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FIRST DIVISION
September 21, 2015

No. 1-14-3285
2015 IL App (1st) 143285-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GRETCHEN HUNT,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 13 L 50382
)	
GUILDHAUS,)	
)	Honorable
)	Robert Lopez Cepero,
Defendant-Appellee.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Liu and Justice Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* Summary judgment was proper where plaintiff failed to show a genuine issue of material fact existed in her claim for discriminatory termination pursuant to the Illinois Human Rights Act since plaintiff could not establish the elements of a *prima facie* case for disability discrimination, and even if she could, she failed to show that the reason given for her former employer's adverse action was pretextual.
- ¶ 2 Plaintiff, Gretchen Hunt, appeals from an order of the circuit court that granted summary judgment to defendant, Guildhaus, on Hunt's one-count complaint for violation of the Illinois Humans Rights Act, 775 ILCS 5/1-101 *et seq.* (West 2010), which alleged discriminatory

termination. On appeal, Hunt argues that the trial court erred because a genuine issue of material fact existed as to whether Hunt's supervisor fired her because he believed she had Alzheimer's disease. We affirm.

¶ 3 On September 12, 2011, Hunt filed a charge with the Illinois Department of Human Rights ("Department of Human Rights") alleging that Guildhaus' decision to discharge her was based on its perception that she had a disability. On January 16, 2013, the Department of Human Rights sent Hunt notice of its finding of "substantial evidence" of discrimination. This court is not privy to the basis for the Department of Human Rights' finding since only the original charge and notice of substantial evidence were included in the record on appeal. According to the notice of substantial evidence, Hunt had the following three options: (1) within 30 days of receipt of the letter, notify the Department of Human Rights in writing of her request to have it file a complaint with the Human Rights Commission on her behalf; (2) within 90 days, file a complaint with the Human Rights Commission on her own behalf; or (3) within 90 days, commence a civil action in the appropriate state court, which is the circuit court in the county where the civil rights violation was allegedly committed. Hunt chose to pursue her cause of action in circuit court, and on April 15, 2013¹, she timely filed her verified complaint which contained one count for "Violations of the Human Rights Act- Americans with Disabilities Act." Guildhaus filed its answer on May 21, 2013 and the case proceeded through discovery.

¶ 4 Guildhaus is a not-for-profit recovery home located in Blue Island, Illinois that treats men over 18 years of age for alcoholism and substance abuse disorders. Guildhaus is regulated by the Illinois Department of Human Services, Division of Alcohol and Substance Abuse ("DASA")

¹ On August 15, 2014, Hunt filed her first amended verified complaint. The only difference between her first amended complaint and her original complaint is that the name that Guildhaus was sued under. In her original complaint, the defendant is listed as "THE GUILD HAUS, INC., a dissolved not-for-profit Illinois corporation." In her first amended complaint, the defendant is listed as "GUILDHAUS, an Illinois not-for-profit Corporation." All other allegations remained the same.

and must comply with Illinois' regulations for the treatment of outpatients through rehabilitation programs known as "the 2060." Periodically, a DASA auditor visits Guildhaus in order to determine its compliance or non-compliance with the 2060. Such a visit is called an "audit" or "site visit." Failure to comply with the 2060 may result, for example, in the loss of licensure, funding, or referral sources.

¶ 5 Hunt was hired by Guildhaus in April 2007 to work as a part-time counselor in the evenings. Later that year, in either September or October, she became a full-time counselor with Guildhaus. Her responsibilities as a counselor primarily included counseling residents of Guildhaus, but she was also tasked with admissions and discharges. In February 2008, Hunt was promoted to clinical supervisor (also referred to as "clinical director"). As clinical supervisor, Hunt was responsible for ensuring that the 2060 was implemented and followed, overseeing clinical programs, policies and case management, acting as a point person for community outreach programs, counseling residents, making decisions regarding hiring and firing, training new counselors and attending meetings with the executive director. Larry Carmody was hired as the executive director of Guildhaus in September 2009. In this role, Carmody was Hunt's supervisor.

