STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO

SANDRA ROJAS, LPN, formerly and also known as SANDRA MENDOZA,	)	
Plaintiff,	)	
vs.	)	No. 2016-L-160
DR. SANDRA MARTELL, Public Health Administrator of the Winnebago County Health Department, in her official capacity, JAMES POWERS, Chair of the Winnebago County Board of Health, in his official capacity, and WINNEBAGO COUNTY, ILLINOIS,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

This case involves claims on the part of Plaintiff Sandra Rojas contending that her rights of conscience have been violated by Defendants, her former employers. The matter presently comes before the Court on the parties' cross-motions. Defendants have moved for summary judgment, and Plaintiff has filed a cross-motion for partial summary judgment on liability. For the reasons stated below, the Court denies both motions.

Standard of Decision

Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits, when viewed in the light most favorable to the nonmovant, reveal that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. *Smith v. Bhattacharya*, 2014 IL App (2d) 130891, ¶12. The motion should be denied if there are disputed facts, but also if reasonable people could draw different inferences from the undisputed facts. *Eakins v. Hanna Cylinders, LLC*, 2015 IL App (2d) 140944, ¶13. The use of summary judgment is to be encouraged as an aid in the expeditious disposition of a lawsuit; however, as it is a drastic means of disposing of litigation, it should be allowed only when the right of the moving party is clear and free from doubt. *Kay v. Centegra Health Sys.*, 2015 IL App (2d) 131187, ¶9.

Where the parties file cross-motions for summary judgment, they agree that only a question of law is involved, and they invite the court to decide the issues as a matter of law based on the record. *Martin v. Keeley & Sons, Inc.*, 2012 IL 113270, at ¶25; *Trannel v. Prairie Ridge Media, Inc.*, 2013 IL App (2d) 120725, at ¶13. However, even where cross-motions for summary judgment are filed, if the Court finds a genuine issue of material fact exists, it is not required to

grant summary relief. *Harwood v. McDonough*, 344 Ill.App.3d 242, 245, 799 N.E.2d 859, 862 (1st Dist. 2003).

Statement of Facts

The Court now summarizes some of the essential facts from the record generated in connection with the pending motions. Note that the parties submitted proposed agreed statements of fact and responses thereto. This is a procedure which is prescribed by the local rules of the United States District Court for the Northern District of Illinois (see L.R. 51.1), but it is not a procedure formally recognized in Illinois state courts. Regardless, it was a useful and helpful exercise and it assisted the Court in its digestion of the record.[1] The summary here sets forth mainly undisputed facts, noting on occasion those matters which may be in dispute.

The Winnebago County Health Department ("Health Department") provides various wellness and environmental health services to the residents of Winnebago County.

Plaintiff has been a License Practical Nurse (LPN) since July 20, 1990. She began her employment at the Health Department on June 6, 1996, providing services as an LPN in the pediatric immunization clinic. Her duties included providing immunizations, screenings for blood levels, and assessments for risk of tuberculosis. She was a part time employee until 2014 (with the exception of six months in 2001-2002).

Plaintiff is a lifelong practicing Catholic who seeks to adhere to the teachings of her faith. Her religious beliefs prevent her from participating in any way in the provision of Plan B, contraception, or abortion referrals. Plaintiff contends that she informed the Health Department of these beliefs in 2001, and that she continued to work for the Health Department without being required to participate in any of these services.[2]

In January of 2014, the Winnebago County Board of Health ("Board") adopted a strategic plan for the Health Department. Among the initiatives of the strategic plan was to "[e]valuate/rate programs for alignment with IOM [Institute of Medicine] core services and support functions" and to "[e]valuate opportunities for cross-connection, better customer service and consolidation by December 2014."

Sometime in 2014, Plaintiff began working in the area of Health Protection and Promotion. In August of 2014, Plaintiff began working full time. She worked in the area of adult immunization and phlebotomy, while continuing to work in pediatrics.

