IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

ANGELO GIAMBRONE,

Plaintiff,

Case No.: 20-CA-4719

Division: C

v.

HILLSBOROUGH COUNTY,

Defendant.
_____/

ORDER GRANTING PLAINTIFF, ANGELO GIAMBRONE'S AMENDED MOTION FOR FINAL SUMMARY JUDGMENT AND

DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter came before the Court for hearing on November 25, 2025, on Plaintiff, ANGELO GIAMBRONE'S (hereinafter "Plaintiff") Motion for Final Summary Judgment filed 09/04/2024 [Doc. #49], Amended Motion for Final Summary Judgment filed 10/02/2024 [Doc. #52] and Defendant's, HILLSBOROUGH COUNTY'S Motion for Summary Judgment filed by HILLSBOROUGH COUNTY on 09/20/2024 [Doc. #50]. The Court having reviewed the parties' respective Motions, Defendant's Response to Plaintiff's Motion for Summary Judgment filed 09/20/2024 [Doc. #51], Plaintiff, ANGELO GIAMBRONE'S Response to Defendant's Motion for Summary Judgment filed 10/28/2024 [Doc. #63], all pleadings, documents, and exhibits thereto provided in support of or in opposition to the subject Motions, the record, the applicable law, argument of counsel for the parties, and being otherwise fully advised in the premises, the Court finds as follows:

EXHIBITS PROVIDED

Attached to the parties dueling Motions for Summary Judgment were a multitude of exhibits. In addition to the pleadings filed, the Court reviewed the following exhibits:

Plaintiff's:

- Exhibit A- Hillsborough County Employment Records for Plaintiff
- Composite Exhibit B- Hillsborough County Administrative Policy Manual; Hillsborough County Administrator Department Procedures Drug Free Workplace Procedure Number 1.4; Collective Bargaining Agreement between Hillsborough County BCCC and International Association of Fire Fighter (IAFF) Local 2294 (October 1, 2018 through September 20, 2021)
- Exhibit C- 08/31/24 Affidavit and 3/16/23 Deposition of Plaintiff, Angelo Giambrone
- Exhibit D- Plaintiff's Medical Marijuana Card, expiration date of 6/7/2019
- Exhibit E- letter and records from "Marijuana Doctor," Clearwater Medical Marijuana clinic. Plaintiff has been patient there since May 30, 2018, includes Plaintiff's intake questionnaire.
- Exhibit F- 08/31/24 Affidavit of Mrs. Jennifer Giambrone, Plaintiff's wife
- Exhibit G- Hillsborough County's Response to Plaintiff's Requests For Admissions
- Exhibit H- Redacted suspension letter from Defendant to Plaintiff
- Exhibit I- Drug screening results from March 1, 2019- Positive for Marijuana, in remarks stated "Donor claims medical marijuana card in Florida."
- Exhibit J- Department of Health letter informing plaintiff that investigation was closed on 4/28/2020 as it was found that there was not probable cause after an investigation by the Probable Cause Panel for Bureau of Emergency Medical Oversight.
- Exhibit K- Office of Medical Marijuana Use, Florida's Official Source for Medical Use treatment center information.

Defendant's:

- Exhibit 1- County Drug Free Workplace Policy (effective 10/-1/2015)
- Exhibit 2- County Collective Bargaining Agreement (CBA)
- Exhibit 3- Plaintiff's Deposition taken March 16, 2023
- Exhibit 4- March 21, 2023, Deposition of Luz Ruiz, Human Resource Partner with Hillsborough County

STATEMENT OF UNDISPUTED FACTS AND PROCEDURAL HISTORY

Plaintiff was employed by Defendant, HILLSBOROUGH COUNTY (hereinafter "Defendant") as an Emergency Medical Technician (EMT) in the role of Fire Medic I with Defendant's Fire Rescue Department, i.e. firefighter paramedic, and had been in the employ of the County for several years.[1] Plaintiff was and is licensed by the State of Florida, Department of Health, as an Emergency Medical Technician. On February 26, 2019, Plaintiff was selected for a random urine drug test and tested positive for marijuana with results obtained on March 1, 2019. (PL's Ex. I) (Def Ex. 4-Deposition of Luz Ruiz). There was no workplace incident or concerns with the Plaintiff's work performance that prompted the random urinalysis screening – the testing was strictly random. In accordance with Defendant's Collective Bargaining Agreement (CBA) and Drug Free Workplace Policy, Plaintiff presented Defendant and the testing medical doctor with a Medical Marijuana Card duly and lawfully issued by the Florida Department of Health evidencing

[1] Plaintiff's documentation shows a hiring date effective December 7, 2009. *See* Plaintiff's Amended Motion for Summary Judgment, Exhibit A. Plaintiff testified he was a volunteer firefighter with Hillsborough County Station 18 for 2 years prior to being hired. *See* Plaintiff Deposition pp. 12-13. Defendant alleges Plaintiff began employment for the County in 2015. This is not a dispute of material fact, and instead undisputedly demonstrates that Plaintiff was employed by the County without issue for many years before the incident prompting his suspension.