¶ 6 During Hunt's time as clinical supervisor, Guildhaus failed DASA audits on four separate occasions. First, Guildhaus failed its audit on April 21, 2008. On May 2, 2008, a letter was sent to Hunt from then executive director, Tom McCue, outlining the bases for the failure of that audit. In its entirety, the letter stated:

¶ 7 "As you are aware, the clinical department failed our site visit on April 21st, 2008 [*sic*]. As clinical supervisor, it is your responsibility to ensure that clinical staff is performing their jobs in an efficient and timely manner. More important, they need to know how to develop treatment plans and follow through on all forms from there. The repetitiveness and incompetence that has come to light due to the site visit will not be tolerated. Everyone in the clinical department has been doing their own form of

treatment and all plans have been generic and incomplete. A weekly staff meeting will be held between you and the counselors to discuss any concerns or questions they may have regarding their responsibilities here.

¶ 8 Bill Weller had a meeting with Oswald and John and he will meet with you and Connie next week. He will also be overseeing all aspects of the clinical department until we are in compliance with 2060. All counselors will have 30 days to comply. Once we receive our report from DASA, staff will be notified of the changes we will be implementing.

¶ 9 Also, Teri is an intern at Guildhaus and is not allowed to hold her own groups. The client who left group should have been talked to by you and Teri immediately following group. Teri referred him to the house manager. This was unacceptable. A full report on Teri's assignments and progress during her internship needs to be placed in her file for her teacher and for any future DASA visits. A copy of this correspondence will be placed in your file and an incident report will be placed in Teri's file.

¶ 10 I am hopeful we will be given a chance to redeem ourselves in the eyes of the State. It is imperative that clinical staff is aware of repercussions this may cause."

¶ 11 Additionally, an employee file note dated April 20, 2008 ("the note") reflected that the DASA auditor had reviewed ten charts and none of them passed clinical inspection because treatment plans were not being developed as required by 2060 regulations. The note was written by Ida Brasic, Administrative Assistant, and stated that the clinical department "was put on probation" and "[t]he counselors were given three weeks to correct their errors and to begin developing charts as required." The note also reflected that a copy of it would be entered into each of the counselors' charts and their work performance would be re-evaluated in June. The record on appeal does not contain a follow-up report from June 2008. Guildhaus was subsequently audited on June 17-18, 2010, July 1, 2010, and March 15, 2011. Each time it was found to be non-compliant with the 2060.

¶ 12 There were also various employees who worked with Hunt who stated that her performance as supervisor was deficient. Brenda Dixon, a counselor at Guildhaus since September 2010 whom Hunt supervised, testified in her deposition, which took place on March 12, 2014, that Hunt was vague regarding Dixon's position and what was expected of her. She also felt Hunt did not give her the proper training. Dixon explained that while Hunt was training

her as to how Guildhaus did their resident notes, Hunt would give her a layout to follow and then the next day, Hunt would tell her that the layout she had given her was wrong and that it had to be redone. Dixon also testified that Hunt did not give her any instruction as to how to conduct the group counseling sessions.

¶ 13 When asked about her opinion of Hunt's job performance, Dixon testified that "she didn't show enough care for the client." Dixon gave a specific example of a patient named Adam that she felt Hunt needlessly discharged for failing to get his medicine on time. Dixon stated that "we should have tried to assist him and find another place to go. We didn't do that. In my opinion, that particular day she was very cold-hearted and that particular client OD'd and it really affected me because I just feel like we could have done more." Dixon also gave testimony through an affidavit which was sworn to on August 30, 2012.² In her affidavit, Dixon stated that Hunt never told her that she had been terminated.

¶ 14 Robert Whitney, a counselor at Guildhaus since September 2010, also gave testimony in the form of an affidavit that was sworn to on August 30, 2012. Whitney's affidavit included statements regarding Hunt's job performance. In his affidavit, Whitney stated that "Hunt's assignments to staff often appeared inconsistent and scattered, often giving instructions to [s]taff and then abruptly changing [*sic*] position, offering new, often contradictory direction." Whitney stated that he expressed his concerns to executive director Carmody and then assistant director Lara Bergstedt on several occasions but never directly to the board of directors. On the issue of whether Hunt was fired or chose to leave, Whitney stated that "[i]n late March 2011, I noticed