Since September 8, 2014, Defendant Dr. Sandra Martell has been employed by the Board as the Public Health Administrator of the Health Department. Dr. Martell's job description requires her

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[1] It would have been more helpful, however, if the responding party would address not just whether an asserted fact is supported by the testimony of a particular witness, but whether it is in dispute regardless of the source cited.

[2] Dr. Martell contends that she was not personally made aware of these beliefs until 2015.

to "[manage] the comprehensive public health program of the Winnebago County Health Department in all aspects." She has the authority to establish current and long-range objectives, plans, and policies for the Health Department; align organizational systems and structures to support the strategic imperatives of the organization; dispense advice, guidance, direction and authorization to carry out major plans and procedures consistent with established practices and Board approval; and ensure that the Health Department obtains appropriate funding sources and manage programs within the guidelines of these services.

When Dr. Martell began her employment as Administrator, the Health Department operated eight separate clinics located in two separate buildings: pediatric immunizations, adult immunizations, refugee, blood work, travel immunizations, sexually transmitted disease/infections, family planning/women's health, and tuberculosis control. Within 60 days of assuming the position of Administrator, Dr. Martell made the decision to integrate the eight clinics. Some of the considerations influencing her decision included streamlining services for clients; declining client visit numbers at the separate clinics; using personnel and space resources more effectively; continuing to provide safety net services; and aligning with the strategic plan adopted by the Board.

Preparations for combining the clinics began in late 2014 with the goal of opening the fully integrated clinic by June of 2015. All nurses working in the separate clinics prior to consolidation, including Plaintiff, were advised in January 2015 that they would be cross-trained to provide all services, including family planning services, in the combined clinic.

Dr. Martell estimated that, in 2015, "when you looked at clinic volume at the time … about 50 percent of the visits" were family planning clients. Family planning services have been provided at the Health Department for many years, including 2014 and 2015, and are primarily financed with funds provided under Title X as administered by the Illinois Department of Public Health. The purpose of Title X funding is to provide contraceptive and family planning services to women at an economic disadvantage and those with access concerns, including adolescents. As a recipient of Title X funding, the Health Department is required to provide all required Title X services; this includes all FDA approved methods of contraception, emergency contraception, counseling on all pregnancy options, and having a referral procedure in place.[3]

Dr. Martell submitted an affidavit attesting that on April 17, 2015, Christine Savage, RN, APN, who worked part time in the sexually transmitted diseases/infections clinic prior to the consolidation, advised Dr. Martell that her contractual obligations with OSF-St. Anthony would not allow her to perform certain women's health services in the combined clinic. Savage advised Dr. Martell that she could provide the required Title X family planning services if necessary.[4] Dr. Martell determined that she could accommodate Savage due to the fact that she worked only

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[3] The parties do not necessarily agree on the implications for employees who do not wish to participate in providing abortion referrals, abortifacients, or birth control.

[4] Plaintiff objects to these statements on the basis that they are hearsay. The Court receives it not for the truth of the matter asserted, but simply for the fact that this information was conveyed to Dr. Martell. The same is true as to certain statements Dr. Martell attests were made to her by Karen Gugliuzza, R.N, as discussed elsewhere here.

three hours per week and job shared with another APN; Savage's appointments could, therefore, be limited to sexual health clients.

At the beginning of June 2015, Karen Gugliuzza, RN, who worked part time in the travel clinic prior to consolidation, advised that she could not perform certain family planning services at the combined clinic due to religious objections. Dr. Martell determined that she could accommodate Gugliuzza, as she had a part-time opening outside the clinic for an RN in the Health Department's Breast and Cervical Cancer Program.

In May or June, 2015, Plaintiff spoke with Kim Ponder, Winnebago County's Director of Human Resources, about being uncomfortable providing certain women's health services based on her religious beliefs. Ponder recommended that Plaintiff take her concerns to Dr. Martell, as she felt that Dr. Martell was the person with authority to determine whether an accommodation could be made for Plaintiff. Ponder also discussed the possibility of a transfer to a full-time nursing position at a County nursing home if an accommodation could not be reached; the parties dispute the certainty of such a position being available.