that Plaintiff held a valid prescription for medical marijuana to treat his medical conditions.[2] Instead of treating Plaintiff's positive drug test as a negative test pursuant to Defendant's own Drug Free Workplace Policy concerning prescriptions for controlled substances and other medications, Defendant placed Plaintiff on administrative leave without pay. Plaintiff has not undergone a follow up drug test, as it would provide the same result as the first one since he is still being prescribed the medication for use in treating his diagnosed ailments. (PL's Depo. pp 42-43). Plaintiff was placed on unpaid administrative leave due to the 03/01/19 positive drug test on the basis that Defendant would not accommodate Plaintiff's use of medical marijuana with a prescription during his employment as an EMT. (PL's Depo. pp 41). Defendant admits that:

1. There is no evidence that Plaintiff used marijuana on work premises, or during work hours;
2. There is no evidence that Plaintiff possessed marijuana on work premises or during work hours;
3. There are no work performance evaluations which allege Plaintiff was impaired while working;
4. That Plaintiff never had a complaint or a suspicion of impairment on his employment record;
5. The sole reason for Plaintiff's employment suspension was due to a positive random drug urinalysis.

(PL's Exhibit G- Hillsborough County's Response to Plaintiff's Requests For Admissions filed 8/11/22- DOC. #25).

[2] It is undisputed that Plaintiff was issued and held a valid license to use prescription medical marijuana. Despite this fact, Defendant attempts to argue that Plaintiff does not have a qualifying medical condition under the Public Health statute F.S.381.986(2).

Defendant has never alleged that Plaintiff ever used marijuana on Defendant's property, ever used marijuana during the course and scope of his employment as an EMT, and that Plaintiffs job functions and performance were never impacted by his use of medicinal cannabis outside of work after he first obtained his medical marijuana card sometime in 2016. In fact, Plaintiff received a promotion in 2018 to Fire Medic I. (PL Depo. pp 13).

As a result of the positive drug screening, the Defendant reported Plaintiff to the State of Florida, Department of Health, licensing board who governs Plaintiff's EMT license. An investigation was conducted by the State of Florida into Plaintiff's positive drug screening, but after being provided with a copy of Plaintiff's medical marijuana card, the investigation was dropped for want of probable cause. More specifically, the Department of Health stated that the Probable Cause Panel for Bureau of Emergency Medical Oversight carefully reviewed all of the information and evidence obtained in the case and determined that probable cause of a violation did not exist and directed the case be closed. (PL's Ex. I). The parties are in agreement that there is no dispute of material fact remaining.

As a result of Defendant's actions, Plaintiff filed the instant cause against Defendant. Plaintiff's Complaint filed 06/05/2020 [Doc. #4], alleges (a) Count I - violation of the Florida Civil Rights Act because Defendant was required to accommodate Plaintiff as a disabled individual; (b) Count II - wrongful termination because Defendant refused to accept Plaintiff's state issued medical marijuana card as justification for the positive test results as required by Defendant's own Drug Free Workplace Policy and Collective Bargaining Agreement; (c) Count III – failure to update its Drug Free Workplace Policy pursuant to the Florida Civil Rights Act; and (d) Count IV - breach of contract for Defendant's violation of it Drug Free Workplace Policy and Collective Bargaining Agreement by not accepting Plaintiff's state issued medical marijuana card as a

prescription or non-prescription drug as defined and required in the Collective Bargaining Agreement and Drug Free Workplace Policy.

Defendant, in opposition, argues that Plaintiff questions, as a matter of law, the authority of Defendant – Hillsborough County Fire Rescue Department – to discipline its firefighter medics for a positive drug screen, by contending that a Medical Marijuana Card immunizes firefighter medics from both federal law and employee discipline pursuant to Section 381.986, Fla. Stat. and Fla. Const. Art. X, Section 29.

FINDINGS OF FACT

A. Defendant's Collective Bargaining Agreement and Drug Free Workplace Procedure Number 1.4.

1. On December 7, 2008, Plaintiff was hired to work as an Emergency Medical Technician (EMT) with Defendant's Fire Rescue Department.

2. Plaintiff's employment with Defendant was governed by the Hillsborough County Administrator Policy Manual, Hillsborough County Administrator Department Procedures (hereinafter "County Policy") Drug Free Workplace Procedure Number 1.4, and the Collective Bargaining Agreement (hereinafter "CBA") between Hillsborough County BCCC and International Association of Fire Fighters.

3. Section 40.1 of the CBA prohibits certain actions and behaviors for its employees and provides that "[e]xcept as approved in the line of duty for EMT or paramedic-certified personnel, all employees are prohibited from using, possessing, soliciting, purchasing, selling, distributing, dispensing or manufacturing a Drug; (1) while at work, when within Hillsborough County whether on or off County property; (2) at any time on County property, whether or not at work; (3) at any time in a County vehicle, whether or not at work; and (4) at any time wearing, or otherwise, displaying a Hillsborough County logo, whether or not at work. (5) Or at any

time while employed by Hillsborough County Fire Rescue, other than alcohol or prescribed medications."

4. The CBA and County Policy provide that the County can subject an employee to submit to a random urinalysis for the presence of illegal substances.

5. Section 40.2(L) of the CBA defines Prescription or Nonprescription medication as "a drug or medication obtained pursuant to a prescription as defined by s. 893.02 or a medication that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries." This broad definition encompasses medications authorized under federal *or* Florida law.