² All affidavits referenced in this order, with the exception of the second affidavit of Carmody, were prepared and used initially in Hunt's charge before the Commission. Carmody's second affidavit was sworn to on August 26, 2014. This court has relied upon affidavits in this appeal, because all affidavits herein discussed were made part of the record on appeal as attachments to either Guildhaus' motion for summary judgment or Hunt's response thereto. Conversely, all depositions referenced herein were conducted during the course of discovery in Hunt's circuit court case.

that Ms. Hunt was packing personal items from her office into boxes. Ms. Hunt told me that she was 'just cleaning' but I later learned from Laura [sic] Bergstedt that April 6 would be her last day." Whitney testified that in an April 4, 2011, conversation with Hunt, Hunt stated "that she would be leaving Guildhaus, that it was 'just time for me to go' * * *." Whitney averred that Hunt never told him that she had been fired, but that she said "I guess they think I'm a good counselor, but not much as a supervisor."

¶ 15 Lara Bergstedt, who was hired by Hunt as a counselor in April 2009 and then became assistant director of Guildhaus in September or October 2009, gave testimony regarding Hunt's work performance in her deposition on January 24, 2014. In her deposition, Bergstedt stated that she first expressed concern to Carmody regarding Hunt's performance in "early 2011." She told Carmody that one of the counselors (Whitney) "had a complaint of [Hunt] being inconsistent in her directions regarding daily paperwork." On another occasion, Bergstedt also "expressed concern [to Carmody] about some of the directions [Hunt] was giving the counselors regarding documentation." Specifically, she testified "[t]hat what they were being told to do was not necessary for the compliance and that they were having to do double work." Bergstedt also testified that "within a day or so after talking to [Carmody] about it," she also spoke with Hunt and advised her that the documentation only needed to be completed once. Bergstedt further testified that Carmody expressed concern to her that Hunt was unable to do her job and that he was concerned about her inconsistencies. Bergstedt stated that Carmody told her "[t]hat he feels bad. That he thinks it's best for [Hunt] to be let go. He wasn't comfortable doing it." Bergstedt stated that Carmody told her that he felt he needed to let Hunt go "[b]ecause of her inconsistencies and she wasn't supervising well." Bergstedt testified that sometime within the week after Carmody conducted Hunt's final performance evaluation, Carmody told her that he

had spoke with Hunt and that she would get back to him about when she wanted to leave.

Bergstedt also testified that "[Carmody] said he spoke with [Hunt], he thought it went well, and he suggested that she might want to get evaluated for Alzheimer's because he had noticed that she was forgetful." She also testified that neither she nor anyone else who worked at Guildhaus had ever discussed the possibility of Hunt having Alzheimer's.

¶ 16 Prior to the performance evaluation conducted by Carmody on March 17, 2011, Hunt's performance had only been evaluated once. Her previous evaluation was conducted on January 13, 2009, by Ida Brasic. Brasic was employed at Guildhaus as an administrative assistant to the executive director from 1997 to September 2009. In each category of the eleven categories of the performance evaluation ("Quality," "Productivity," "Job Knowledge," "Reliability," "Attendance," "Independence," "Creativity," Initiative," "Adherence to Policy," "Interpersonal Relationships," "Judgment") Brasic gave Hunt a score of "85" which, based on the evaluation's scale, equated to "very good." In response to a question regarding accomplishments, Brasic wrote that "[Hunt] has taken control of the clinical staff and turned it around for the best."

¶ 17 Carmody conducted the performance evaluation that is at issue in this case on March 17, 2011.³ The conversation that took place between Carmody and Hunt during the evaluation is in dispute. Carmody and Hunt have both testified to their respective positions. In his second affidavit, which was sworn to on August 26, 2014, Carmody testified that on February 23, 2011, he met with the board of directors of Guildhaus and they discussed Hunt's performance as clinical supervisor. Carmody attested that "[t]he board decided that based on her performance as [c]linical [s]upervisor, it was in the best interest of Guildhaus that she no longer remain in the position of [c]linical [s]upervisor." Carmody further stated that the board also decided that Hunt

³ The performance evaluation form was signed and dated by Carmody on March 11, 2011 and subsequently signed and dated by Hunt on March 17, 2011, which was the date that Carmody reviewed the evaluation with Hunt in person.

was not going to be terminated. Instead, Hunt would be offered to continue her employment with Guildhaus as a counselor. Carmody testified that the board's decision was then implemented at the March 17, 2011 performance evaluation. On the performance evaluation form, which was completed by Carmody, Hunt's overall performance was rated as "needs improvement; level falls below requirements on a repeated basis and there is a negative impact on goal attainment." In the section entitled "Supervisor's Comments," Hunt wrote a statement that read: "I appreciate the honesty and concern- I will address possible medical aspect of scattered. I will try to do better with the understanding this position may need anothers [sic] knowledge."