After speaking with Ponder, Plaintiff met with Dr. Martell and stated that she would be unable to provide Plan B (emergency contraception) or birth control and that she would be unable to make referrals for an abortion. Dr. Martell contends that she considered Plaintiff's limitations and assessed whether she could accommodate her, taking into account roles and responsibilities in the clinic, clinic visit types, and staffing patterns. Ultimately, Dr. Martell determined that she could not accommodate Plaintiff long term in the combined clinic; although the soundness and propriety of her conclusions are in dispute, Dr. Martell felt that she could not accommodate Plaintiff given constraints under Title X and the service needs of the clinic's patients. Dr. Martell had no personal or work-performance issues with Plaintiff; she thought Plaintiff was a good nurse and that she preferred to work in the pediatric area. Likewise, Plaintiff had no personal or work-performance issues with Dr. Martell.

Ponder and Dr. Martell identified two open positions outside of the Clinic for which Plaintiff was qualified. One position was a part-time food inspector at the Health Department; the other was the nursing home position mentioned above. The parties disagree about whether these positions were offered or available to Plaintiff, as opposed to being subject to application. There is also an issue raised concerning a nepotism policy possibility preventing Plaintiff from being hired for the nursing home position.

On June 30, 2015, Dr. Martell wrote to Plaintiff and advised her that she could not be accommodated in the clinic environment, but that the Health Department could "offer some alternatives outside of the clinics." The letter identified the health inspector and nursing home positions described above. Also as noted above, Plaintiff disputes that these positions were "offered" to her or that she had any guarantee of being employed in them. Dr. Martell closed by stating that the clinic would continue to accommodate Plaintiff for another 14 days while she pondered her decision.

On July 14, 2015, Dr. Martell emailed Plaintiff asking about her decision concerning the "accommodation" she felt had been offered in the June 30, 2015, email. There is some

confusion about whether and when Plaintiff received the June 30, 2015, letter, but the parties agree that she had received a copy by July 14, 2015. Plaintiff did not pursue the food service or nursing home position. As noted above, there is a factual dispute about whether a nepotism policy would have prevented her from working at the nursing home, where her son also worked; there is also a dispute about whether a position was offered to Plaintiff, or just potentially available to her. Plaintiff also testified that working at the nursing home would be significantly different than working at the clinic. Plaintiff also informed Ponder that she needed full time work because she needed the associated benefits.

On July 17, 2015, Plaintiff submitted her resignation from the Health Department, effective July 31, 2015. The parties disagree about whether Plaintiff suffered loss of income and benefits, or sustained personal damages, as a result of her resignation.

Statutes Involved

The motions before the Court require interpretation and application of three different statutes. The Court will summarize the pertinent provisions of each here, but it notes that the *sequence* in which the statutes were enacted may be of some import to the analysis.

Tort Immunity Act. The statute relied upon by Defendants is the Local Governmental and Governmental Employees Tort Immunity Act. 745 ILCS 10/1-101 *et seq.* ("Tort Immunity Act"). The two provisions relied upon are the following, and both of them date to 1965:

> § 2-201 Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.
>
> 745 ILCS 10/2-201 (effective August 13, 1965).
>
> A local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable.

745 ILCS 10/2-109 (effective August 13, 1965).

The Conscience Act. One of two statutes relied upon by Plaintiff is the Health Care Right of Conscience Act, 745 ILCS 70/1*et seq.* ("Conscience Act"). There are several provisions of the Act applicable here:

> § 5. Discrimination. It shall be unlawful for any person, public or private institution, or public official to discriminate against any person in any manner, including but not limited to, licensing, hiring, promotion, transfer, staff appointment, hospital, managed care entity, or any other privileges, because of such person's conscientious refusal to receive, obtain, accept, perform, assist, counsel, suggest, recommend, refer or participate in any way in any particular form of health care services contrary to his or her conscience.