6. Section 40.2(K) of the CBA defines a "Medical Review Officer" or "MRO" as "a licensed physician, employed with or contracted with an employer, who has knowledge of substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate an employee's positive test result in relation to the employee's medical history or any other relevant biomedical information."

7. County Policy 1.4 section titled "Over the Counter or Prescription Drugs" states that "[e]mployees and job applicants should confidentially report the use of prescription or non-prescription medications to the County's medical Review Officer (MRO) when contacted by the MRO. Employees or job applicants will have the opportunity to contest or explain the result to the MRO within five working days after written notification of the positive result. If the employee or job applicant's explanation or challenge is unsatisfactory to the MRO, the MRO shall report a positive test back to the employer. If an employee or job applicant has provided an adequate

explanation regarding prescription or non-prescription drug use that may affect the test results, the MRO will verify the test as negative and report back to the employer."

8. The County Policy section 1.4 requires Defendant to permit an employee to provide justification for a positive test result within 5 days of written notification of the positive test.

9. Plaintiff was requested to take a random drug test that resulted in a positive test for marijuana.

10. The Duty of an Employee to Disclose their use of a prescription or non-prescription drug is dictated by section 40.7(A) of the CBA and provides that "[a]n Employee is responsible for disclosing to the Battalion Chief or Deputy Fire Marshall, any medication or prescription drug that could impair or adversely affect an Employee's ability to perform his/her job functions."

B. Medical Marijuana in Florida.

11. Per the will of the voters of the State of Florida, Medical Marijuana became enshrined in Article X. s. 29 of the Florida Constitution and codified in Florida Statute § 381.986. This provision maintains that medical use of marijuana by a qualified patient or caregiver in compliance with the provision is not subject to criminal or civil liability or sanctions under Florida law.

12. The Florida Constitution and section 381.986, Florida Statutes, provides for a framework where patients in Florida can obtain a medical marijuana certification from a licensed Florida doctor and to then be eligible to legally obtain marijuana from a Florida licensed dispensary.

13. There are currently over 880 thousand medical marijuana patients in the State of Florida with over 650 retail stores dispensaries for distribution of regulated medical marijuana to

patients. In oral arguments, counsel for Defendant argued that doctors prescribing medical marijuana under Florida law are not "real" doctors because marijuana is "never prescribed, [but is] provided by a person representing themselves to be a physician giving them a license to purchase it." The Court notes that under Florida law, only licensed and state certified medical physicians who have obtained additional licensing to prescribe marijuana are eligible to write prescriptions for medical marijuana.

14. It is factually undisputed that prior to and during Plaintiff's employment with the Defendant, he suffers from anxiety, PTSD, and insomnia which substantially limits one or more of his major life activities on a daily basis when he is not properly medicated. (PL's Depo pp 16-29).

15. The definition of disability under the Florida Civil Rights Act includes both physical and mental impairments.

16. Plaintiff is a disabled individual under the Florida Civil Rights Act, as indicated by the testimony in the affidavits provided by Plaintiff and his wife, but otherwise able to complete all his job duties and functions.

17. Plaintiff's wife's affidavit corroborates Plaintiff's testimony that his anxiety and sleep disorder substantially limited one or more of his major life activities.

18. Plaintiff had tried multiple different prescription medications for many years prior to his primary care physician recommending him to a medical marijuana doctor because of the side-effects of the prescription medications.

19. Plaintiff became a qualified patient pursuant to Article X. s. 29 of the Florida Constitution, by consulting with a licensed medical doctor authorized to certify patients to use medical marijuana, he paid the required fee to the Florida Department of Health and was issued a

medical marijuana card from the Florida Department of Health. In oral arguments, counsel for Defendant argued that this Plaintiff is "not a qualified patient" under the applicable Florida Law despite a qualified treating physician determining that the Plaintiff was qualified.

20. Plaintiff began using medical marijuana to treat his anxiety and sleep disorder which Plaintiff found provides him with significantly more relief with little to no side effects. In contrast, Plaintiff previously treated his conditions with traditional prescription medications and experienced significant side effects. Plaintiff in his deposition testified that he only utilizes marijuana on gaps of time where he has off from work, and that he does not use medical marijuana when he is on duty at work. While on shift, Plaintiff normally did not get consistent sleep due to the on-call nature of his job as an EMT. Plaintiff did not request an accommodation because he did not need an accommodation for medicine usage while on shift.

21. Plaintiff provided his state issued medical marijuana card to the Medical Review Officer within 5 days after the positive drug test as justification of his use of medical marijuana as a prescription or non-prescription drug in accordance with the CBA and County Policy. It is noted in Plaintiff's drug test that he provided his medical marijuana card to the testing provider.[3]

22. During his deposition, Plaintiff was not asked about the impact of his medical conditions on his life when unmedicated.

C. Defendant admits that Plaintiff's use of medical marijuana had no impact on his job duties.

23. Defendant admits there was no evidence that Plaintiff possessed medical marijuana on work premises, in work vehicles, during work hours, and in the course and scope of his employment.