¶ 18 In his deposition, which took place on January 16, 2014, Carmody testified that Hunt failed to keep Guildhaus compliant with all of the "case management, policies and procedures" required under the 2060. Carmody also testified that counselors Whitney, Dixon and John Kummerer, had all complained to him. Carmody explained that the counselors told him that "* * * one day she wants one thing. She comes in the next days and says that's no good. I want it this way." Carmody also stated that Hunt was tardy to work "roughly every day." Carmody testified that during the performance evaluation he gave Hunt the performance evaluation form. When asked in his deposition what was said when he gave her the form, Carmody stated "I said hated having to do this, you know, and I hated having this conversation, but you know, I want you to read this and understand that this is how I see the work here and how I viewed the performance in the past year and that she was no help whatsoever in finding solutions to the problems we had with the policies and procedures." Carmody further testified that he also told Hunt that he had heard complaints from counselors about her inconsistencies. He testified that he told Hunt that "it was in the best interest of Guildhaus that she not perform those duties [of

clinical supervisor] any longer." Carmody testified that Hunt was not terminated and that he told her that she could stay at Guildhaus as a counselor.

¶ 19 Carmody testified that at the end of their conversation during the performance evaluation, he told Hunt that "* * * it's all her inconsistencies and scatteredness that maybe there is an underlying problem and maybe she should ask her doctor about it." Carmody testified that he said "she should ask the doctor if she could be tested for Alzheimer's or something of that nature to see if there wasn't some medical reason." Carmody stated that he was "reaching for reasons" as to why Hunt was unable to perform her job, but that he did not believe she actually had Alzheimer's. Carmody stated that Hunt never told him she had decided not to stay on as a counselor. Rather, although he could not remember who he had specifically heard it from, someone told him that Hunt had decided to leave on April 6, 2011. Carmody testified that he never told Hunt she was terminated because she had Alzheimer's disease.

¶ 20 Hunt was deposed on November 4, 2014, and her version of what happened during the March 17, 2011 performance evaluation differs from Carmody's testimony. When asked to give her story of the ending of her employment at Guildhaus, Hunt testified:

¶ 21 "Larry called me into the office approximately between 5:00 and 5:30. And I went into the office and he closed the door, and he sat and looked at me. I really didn't know why I was there. He said this is about your evaluation. And I looked at him, and his look—[h]e looked like he lost his best friend; and I said oh, my God, you're letting me go, [Carmody]? And he said yes. And he had the evaluation in his hand, and he said here's your evaluation. And then he said to me basically you have had complaints from the counselors about you, you have had complaints from the clients about you. And I had no idea that anybody was complaining about me at all. And I couldn't believe it. * * *"

¶ 22 According to Hunt, Carmody got angry during the evaluation and raised his voice at her. He told her that she wasn't "getting it" and that "* * * I really didn't know what he meant by not getting it. And he said she wants your office, Lara. * * *." Hunt testified that she took this to be

a reference to Lara Bergstedt and that she thought Carmody meant that Bergstedt wanted her "office." However, Hunt testified that she did not know if he meant her physical office or her office, as in clinical supervisor. Further, Hunt testified that during the evaluation, Carmody wrote the word "scattered" on her performance evaluation. When asked what she thought Carmody meant by that, Hunt answered "I could tell you what he meant. Because we couldn't—either one of us could spell Alzheimer's." Hunt went on to contradict Carmody's testimony again in her deposition when she stated that although she requested to stay on as a counselor, Carmody refused. Hunt stated that she "tried every way she could to say [*sic*] during our conversation at the evaluation" but that Carmody would not allow it. Finally, Hunt testified that following her final evaluation, she remained employed with Guildhaus for two to three weeks. Hunt testified that it is not uncommon for someone to "stay and tie up their charts." Hunt testified that although she has never been tested for Alzheimer's, she does not have Alzheimer's disease. Hunt also testified that she has never been diagnosed with any mental conditions other than "slight depression."

