five percent who live with only their fathers. See Pl.’s Resp. at 9-10. Because single mothers must take care of their own health in order to continue employment and have job security, Plaintiff argues that women are disproportionately negatively impacted by an inability to take leave for self-care.

with pregnancy in any way (and Plaintiff makes no argument to that effect). Nor has Plaintiff attempted to demonstrate that either of these specific afflictions impacts women with greater frequency or severity than it does men. Rather, Plaintiff retreads lines of reasoning which were clearly considered, and given due weight, by the Toeller Court. We are bound to apply the Seventh Circuit's unambiguous ruling in Toeller, and do so here. Thus, as our precedent clearly prescribes, we hold that Defendant may assert a sovereign immunity defense to Plaintiff's claims brought under the self-care provision of the FMLA.

Waiver of Immunity

In the alternative, Plaintiff contends that Defendant has waived its sovereign immunity here. Sovereign immunity may be waived by a State either legislatively or in the lawsuit in which it is named as a defendant. See Higgins v. Mississippi, 217 F.3d 951, 953 (7th Cir. 2000); Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 675-76 (1999). Since Defendant has clearly not waived immunity voluntarily in this lawsuit – rather, it seeks vehemently to invoke such immunity – we need consider only whether sovereign immunity has been waived by statute.

The test for determining whether a state has legislatively waived its immunity from federal court jurisdiction is stringent. See MCI Telecommunications Corp. v. Ill. Bell Tel. Co., 222 F.3d 323, 338 (7th Cir. 2000). A waiver must be extremely clear and unequivocal. Waiver of immunity will be found only when the text or overwhelming implication of a statute leaves no room for any other reasonable construction, and we “indulge every reasonable presumption against a state's waiver of its immunity.” Id. at 338 (internal quotation marks omitted); see also Mueller v. Thompson, 133 F.3d 1063, 1064 (7th Cir. 1998) (“No magic words are required . . .

but implicit waivers won't do; the court must be highly confident that the state really did intend to allow itself to be sued in federal court.”). Moreover, “[i]n order to waive Eleventh Amendment immunity, a state statute or constitutional provision must . . . [state] ‘not merely *whether* it may be sued, but *where* it may be sued.’” Thiel v. State Bar of Wisconsin, 94 F.3d 399, 403 (7th Cir. 1996) (quoting Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 241 (1985)).

Plaintiff maintains that the State of Indiana has made such a “clear declaration” in Indiana Code § 5-10.2-4-6, which states in relevant part that “[a] member [of the public employees’ retirement fund] who becomes disabled while receiving a salary . . . *or who is on leave under the Family and Medical Leave Act* may retire for the duration of his disability if” certain conditions are met. Indiana Code § 5-10.2-4-6(a) (emphasis added). Plaintiff argues that this statutory provision constitutes waiver by making the FMLA available to state employees. See Pl.’s Resp. at 21.

In addition, Plaintiff argues that the BMV “by its actions has made a clear declaration that it intends to be subject to the FMLA,” citing the BMV Policy and Procedure Manual, which, by its own terms, is “intended to comply with . . . the Family and Medical Leave Act of 1993” (Ex. I), and the fact that Sipe was afforded FMLA leave in 2004.⁷ Plaintiff argues that if employees may not enforce these rights judicially, then the policy may be applied or ignored arbitrarily. Pl.’s Resp. at 21-23.

Neither of Plaintiff’s arguments here is availing. First, the Indiana statute she cites is obviously a far cry from the “clear declaration” required for legislative waiver. It mentions the

⁷ Sipe further cites other Indiana state policy materials which suggest that FMLA is available to state employees, including a report from the state Inspector General which states that “FMLA is a federal statute which requires compliance by Indiana state agencies and provides a penalty for non-compliance.” Pl.’s Ex. T at 3.

FMLA only incidentally, says nothing about immunity to suit, and does not designate where the State intends to subject itself to suit. See Atascadero, 473 U.S. at 241 (“[I]n order for a state statute . . . to constitute a waiver of Eleventh Amendment immunity, it must specify the State’s intention to subject itself to suit in *federal court*.” (emphasis in original)).