[3] Plaintiff testified at his deposition that the (doctor) at the testing facility contacted him and asked if he had a prescription for marijuana. (PL Depo pp 35).

24. Defendant admits there were no allegations that Plaintiff was ever impaired, under the influence of cannabis at work or used cannabis at work, before work, or during work hours.

25. Defendant admits there were no complaints or suspicions that Plaintiff was ever impaired at work and Plaintiff regularly had above average or exemplary performance reports.

26. Defendant admits that the sole reason for Plaintiff's suspension was a random positive urinalysis.

27. Defendant suspended Plaintiff for the positive test and denied considering Plaintiff's medical marijuana card as justification for the positive test, unlike any other controlled substances under Florida law.

28. After suspension, Plaintiff, through the union representatives, requested the County make an accommodation after his positive screening that the Defendant consider the positive test a negative test for his use of marijuana outside of work hours pursuant the policy and in light of his lawful Florida prescription for medical marijuana and his rights to obtain that prescription as a lawful prescription under Article X. s. 29 of the Florida Constitution establishing medical marijuana.

29. Defendant denied Plaintiff's accommodation request and Plaintiff subsequently sued Defendant seeking in part reinstatement of employment, lost wages and compensatory damages. In oral arguments, counsel for the Defendant argued that Plaintiff was under an implied, affirmative duty to self-report his medical marijuana usage in advance of any potential screening and request an accommodation to utilize medical marijuana while not at work. Counsel for Defendant argues that Plaintiff is not a disabled person, because he never requested an accommodation or self-reported his confidential medical information to his employer. Further, even if the Plaintiff had revealed his medical information requesting an accommodation,

Defendant argues the accommodation of using medical marijuana while off shift or during gaps of time off from work would be unreasonable.

30. Perplexingly, in oral arguments, counsel for Defendant argued that the County "singled out" medical marijuana use and only tested Plaintiff for marijuana – despite the Plaintiff's drug test demonstrating that a battery of controlled substances were listed as being tested for. When asked about examples of accommodations for other controlled substances testified as being used by Plaintiff in the past to treat his current medical conditions such as amphetamines and benzodiazepines, counsel stated that they were unsure if those individuals would go through the same process as someone with a prescription for medical marijuana because the Defendant was specifically looking for medical marijuana as there is "'no valid prescription for marijuana' under federal law." The Court notes that two medications prescribed and taken by Plaintiff during the course of his employment, Xanax (benzodiazepine) and Adderall (amphetamine) are controlled substances under Florida Law requiring a prescription for legal possession and consumption and were the types of controlled substances Plaintiff was tested for on 02/26/19, which, according to the lab results yielded negative results.

CONCLUSIONS OF LAW

A. SUMMARY JUDGMENT STANDARD OF REVIEW.

Florida's summary judgment standard recently changed, pursuant to the Florida Supreme Court's December 31, 2020 and April 29, 2021 orders titled "In Re: Amendments to Florida Rule of Civil Procedure 1.510." *In re Amends, to Fla. Rule of Civ. Pro. 1.510*, 309 So. 3d 192, 192 (Fla. 2020) and *In re Amends, to Fla. Rule of Civ. Pro. 1.510*, 317 So. 3d 72 (Fla. 2021). Florida Rule of Civil Procedure 1.510 is now largely consistent with Federal Rule of Civil Procedure 56. The

new version of Fla. R. Civ. P. 1.510, which took effect May 1, 2021, aligns Florida's summary judgment standard with federal courts and a supermajority of states. *Id.*

Under Florida's new standard, summary judgment is appropriate where there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. *See* Fla. R. Civ. P. 1.510; *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The moving party bears the initial burden of showing the court, by reference to materials on file, that there are no genuine issues of material fact to be decided at trial. *Celotex*, 477 U.S. at 330. A moving party discharges its burden on a motion for summary judgment by "showing" or "pointing out" to the Court that there is an absence of evidence to support the non-moving party's case. *Id.* at 325; *see also Bedford v. Doe*, 880 F.3d 993, 996 (8th Cir. 2018) ("In other words, if the nonmoving party must prove X to prevail, the moving party at summary judgment can either produce evidence that X is not so or point out that the nonmoving party lacks the evidence to prove X") (emphasis in original). When a moving party has discharged its burden, the non-moving party must then "go beyond the pleadings," and by its own affidavits, or by "depositions, answers to interrogatories, and admissions on file," designate specific facts showing there is a genuine issue for trial. *Celotex*, 477 U.S. at 324.

B. COUNT I - VIOLATION OF THE FLORIDA CIVIL RIGHTS ACT.

The undisputed facts establish that Plaintiff is a qualified individual who suffers from anxiety and insomnia. The medical records of Dr. Auerbach, the State of Florida certified doctor, state that Plaintiff suffers from moderate anxiety and severe insomnia, affidavits provided by Plaintiff and his wife, along with Plaintiff's deposition testimony, demonstrate that Plaintiff suffers from anxiety and a sleep disorder, which significantly impacts his day-to-day life when unmedicated. (PL's Ex. E). Section 381.986(2), Florida Statutes, defines what a "Qualified

Patient" is as described in Article X, section 29, of the Florida Constitution. Although section 381.986(2) provides an enumerative list of qualifying conditions for a medical marijuana prescription, there is also a catch all provision in subsection (k) that encompasses "[m]edical conditions of the same kind or class as or comparable to those enumerated in paragraphs (a)-(j)." Defendant's contention that Plaintiff is not a qualified patient on the basis that he does not have one of the enumerated conditions in subsections (a)-(j) does not amount to a conclusion that the Plaintiff was incorrectly determined to qualify under subsection (k) through a determination by the Plaintiff's treating medical physician.