745 ILCS 70/5 (originally effective Sept. 13, 1977, and as amended Jan. 1, 1998).

> Actions; damages. Any person, association, corporation, entity or health care facility injured by any public or private person, association, agency, entity or corporation by reason of any action prohibited by this Act may commence a suit therefor, and shall recover threefold the ***actual damages, including pain and suffering***, sustained by such person, association, corporation, entity or health care facility, the costs of the suit and reasonable attorney's fees; but in no case shall recovery be less than $2,500 for each violation in addition to costs of the suit and reasonable attorney's fees. These damage remedies shall be cumulative, and not exclusive of other remedies afforded under any other state or federal law.

745 ILCS 70/12 (originally effective Sept. 13, 1977, and as amended Jan. 1, 1998) (emphasis added).

Finally, the Conscience Act contains the following "superseding clause":

> Supersedes other Acts. This Act shall supersede all other Acts or parts of Acts to the extent that any Acts or parts of Acts are inconsistent with the terms or operation of this Act.

745 ILCS 70/14 (originally effective Sept. 13, 1977, and as amended Jan. 1, 1998).

Religious Freedom Restoration Act. The other statute relied on by Plaintiff is the Religious Freedom Restoration Act ("RFRA"), 775 ILCS 35/1 *et seq.* The following provisions of RFRA are important to the arguments raised by Plaintiff:

> Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest.

775 ILCS 35/15 (effective December 2, 1998).

> Judicial relief. If a person's exercise of religion has been burdened in violation of this Act, that person may assert that violation as a claim or defense in a judicial proceeding and ***may obtain appropriate relief against a government.*** A party who prevails in an action to enforce this Act against a government is entitled to recover ***attorney's fees and costs*** incurred in maintaining the claim or defense.

775 ILCS 35/20 (effective December 2, 1998) (emphasis added).

> This Act applies to all State and local (including home rule unit) laws, ordinances, policies, procedures, practices, and governmental actions and their

implementation, whether statutory or otherwise and whether adopted before or after the effective date of this Act.

775 ILCS 35/25.

Analysis -- Effect of Tort Immunity Act on Conscience Act

Defendants argue that they are protected against Plaintiff's Conscience Act claims by virtue of the Tort Immunity Act. Addressing this issue requires the Court to engage in appropriate construction of both statutes. The cardinal rule in interpreting a statute is to give effect to the intent of the legislature, and the language of the statute is the best and most reliable indicator of the legislature's intent. *People v. Fort*, 2017 IL 118966, ¶20. Here, the parties disagree about the interaction between two different statutes. When an apparent conflict exists between statutes, courts must construe the statutes in harmony if possible. *Mermelstein v. Rothner*, 349 Ill. App. 3d 800, 803, 812 N.E.2d 461, 464 (1st Dist. 2004).

Here, the Court does not find a conflict between the Tort Immunity Act and the Conscience Act, at least not one which cannot be fairly easily resolved. As a matter of statutory construction, the Tort Immunity Act explicitly states that it applies "[e]xcept as otherwise provided by Statute." 745 ILCS 10/2-201. The Conscience Act explicitly provides that it supersedes all other statutes. Examination of these provisions of the two statutes is sufficient to make clear that, where the Conscience Act applies, it is not defeated by application of the Tort Immunity Act.

Furthermore, the Court must look at the fundamental purpose of each statute. The purpose of the Tort Immunity Act is to limit the financial exposure of governmental units for tort liability; one clear purpose of the Conscience Ac, however, is to *impose* liability with regard to a certain limited class of claimants in certain specific situations. If there is a conflict in this regard, the Conscience Act -- which is more specific and applies to a narrower slice of cases -- must prevail over the more general Tort Immunity Act *In re Marriage of Ross & Pruitt*, 2015 IL App (2d) 130961, ¶23. Another rule of construction favoring the Conscience Act is that, in cases of conflict, the more recent statute should be favored over the older one. *Gillespie Cmty. Unit Sch. Dist. No. 7, Macoupin County v. Wight & Co.*, 2014 IL 115330, ¶41.