¶ 23 Don Shannon, a former counselor at Guildhaus, testified at his deposition on March 26, 2014 that during a breakfast meeting in July 2011, Carmody told him that he had to let Hunt go because she "had been having problems." Shannon stated that he assumed this meant fired, though Carmody never used that word. Shannon also testified that Carmody told him that, at the end of the evaluation, he had told Hunt that she should get tested for Alzheimer's but that Carmody never told him that he had let Hunt go because she had Alzheimer's or because he thought she had Alzheimer's. Shannon also spoke with Hunt approximately one month after he spoke with Carmody, and he testified that Hunt told him "[Carmody] let me go because [he] thought I was having a problem with my memory and wasn't capable of doing my job correctly."

¶ 24 On August 27, 2014, Guildhaus filed its motion for summary judgment. In its motion, Guildhaus contended that summary judgment was appropriate because Hunt's claim failed as a matter of law since she could not establish disparate treatment through either the "direct" or "indirect" method. Specifically, Guildhaus asserted that Hunt could not prevail under the "direct" method, because she is not "disabled" under the meaning of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, and because she was not qualified to perform the essential functions the position of clinical supervisor. Also, Guildhaus argued Hunt could not prove her case under the "indirect" method because she could not make out a *prima facie* case of discrimination and could not show that the non-discriminatory reason given for her removal from her position (poor performance) was pretextual. In her response, Hunt argued that a question of fact existed as to whether Carmody terminated Hunt because he perceived her as having Alzheimer's disease. On September 25, 2014, the trial court heard oral argument and granted Guildhaus' motion for summary judgment in its entirety. The trial court found that Hunt's claims did not survive any of the arguments made by Guildhaus. Hunt now appeals.

¶ 25 ANALYSIS

¶ 26 This matter is an appeal from a grant of summary judgment, which is proper where the pleadings, admissions, depositions, and affidavits demonstrate there is no issue as to any material fact and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2012). During the summary judgment phase, a plaintiff does not need to prove her entire cause, but she must present some evidentiary facts to support the elements of her cause of action. *Wallace v. Alexian Brothers Medical Center*, 389 Ill. App. 3d 1081, 1085 (2009). Additionally, "[s]ummary judgment is a drastic measure and should only be granted if the movant's right to judgment is

clear and free from doubt." *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). We review a summary judgment ruling *de novo*. *Id.*

¶ 27 At the outset of our analysis, this court finds it pertinent to address an issue that was not mentioned by either party, or the trial court, but which is essential to the issues in this case. Hunt brought a single count in her complaint, which was labeled "Violation of the Human Rights Act- Americans with Disabilities Act." In paragraph three of her complaint, under the sub-heading "Venue and Jurisdiction," it states: "The claims herein lie under the Illinois Human Rights Act." Further, in paragraph five of her complaint, under the sub-heading "Procedural Posture," it states: "On or about September 12, 2011, Hunt filed a charge of discrimination with the Illinois Department of Human Rights for violation of the Human Rights Act." Finally, in her complaint's prayer for relief, Hunt seeks *inter alia* "An Order finding that Guildhaus violated Hunt's rights under the Illinois Human Rights Act and that Hunt receive any backpay, with interest and compensatory damages, to be determined at trial." Outside of the label of Hunt's singular count, her complaint makes no reference to the ADA or any allegations brought pursuant to the ADA. Illinois courts have recognized that when analyzing a pleading, a court will look at its substance; labels are not controlling. *Herman v. Power Maintenance & Constructors, LLC*, 388 Ill. App. 3d 352, 363 (2009) (citing *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002)). In this case, although the label of the singular count includes the words "Americans with Disabilities Act," there are no allegations pursuant to the ADA nor are there any citations to specific sections of the ADA. Therefore, this court conducts its analysis of whether summary judgment was proper on Hunt's singular claim brought under the Illinois Human Rights Act ("IHRA"). This court also notes that in applying the IHRA, courts often look to federal law due to the lack of state court decisions addressing that statute.