The definition of disability under the Florida Civil Rights Act includes both physical and mental impairments. *Avery v. City of Coral Gables*, 100 So. 3d 749 (Fla. 3d DCA 2012).

Medical marijuana is strictly regulated under the applicable statutory provision, section 381.986. Plaintiff is and was at all times pertinent hereto, a "Qualified Patient" for the use of medical marijuana. A "Qualified Patient" as defined in Art. X. s. 29 and Florida Statute § 381.986 as:

> a resident of [Florida] who has been added to the medical marijuana registry by a qualified physician to receive marijuana or marijuana delivery device of a medical use and who has a qualified patient identification card." Contained in the Public Policy section of Article X., section 29(a)(1) of the Florida Constitution, states "[t]he medical use of marijuana by a qualifying patient or caregiver in compliance with this section is not subject to criminal or civil liability or sanctions under Florida Law.

Article X, Section 29 of the Florida Constitution states that it *does not require* for any on-site use of medical marijuana. The plain language of the Amendment provides that "[n]othing in this section shall require any accommodation of any on-site medical use of marijuana in any place of education or employment, or of smoking medical marijuana in any public place" it therefore requires people be able to use medical marijuana in private and the legislatures ban on it was

unconstitutional. The pertinent section requires that "Qualified Patients" be allowed to use medical marijuana off site and employers are required to make accommodations, *expressio unius est exclusion alterius*. This maxim and rule of statutory construction means if one or more things of a class are expressly mentioned others of the same class are excluded.

Therefore, the Court finds that Plaintiff is entitled to protection under the Florida Civil Rights Act and the County violated the by not making an accommodation for Plaintiff to use his medical marijuana off-site.

The Court is unpersuaded by Defendant's argument concerning the illegality of marijuana as a schedule I substance under Federal Law and the Americans with Disabilities Act (ADA) and its reliance on *Ortiz v. Department of Corrections*, 368 So. 3d 33 (Fla. 1st DCA 2023) in support of its position. The Court finds that *Ortiz* is distinguishable and that under Florida law, there exists a valid prescription for medicinal marijuana and that use and possession of marijuana pursuant to a lawful prescription is not illegal under Florida law.

Ortiz is based on a violation of the Florida Civil Rights Act and does not implicate the Federal ADA. Counsel for Defendant in oral argument argued that *Ortiz* is not distinguishable as it "simply says" that there is a federal law deeming marijuana illegal and therefore an employer can take action firing an employee if they "fail" a drug screening as the Plaintiff did. The Court in *Ortiz* made clear that it did "not decide the extent of a qualified patient's right to use medical marijuana." The Court's ruling was based specifically on the fact that "[f]ederal law makes it a felony for certain 'prohibited persons' to possess a firearm," and that a correctional officer who *sometimes* was required to carry a firearm as a part of their employment would be committing a felony every time they possessed a firearm by the nature of their marijuana possession and usage. *Ortiz*, 368 So. 3d at 34. Further, the Court in *Ortiz* pointed to the ethical requirements for

correctional officers under Section 943.13(4) and (7), Florida Statues, and that their behavior is held to a higher standard both on and off shift. Pursuant to Florida law, the *Ortiz* Court found that correctional officers while possessing marijuana are committing a felony under federal law every time they possess it, thereby violating their character requirement because criminal prosecution is not a necessary element for violation. Verbatim, the Corut in *Ortiz* ruled:

> Because Mr. Velez Ortiz uses medicinal marijuana to treat his posttraumatic stress disorder, he is a regular user of marijuana. Although he can legally possess and use medicinal marijuana under state law, his use of it is illegal under federal law. Accordingly, he cannot lawfully possess a firearm. Each time he does, he is committing a felony. And each year, he is required to possess a firearm to qualify. As a result, he is violating his requirement to maintain good moral character, which is required to keep his correctional officer certification. Because Mr. Velez Ortiz could not perform an important requirement of the job of corrections officer, training with and using firearms, without being in violation of federal law and causing other agency personnel to be in violation of federal law, his termination was lawful.

368 So. 3d 33 (Fla. 1st DCA 2023).

Under Florida law, EMTs and their licensing are supervised by the State of Florida, Department of Health, not under federal law. Medical marijuana licenses and prescriptions are also supervised by the Florida Department of Health. Unlike *Ortiz,* after the Plaintiff's drug test result was reported to the Department of Health, the investigation into Plaintiff's EMT license was dropped for want of probable cause to determine Plaintiff an illicit drug user due to Plaintiff's state issued medical marijuana card. There is no analogous provision of law holding EMTs and correctional officers to the same duty of moral character, and the State Health Department, responsible for Plaintiff's licensing, found he had not violated the conditions of his EMT license.