The actions of the BMV and the State of Indiana that suggest an intent to comply with the FMLA similarly do not constitute waiver. Our courts have rejected the concept of constructive or implicit waivers of state sovereign immunity. See Coll. Sav. Bank, 527 U.S. at 680 (“The whole point of requiring a ‘clear declaration’ *by the State* of its waiver is to be certain that the State in fact consents to suit. But there is little reason to assume actual consent based upon the State’s mere presence in a field subject to congressional regulation.”). See also Edelman v. Jordan, 415 U.S. 651, 673 (1974) (“Constructive consent is not a doctrine commonly associated with the surrender of constitutional rights.”). There is a distinct difference between a state agency offering leave under the FMLA to its employees and unequivocally waiving its constitutional right to sovereign immunity for suits under that law.⁸ Therefore, because Defendant has not waived its immunity from suit under the FMLA, summary judgment is GRANTED as to this claim.⁹

⁸ Plaintiff relies upon language in Atascadero stating that a State may “waiv[e] its immunity to suit in the context of a particular federal program.” 473 U.S. at 238 n. 1. This language does not support the implicit waiver that Sipe argues the BMV has exercised here, but rather refers to the congressional ability to condition the receipt of federal funds on a State’s waiver of sovereign immunity. See, e.g., Alexander v. Sandoval, 532 U.S. 275 (2001). This is not the situation here. The next sentence of the Atascadero opinion, not cited by Plaintiff, indicates that in such situations, “an unequivocal indication that the State intends to consent to federal jurisdiction” is required – which, as we have noted, is clearly absent here. 473 U.S. at 238 n. 1.

⁹ We note that the FMLA provides concurrent jurisdiction to the state and federal courts. (continued...)

III. Sovereign Immunity to ADA Claim

Defendant also asserts a sovereign immunity defense to Plaintiff's ADA claim. The Supreme Court determined in Bd. of Trustees of Univ. of Ala. v. Garrett, 531 U.S. 356 (2001), that states may assert sovereign immunity against claims brought in federal court under Title I (the employment subchapter) of the ADA. Plaintiff concedes as much, but argues (as above) that Defendant has waived that immunity. Pl.'s Mem. at 23.

Plaintiff's arguments here are substantially similar to those discussed earlier in this entry. She argues that Indiana has legislatively waived immunity, as evidenced by a different provision of the same statute it cited to support its FMLA waiver argument (Indiana Code § 5-10.2-4-6) – a provision which states that “[t]o the extent *required by the Americans with Disabilities Act . . .* the transcripts, records, and other material compiled to determine the existence of a disability [among members of the public employees' retirement fund] shall be” treated in certain ways. Indiana Code § 5-10.2-4-6(e) (emphasis added). Obviously, this provision no more constitutes a “clear declaration” of waiver than does the other provision cited by Plaintiff. The State of Indiana has not legislatively waived its immunity to such claims. Similarly, the actions of the BMV and the State of Indiana may not implicitly establish such a waiver. Therefore, summary judgment for Defendant is GRANTED as to Plaintiff's ADA claim, as well.

IV. Promissory Estoppel

Sipe's state-law-based promissory estoppel claim rests on her contention that the BMV

⁹(...continued)

See 29 U.S.C. § 2617(a)(2). Clearly, our holding here applies only to the State's immunity under the Eleventh Amendment, and we express no opinion as to whether, should Plaintiff refile her action in state court, the State may also avail itself of an immunity defense.

informed her that she had several weeks of special sick leave available to her, and then terminated her employment before the expiration of that time. Sipe asserts that she reasonably relied on her employer's promise when she failed to report to work after her shoulder injury. Am. Compl. ¶¶ 44-51.

The BMV points out, and Sipe acknowledges, that the Eleventh Amendment bars federal consideration of *state law* claims against States, as well. See Komyatti v. Bayh, 96 F3d. 955, 959-60 (7th Cir. 1996). Sipe requests that we “reserve the promissory estoppel issue” (Pl.’s Resp. at 3) if we allow her federal claims to survive, for ease of litigation. However, having granted summary judgment on those claims in favor of the BMV (and after being reassured by the BMV that it does not waive its immunity as to the state-law claim (Def.’s Reply at 12)), we decline to do so. Thus, summary judgment is GRANTED as to this claim also.

Therefore, Defendant’s Motion for Summary Judgment is GRANTED in its entirety, and final judgment will be entered accordingly. IT IS SO ORDERED.

Date: _____

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