Robinson v. Village of Oak Park, 2013 IL App (1st) 121220 ¶ 19; *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172 (1989).

¶ 28 According to Section 5/1-103(I) of the IHRA,

¶ 29 " 'disability' means a determinable physical or mental characteristic of a person, including, but not limited to, a determinable physical characteristic which necessitates the person's use of a guide, hearing or support dog, the history of such characteristic, or the perception of such characteristic by the person complained against, which may result from disease, injury, congenital condition of birth or functional disorder and which characteristic:

¶ 30 (1) For purposes of Article 2 is unrelated to the person's ability to perform the duties of a particular job or position and, pursuant to Section 2-104 of this Act, a person's illegal use of drugs or alcohol is not a disability;"

¶ 31 * * * 775 ILCS 5/1-103(I) (West 2010).

¶ 32 Article 2 of the IHRA is titled "Employment." 775 ILCS 5/2 *et seq.* (West 2010). Section 102(A) of Article 2 the IHRA states that it is a civil rights violation for any employer to refuse to hire, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination or citizenship status. 775 ILCS 5/2-102(A) (West 2010).

¶ 33 In analyzing employment discrimination claims under the IHRA, Illinois courts apply the three-part test set out by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Van Campen v. International Business Machines Corp.*, 326 Ill. App. 3d 963, 970-71 (2001) (citing *Zaderaka*, 131 Ill. 2d at 178-79). First, the plaintiff must establish a *prima facie* case of unlawful discrimination by a preponderance of the evidence. *Van Campen*, 326 Ill.App.3d at 971; see also *Raintree Health Care Center v. Illinois Human Rights Comm'n*, 173 Ill.2d 469, 481 (1996)⁴. Second, to rebut the presumption of unlawful discrimination, the

⁴ Prior to 2007, the IHRA referred to "handicap" discrimination rather than "disability" discrimination. Public Act 95-668 (P.A. 95-668, § 5, eff. October 10, 2007) replaced the term "handicap" throughout the statute with "disabled"

employer must articulate a legitimate, nondiscriminatory reason for its employment decision. *Id.* Finally, if the employer establishes a legitimate reason, the plaintiff must prove that the reason was merely a pretext for unlawful discrimination. *Id.* To establish a *prima facie* case of disability discrimination under the IHRA, a plaintiff is required to prove: (1) she was disabled within the definition of the IHRA; (2) her disability is unrelated to her ability to perform the functions of the job she was hired to perform; and (3) an adverse job action was taken against her related to her disability. *Van Campen*, 326 Ill. App. 3d at 971.

¶ 34 After reviewing the record and applying the foregoing factors, this court does not believe that Hunt has made out a *prima facie* case of disability discrimination. Even assuming *arguendo* that she has, we believe that Guildhaus has clearly set forth a legitimate, non-discriminatory reason for Hunt's removal from the position of clinical supervisor, therefore Hunt is unable to show that the proffered reason was only a pretext for unlawful discrimination as required under the *McDonnell-Douglas* test.

¶ 35 The IHRA defines disability as a "determinable physical or mental characteristic of a person * * * or the perception of such characteristic * * *." 775 ILCS 5/1-103(I) (West 2010). Here, Hunt alleges that she was perceived as having a determinable mental characteristic, Alzheimer's disease. The only evidence that Hunt has presented which supports her contention that she was perceived as having Alzheimer's was the statement made by Carmody during the March 17, 2011 performance evaluation. Hunt alleges that Carmody unequivocally stated that she was being terminated because she had Alzheimer's. Carmody testified that he neither terminated Hunt nor told her she had Alzheimer's. Instead, Carmody asserts that he was "reaching for a reason" as to why Hunt was unable to perform her job, but that he did not believe

or "disability." However, the definition of "handicap" (now "disability") did not change. Thus, for consistency purposes, we have treated the use of "handicap" in any earlier cases to be interchangeable with "disability."

she actually had Alzheimer's. The other testimony in this case establishes that no one besides Carmody ever told Hunt, or one another, that they believed she had Alzheimer's. Based on the testimony of Carmody that he never actually believed that Hunt had Alzheimer's, we cannot find that she was perceived as having a disability within the meaning of the IHRA. Even if we did find that Hunt could establish a perception of disability, she cannot satisfy the remaining two requirements.