The Court's ruling in *Ortiz* was specifically based upon the employee's possession of a firearm and being a medical marijuana patient, which has recently been held unconstitutional under numerous federal court rulings. *Cf. United States v. Connelly*, 117 F.4th 269 (5th Cir. 28, 2024)

(holding that 18 U.S.C. § 922(g)(3) possession of a firearm as an unlawful user of a controlled substance was unconstitutional as applied to her right under the 2nd Amendment because the history of the 2nd Amendment does not support disarming sober people based on past substance use and only some limits on presently intoxicated individuals); *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023) (same); *United States v. Harrison*, 654 F. Supp. 3d 1191 (W.D. Okla. 2023) (same). None the less, the crux of this dispute is rooted in Florida state law, not federal law. Plaintiff does not and is not required to possess a firearm in his employment duties with Defendant and is readily distinguishable from the employee in *Ortiz*.

To further distinguish the *Ortiz* decision, the *Ortiz* Court also relied heavily upon a strict Florida Department of Corrections enumerated contractual employment policy against **any** and **all** marijuana usage. 368 So. 3d 33 (Fla. 1st DCA 2023). Although Defendant's argument in their Motion for Summary Judgment mirrors and largely adopts the *Ortiz* Court's reasoning, their contractual agreement on prescription medications and substances does *not* distinguish marijuana from all other substances *and* adopts a more liberal definition of prescription and over the counter substances that encompasses both substances prescribed or made legal over the counter under federal *and Florida law*. This impliedly provides that medical marijuana prescribed under Florida law will be treated the same as all other prescriptions and lawful over the counter substances. Despite their written agreement being worded differently, Defendant relies *solely* upon federal law to argue that there is no valid prescription for medical marijuana. *See* 21 U.S.C. Sect. 812(c)(10); *Gonzales v. Raich*, 545 U.S. 1, 14, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005). Defendant does not explain how this is reconcilable in light of the Florida Constitutional grant on medical marijuana or the widespread practice of providing medical marijuana at dispensaries across the state. The

citizens of Florida in adopting Article X, Section 29 of the Florida Constitution decided to make medicinal marijuana legal in this state.

Further, the Defendant argues that the Plaintiff is not protected by the Americans with Disability Act and thereby the Florida Civil Rights Act because the ADA provides "... a qualifies individual with a disability **shall not** include any employee... who is **currently engaging in the illegal use of drugs**, when the covered entity acts on the basis of such use." *Emphasis supplied by Defendant*, 42 U.S.C. Section 12114. Defendant arrives at this legal conclusion because Florida Courts have held that the Florida Civil Rights Act is interpreted in conformity with the Federal ADA. *St John's County v. O'Brien*, 973, Se.2d 535, 540 (Fla. 5th DCA 2007). However, this overlooks the fact that medical marijuana usage is not illegal under Florida law. At the time of his drug test, Plaintiff was not engaged in the illegal use of drugs due to his lawful medical marijuana license.

Counsel for Defendant further elaborated their above argument in stating that Plaintiff is not a disabled person in light of his failure to request an ADA accommodation for his medical conditions prior to his random drug screening. Defendant through counsel argued that Plaintiff was under an affirmative implied duty to reveal his private medical information to his employer to seek accommodations for activities occurring outside of the course and scope of his employment. Defendant concedes that there is no requirement that an employee seek an accommodation if the employee does not need one. In this instance, Plaintiff had zero performance issues for several years in the employment of the Defendant, despite using medical marijuana while not in the course and scope of his employment for several of those years. Plaintiff is not seeking any accommodation for his medical marijuana use "in the workplace," but rather the ability to use his lawfully prescribed medical marijuana while not in the course and scope of his employment. The Plaintiff

is not seeking to consume, smoke, utilize, possess, or be under the influence of marijuana while at work.

C. COUNT II - WRONGFUL PLACEMENT ON ADMINISTRATIVE LEAVE.

Defendant's County Policy requires it to permit an employee to provide justification for a resulting positive drug test. Defendant's Drug Free Workplace Policy defines a prescription or non-prescription drug as any substance allowed under Florida law that is widely distributed for medicinal use. In summation, the policy holds that if an employee tests positive on an employer ordered drug screening and provides a prescription – valid under Florida or Federal law – for that positive result, then the positive result will be treated as a negative one if the justification is provided within the contractually enumerated period.

Defendant's Drug Free Workplace Policy number 1.4 defines Over the Counter or Prescription Drugs and paragraph 2 of the Policy:

> [e]mployees and job applicants should confidentially report the use of prescription or non-prescription medications to the County's Medical Review Officer (MRO) when contacted by the MRO. Employees or job applicants will have the opportunity to contest or explain the result to the MRO within 5 working days after written notification of the positive test result. If the employee or job applicant's explanation or if an employee or job applicant has provide an adequate explanation regarding prescription or non prescription drug use that may affect the test results, the MRO will verify the test as negative and report back to the employer.