Defendants' reliance on *Rozsavolgyi v. City of Aurora*, 2016 IL App (2d) 150493, is misplaced for a number of reasons. *Rozsavolgyi* rejected the argument that the Tort Immunity Act does apply to constitutionally based claims under the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* *Rozsavolgyi* did not, however, categorically declare that *any* constitutionally based claim is subject to the Tort Immunity Act, *regardless of what the applicable statute says.* The Human Rights Act does not contain the superseding clause that is found in the Conscience Act. Furthermore, the Appellate Court in *Rozsavolgyi* specifically held that the Tort Immunity Act applied to the Human Rights Act Plaintiff's request for damages, "but not to her requests for equitable relief." *Rozsavolgyi*, at ¶115; the latter covers much of the relief sought here by Plaintiff.

More importantly, the Appellate Court's opinion in *Rozsavolgyi* was vacated by the Illinois Supreme Court approximately two weeks after the oral argument in this case. *Rozsavolgyi v.*

City of Aurora, 2017 IL 121048, ¶39. As the Appellate Court's opinion has been vacated, it now holds no precedential value. *Quigg v. Walgreen Co.*, 388 Ill. App. 3d 696, 701, 905 N.E.2d 293, 297 (2d Dist. 2009).

Consequently, as a fairly straightforward matter of statutory construction, the Court finds that Plaintiff's claims under the Conscience Act are not subject to the liability limitations imposed by the Tort Immunity Act.[5]

Analysis -- Effect of Tort Immunity Act on RFRA

The analysis of Plaintiff's claims under RFRA is similar. RFRA was enacted after the Tort Immunity Act. RFRA explicitly declares that it applies to all governmental action. 775 ILCS 35/25. The Tort Immunity Act is intended to limit the financial liability of governmental units for various torts and other offenses. There is a more patent conflict here than is true with respect to the Conscience Act, which applies to more than just units of government. The conflict here is between a statute which *imposes* liability on governmental units and a statute which *limits* liability of governmental units.

The Court believes that the same analysis applied to the Conscience Act must also apply here. RFRA is a more specific statute than the Tort Immunity Act. While governmental units are broadly protected by the Tort Immunity Act "[e]xcept as otherwise provided by statute," RFRA imposes liability on governmental actors for only a particular kind of wrong. Additionally, RFRA was adopted more recently than the Tort Immunity Act, which by virtue of the canons of construction discussed above suggests that RFRA must be given effect.

Consequently, the Court concludes that the Tort Immunity Act does not protect Defendants against Plaintiff's claims under RFRA.

Plaintiff's Cross-Motion for Partial Summary Judgment

Plaintiff's cross-motion for partial summary judgment asks the Court to find, as a matter of law, that Defendants violated her rights under both the Conscience Act and RFRA by refusing to accommodate her objections to performing certain services at the clinic. However, the Court feels that the facts presented can support conflicting conclusions about the degree to which Plaintiff's objections could be accommodated within the clinic setting, and the reasonableness and availability of the alternative placements offered by Defendants. The Court does agree that, at least at this stage, there does not appear to be a dispute that Plaintiff's objections fall within the protections offered by both statutes. There is no basis to view these statutes, however, as strict liability propositions. Their application to the facts of this case, and in particular to the Defendants' response to Plaintiff's situation, is not so clear that the case may be decided as a matter of law, rather than after consideration of the facts on a complete record.

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[5] The Court reaches this conclusion without reference to the doctrine of entrenchment. Entrenchment occurs when a legislature purports to pass a law which limits what future legislatures may choose to do, or imposes a higher threshold for their enactments to be upheld. See Daryl Levinson, Benjamin I. Sachs, *Political Entrenchment and Public Law*, 125 Yale L.J. 400 (2015). That is not the situation presented here, which is a more straightforward matter of resolving conflict in the application of two statutes, one older and less specific than the other.

Conclusion

For the reasons stated above, Defendants' motion for summary judgment is denied, as the Court concludes that the Tort Immunity Act does not protect Defendants from Plaintiff's claims. Furthermore, the Court denies Plaintiff's motion for partial summary judgment because there are factual disputes concerning the sufficiency of the accommodations offered by Defendants.

2/12/18
Date

Hon. Eugene G. Doherty, Circuit Judge