¶ 36 Hunt is unable to establish that her perceived disability is unrelated to her ability to perform the functions of the job she was hired to perform. Illinois courts have held that a plaintiff who cannot, by reason of a physical condition, perform the duties of the job in question even with accommodation is not handicapped under the IHRA. *Van Campen*, 326 Ill. App. 3d at 971. In *Van Campen*, the court affirmed the decision of the Human Rights Commission which found that a former employee's handicap was related to the performance of his job duties and therefore he was not handicapped under the IHRA. *Id.* at 973. The plaintiff suffered from an immune deficiency which caused him to be more susceptible to minor illnesses. *Id.* at 965. He was also clinically depressed, which made it difficult for him to wake up in the morning. *Id.* at 965. These illnesses caused the plaintiff to be late for work or miss work entirely. *Id.* at 966. Subsequently, the plaintiff was fired. *Id.* at 969. The plaintiff filed a charge against his former employer alleging disability discrimination with the Human Rights Commission. *Id.* at 965. At the conclusion of the hearing, the administrative law judge issued her recommendation to dismiss the plaintiff's complaint with prejudice, finding that he did not establish that his medical conditions were "handicaps" under the IHRA because those conditions were related to his ability to perform his job. *Id.* at 970. On appeal, the court found that there was no evidence that the plaintiff actually could have performed his job, even with accommodation. *Id.* at 973.

¶ 37 Although this case differs from *Van Campen* because Hunt does not actually have a disability, that court's analysis is still instructive. As in *Van Campen*, here, Hunt's perceived disability is directly related to the performance of her job. If Hunt actually had Alzheimer's, the disability which she claims she was perceived to have, it would certainly impact her ability to act as a clinical supervisor. Hunt's own testimony establishes that she was responsible for training new counselors and overseeing their work. She was also responsible for implementing the requirements of the 2060 and ensuring Guildhaus' compliance therewith. Hunt does not have Alzheimer's disease, but there is testimony which establishes that she was unable to do her job. Thus, if Hunt actually had the malady she was perceived as having, it would be even less likely that she would be able to perform her duties as clinical supervisor. Thus, Hunt cannot show that her perceived disability is unrelated to her ability to perform the functions of the job she was hired to perform. As such, she cannot satisfy the second requirement of a "disability" under the IHRA.

¶ 38 Finally, the evidence does not support Hunt's assertion that the adverse action taken against her, alleged termination, was related to the perception of her disability.⁵ The evidence establishes that the decision to remove Hunt from the position of clinical supervisor was made at the board of directors' meeting in February 2011. Carmody's sole comment regarding the possibility that Hunt had Alzheimer's was made over six weeks later at her final performance evaluation. Further, Hunt cannot show that she was terminated from Guildhaus, thus she has failed to substantiate the occurrence of the adverse action which she alleges in her complaint. The evidence establishes that she continued to work at Guildhaus for three weeks subsequent to the performance evaluation during which she alleges she was terminated. Hunt's own writing on

⁵ This court must note that the only "adverse action" at issue in this case is the alleged termination of Hunt since that is the only adverse action pled in her complaint. Hunt did not allege another adverse action, such as a demotion, therefore we will not analyze any possible allegations other than what was pled.

her performance evaluation form evidences her intent to improve her quality of work at Guildhaus. We find it very unlikely that a person who was fired would write that he or she would try to do better in the future, as Hunt did here. We find that this evidence, coupled with the lack of any testimonial support for Hunt's position that she was fired, other than Hunt's own testimony, shows that no question of fact exists as to whether Hunt was terminated.