Plaintiff provided the MRO with his medical marijuana card immediately upon receiving notice of the positive drug test result, within the 5 days required by the policy. It is also noted on the Plaintiff's drug screening report that he provided his medical marijuana card to the screening provider at the time of testing. Section 40.2(L) of the CBA defines Prescription or Nonprescription medication as "a drug or medication obtained pursuant to a prescription as defined by s. 893.02 or a medication that is authorized pursuant to federal *or state law* for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries." *Emphasis added.*

A prescription under Florida Statute, section 893.02, requires the "[n]ame of the person the medicine is prescribed to, the date on which it was ordered, the quantify and directions for use and the mode of administration." Similarly, dispensaries are required to have the full name and information for the doctor, labeling requirements on the product, including the dispensing pharmacy, the date it was filled, the number ordered, the directions for use and information that it is a crime to transfer it to another individual. A special Pharmacy under section 465.003(11)(a)4, Florida Statutes, which "includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined in this subsection." A Medical Marijuana Treatment Center in Florida fits the definition of Special Pharmacy.

Under Florida law, a medical marijuana certification is considered a prescription or akin to a prescription, as it is an order for drugs written by a licensed doctor and permitted pursuant to the state constitution. Nowhere in Defendant's contract is medical marijuana enumerated as distinct from all other prescribed medications.

Defendant was required to accept Plaintiff's state-issued medical marijuana card as justification under the verbiage of their policy and report the test as negative due to the undisputed fact that Plaintiff was not under the influence of and did not utilize marijuana while in the course and scope of his employment and Defendant's failure to do so constitutes a violation of its own Defendant's Drug Free Workplace Policy number 1.4. Plaintiff was not under any notice under the written Collective Bargaining Agreement, Drug Free Workplace Policy, or otherwise that the Defendant would treat medical marijuana distinctly from all other prescribed substances and medications.

D. COUNT III – FAILURE OF DEFENDANT TO UPDATE ITS POLICY PURSUANT TO THE FLORIDA CIVIL RIGHTS ACT.

The CBA states that the Employer and Union will not discriminate against an employee for their legal or political activity is permitted by law and not prohibited by the agreement. Article 8 – Non-Discrimination states that "the Employer and Union will not discriminate against any employee…provided the activity is permitted by law and/or not prohibited by the Agreement."

The use of medical marijuana is not prohibited in Florida and is constitutionally permitted. Defendant's policy as written does not discriminate against patients who use medical marijuana pursuant to Florida law. The County's silent agenda as argued at oral argument to "single out" marijuana among all other potential medications and treating substances, against its own policies constitutes a breach of the CBA and poses an Equal Protection problem. Defendant argued in oral argument that they – Hillsborough County – have an interest in ensuring that the EMTs employed by the County do not enter people's homes when the have been using marijuana and that the County's actions are to benefit public health and safety. Further, Defendant argues that there are evidentiary issues with allowing employees to utilize marijuana when not in the course and scope of their employment, as the test for marijuana has no way of distinguishing if the employee used marijuana minutes, hours or days ago as it remains in the employee's system for 30+ days. These stated justifications are not convincing reasons as to why the Defendants written policy should be abrogated in favor of their implementation of applying the policy to target employees who utilize marijuana medicinally when their medical use is legal under Florida law.

Defendant cites section 381.986 (14)(f) and (15)(a), Florida Statutes, as justification for their actions. Section 381.986 (14)(f) states that the provision authorizing medical marijuana usage does not "limit the ability of an employer to establish, continue, or enforce a drug free workplace program or policy." Section 381.986 (15)(a) states that the provision authorizing medical

marijuana usage does not "exempt a person from prosecution for a criminal offense related to impairment or intoxication resulting from the medical use of marijuana or relieve a person from any requirement under law to submit to a breath, blood, urine or other test to detect the presence of a controlled substance." Defendant argues that its actions are authorized under section 381.986 (14)(f) as a means to "establish, continue or enforce" its Drug Free Workplace Policy and that under section 381.986 (15)(a), the Plaintiff does not enjoy immunity for his marijuana usage on the basis of his medical marijuana card. The Court declines to grant summary judgment in favor of the Defendant on this ground and grants summary judgment in Favor of the Plaintiff because as written, the Defendant's drug free workplace does not explicitly prohibit medical marijuana usage by employees and impliedly permits it via subsection Section 40.2(L) of the CBA definition of prescription and non-prescription substances because medical marijuana is a substance legal for treatment under Florida Law.

E. COUNT IV - BREACH OF ARTICLE 8 OF THE COLLECTIVE BARGAINING AGREEMENT (CBA) AND DRUG FREE WORKPLACE POLICY NUMBER 1.4.

Plaintiff signed a contract for employment with Defendant as a Fire Medic Trainee (Firefighter) on or about December 7, 2008. At the same time Plaintiff signed an Acknowledgment and Consent form for receipt of the Employee Handbook and copy of the Defendant's Administrator's Drug Free Workplace Policy. In addition to the Handbook and County Policy, Plaintiff was also provided the Collective Bargaining Agreement (CBA) between Hillsborough County BOCC and the International Association of Firefighters (IAFF), dated October 1, 2018, to September 30, 2021. The CBA and County Policy are contracts that both parties must adhere to.

The portions of the contracts relevant to this case include the Drug Free Workplace provisions found in section 40 of the CBA and section 1.4. of the County Policy. The CBA and County Policy provide for random testing of employees for the purpose of detecting the presence

of *illegal* substances. The plain language in section 40.1(A) only prevents employees from using substances or illegal drugs while at work, on county property, in county vehicles, or reporting to work under the influence. Defendant admits that Plaintiff did not possess or use medical marijuana on work premises or while at work, and that he was never under the influence of marijuana while at work.

Defendant points to Section 40.8 of the CBA and argues that for employees that test positive for "controlled substances," they must participate in "EAP" Employee Assistance Training or a private provider counseling and rehabilitation process and undergo further testing to ensure that employee has a "negative test" prior to returning to work. The Defendant's stated purpose behind the EAP program is to assist employees in having a "clean" drug screen. When asked how this policy is impacted by controlled substances like prescribed medications for depression and amphetamines for persons with ADD, Defendant did not have a clear answer as to how those persons would be treated but speculated that it is likely those employees would be same as those testing positive for marijuana. The Court notes that for a person with ADD, they are utilizing the controlled substance while at work due to the nature of the medication. In light of the Defendant's policy on positive drug screenings being deemed negative for prescription substances, this is illogical. The Defendant alleges that under internal company policies, all persons taking "controlled substances," regardless of prescription status, will be subject to the mandatory counseling and retesting requirement. However, the Substance Abuse Policy demonstrates differently.

Section 40 of the CBA contains the provisions of the Substance Abuse Policy, including section 40.1, prohibited actions and behaviors, section 40.2, definitions, and section 40.7, duty to disclose. Section 40.1(A) states that:

> [e]xcept as approved in the line of duty for EMT or paramedic-certified personnel, all employees are prohibited from using, possessing, soliciting, purchasing, selling, distributing, dispensing or manufacturing a Drug; (1) while at work, when within Hillsborough County whether on or off County property; (2) at any time on County property, whether or not at work; (3) at any time in a County vehicle, whether or not at work. (5) Or at any time while employed by Hillsborough County Fire Rescue, other than alcohol or prescribed medications.

Furthermore, County policy 1.4 provides a mechanism for an employee to provide documentation for legal justification for the presence of the substance on the drug test:

> [e]mployees and job applicants should confidentially report the use of prescription or non-prescription medications to the County's Medical Review Officer (MRO) when contacted by the MRO. Employees or job applicants will have the opportunity to contest or explain the result to the MRO within 5 working days after written notification of the positive test result. If the employee or job applicant's explanation or if an employee or job applicant has provide an adequate explanation regarding prescription or non-prescription drug use that may affect the test results, the MRO will verify the test as negative and report back to the employer.

Plaintiff timely provided the MRO with his state issued medical marijuana card as justification of the positive test result. Section 40.2(L) of the CBA provides the definition of Prescription or nonprescription as:

> a drug or medication *obtained pursuant to a prescription* as defined by s. 893.02 or a *medication that is authorized* pursuant to federal or *state law* for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries.

Medical marijuana is enshrined in Article X. s. 29 of the Florida Constitution which sets up a system of cultivation and distribution throughout the state for medical marijuana to patients. This system is codified in Florida Statute § 381.986 which provides for the licensing of business to open retail stores and deliver to patients. According to the Florida Department of Health Office of Medical Marijuana updates there are currently over 880 thousand patients in the state and over 650 retail stores to distribute medical marijuana. Medical marijuana, therefore, falls within the definition of prescription or non-prescription drug under section 40.2(L) of the CBA and required the County to accept Plaintiff's medical marijuana card as sufficient justification for the presence

of marijuana in his random test. Therefore, Defendant's actions in suspending Plaintiff for a positive test result, despite his justified use of medical marijuana, constitutes a breach of contract.

CONCLUSION

Based on the foregoing, it is **ORDERED AND ADJUDGED** that:

1. Plaintiff, ANGELO GIAMBRONE'S Amended Motion for Summary Judgment is **GRANTED** on Counts I, II, III, and IV of Plaintiff's Complaint.

2. Defendant, HILLSBOROUGH COUNTY'S Motion for Summary Judgment is **DENIED**.

3. Pursuant to the Florida Civil Rights Act, Florida Statute § 760.07 and 760.11(5), Plaintiff is entitled to recovery of back pay, compensatory damages, including, but not limited to, damages for mental anguish, loss of dignity, reputational damages, and any other intangible injuries from Defendant and the Court reserves ruling as to the amount of damages. Additionally, Plaintiff is entitled to recover reasonable attorneys' fees and costs incurred pursuant to Florida Statute § 760.11(5) from Defendant and the Court reserves ruling as to the amount of attorneys' fees and costs.

4. Pursuant to the Florida Civil Rights Act, Florida Statute § 760.11(5), and the Defendant's contractual agreements in place, the Defendant is hereby prohibited from discriminating against and must provide an accommodation to employees who present a valid State of Florida Medical Marijuana Card after testing positive for marijuana so long as there is no evidence that the employee was using substances or illegal drugs while at work, on county property, in county vehicles, or reporting to work under the influence in violation of said written agreements.

DONE and ORDERED in Chambers at Hillsborough County, Florida on the date set forth in the signature block.

Electronically Conformed 12/10/2024
Melissa Polo

HONORABLE MELISSA M. POLO
CIRCUIT COURT JUDGE

Copies to All Parties through Counsel.