¶ 39 Based on the foregoing, we find that Hunt cannot make out a *prima facie* case of disability discrimination and thus cannot satisfy the first prong of the *McDonnell-Douglas* test. However, even assuming *arguendo* that she was able to fulfill the first requirement, we still find that the reason given for Guildhaus' removal of Hunt from the position of clinical supervisor was not pretextual. Illinois courts have recognized that "a party establishes pretext with evidence that the employer's stated reason or the employment decision 'was a lie-not just an error, oddity or oversight.'" *Teruggi v. CIT Group/Capital Finance, Inc.*, 709 F.3d 654, 661 (7th Cir. 2013) (quoting *Van Antwerp v. City of Peoria, Ill.*, 627 F.3d 295, 298 (7th Cir. 2010)). Courts also consider the context in which the allegedly discriminatory remarks were made to be a relevant factor in determining causality. *Oest v. Illinois Dept. of Corrections*, 240 F.3d 605, 611 (7th Cir. 2001). Further, "[a] long time period between a remark and an adverse employment action can defeat the inference of a 'causal nexus between the remark and decision to discharge.'" *Oest*, 240 F.3d at 611 (quoting *Geier v. Medtronic, Inc.*, 99 F.3d 238, 242 (7th Cir. 1996)). "Thus, if the remarks are not 'contemporaneous with the discharge or causally related to the discharge decision making process,' they are insufficient to create a triable issue of material fact regarding discrimination." *Id.*

¶ 40 In *Oest*, a former correctional officer brought suit against the Illinois Department of Corrections alleging that she had been discriminated against on the basis of sex and discharged

in retaliation for filing a discrimination charge with the Equal Employment Opportunity Commission. *Oest*, 240 F.3d at 608-611. Summary judgment was upheld on appeal. *Id.* at 617. On the issue of whether the trial court properly held that the corrections officer had not provided sufficient evidence of discriminatory motivation for her firing, the court found the comment made by the officer's supervisor that the camp was "not the place for women to work" could not be fairly characterized as causally related to her firing. *Id.* at 611. The court found that since the comment was made four years prior to her termination and two years prior to her first suspension, it was not related to the decision-making process with regard to the officer's continued status. *Id.*

¶ 41 Here, Hunt asserts that Carmody's suggestion that she get tested for Alzheimer's disease is sufficient to show that Guildhaus' reasons for removing her from the position of clinical supervisor were pretextual. Guildhaus argues that Carmody's comment was merely a "stray remark" and does not rise to the level that is required in order to prove pretext. Also, Guildhaus emphasizes that Hunt's poor job performance is evidenced throughout the record. Like the court in the *Oest* case, we cannot find that Carmody's suggestion that Hunt be tested for Alzheimer's was causally related to her removal from the supervisor position. Although the comment at issue in *Oest* was made four years prior to the officer's termination, we feel that since the comment at issue here was made six weeks *subsequent* to the decision to remove Hunt from her position, it is even further attenuated or unrelated to the decision to remove her. (Emphasis added.) The decision to remove Hunt was made by the board of directors on February 23, 2011. Hunt's final performance evaluation took place on March 17, 2011. Thus, any comment Carmody made during the performance evaluation was not representative of the decision making process. The

testimony and affidavits establish that the decision to remove Hunt from the clinical supervisor position was based on her poor job performance.

¶ 42 We find that Guildhaus' reasoning was legitimately based on Hunt's poor performance. There is ample evidence in the record which establishes that there were various issues with Hunt's performance as a supervisor. Counselors Whitney and Dixon both testified that Hunt often gave them contradictory instructions regarding how to fill out paperwork. Hunt's lack of cohesive instruction often led to duplicative and unnecessary work. Additionally, the DASA audits revealed that Hunt failed to keep Guildhaus compliant with the 2060 on numerous occasions. Bergstedt testified that she did not believe Hunt fully understood the 2060 or how to institute its requirements. Carmody, likewise, testified that Hunt was inadequate in nearly every realm of her job performance. She was late to work roughly every day. She did not train the counselors properly. She also did not supervise them properly, for example, when she allowed an intern to conduct a group session, which was strictly prohibited. Hunt was first advised of her shortcomings in a 2009 letter as a result of a failed DASA audit, however the evidence shows that Hunt's performance never improved and her inability to implement the 2060 never changed. Therefore, the record is replete with bases upon which Guildhaus made its decision to remove Hunt from the position of clinical supervisor. The evidence does not support Hunt's contention that such reasoning was merely a pretext to conceal Guildhaus' discriminatory intent.

¶ 43 We find that summary judgment was proper because no genuine issue of material fact remains in Hunt's cause of action for disability discrimination under the IHRA. For the above reasons, we affirm the judgment of the circuit court.

¶ 44 Affirmed.