Circuit Court for Frederick County
Case No. C-10-CV-20-000630

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1611

September Term, 2021

JAMES BECKER

v.

BUCKINGHAM'S CHOICE, INC., et al.

Reed,
Zic,
Kehoe, Christopher.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: September 21, 2023

*Kehoe, Christopher B., J., now retired, participated in the hearing of this case while an active member of this Court, and after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

James Becker, appellant, filed a pro se complaint in the Circuit Court for Frederick County under Maryland's Fair Employment Practices Act ("FEPA"), MD. CODE ANN., STATE GOV'T. ("SG") § 20-101 *et. seq*, against his former employers Buckingham's Choice, Inc., and its parent company, Integrace Management, Inc., appellees, alleging that they refused to grant him reasonable work accommodations following throat surgery. The circuit court granted appellees' motion to dismiss the complaint. Mr. Becker appeals, raising the following question, which we have rephrased for clarity[1]:

[1] Mr. Becker raised the following six questions in his appellate brief:

1. Did Circuit Court Trial Judge Scott Rolle err when he refused to allow my 2nd amended complaint to be entered?

2. Did Circuit Court Trial Judge Scott Rolle err when he accepted counsel for Appellee(s) attorneys' argument in which they cited a lower court ruling of *Yasmin Reyazuddin v. Montgomery County, Maryland*, but failed to mention the 4th Circuit Appeals Court reversal?

3. Did Circuit Court Trial Judge Scott Rolle err when he allowed Appellee(s) to cite unreported case *Yasmin Reyazuddin v. Montgomery County, Maryland*? Please see pages 27, 212, and 213 of the Record Extract.

4. Did Circuit Court Trial Judge Scott Rolle err when he apparently did not consider my filings which allege facts that a trier of fact would need to weigh to decide if the actions of defendant(s) were reasonable or not?

5. Did Circuit Court Trial Judge Scott Rolle err when he repeatedly interrupted me while I provided brief answers to his questions? Please see transcript pages 16 line 4, page 17 line 22, page 19 line 17.

6. Did Circuit Court Trial Judge Scott Rolle err when he stated "Mr. Becker let's talk a little about the merits of the claim because that is part of the motion to dismiss" and apparently dismissed it based on the answers to 2 questions? "Did you get paid?"

I. Did the circuit court err when it granted appellees' motion to dismiss because a trier of fact was needed to determine the reasonableness of the accommodation offered by appellees?

II. Did the circuit court err when it allowed appellee's counsel to cite *Reyazuddin v. Montgomery County*, 789 F.3d 407 (4th Cir. 2015), during its argument because that case was both allegedly reversed and unpublished?

III. Did the circuit court err when it interrupted Mr. Becker as he was answering the court's questions?

IV. Did the circuit court err when it appeared to grant appellees' motion to dismiss based on Mr. Becker's response to the court's question about whether he was paid?

V. Did the circuit court err when it denied Mr. Becker's request to amend his complaint a second time?

We agree with Mr. Becker that the circuit court erred when it granted appellees' motion to dismiss. Accordingly, we shall reverse the circuit court's order granting appellees' motion to dismiss and remand for proceedings consistent with this opinion.

PROCEDURAL AND BACKGROUND FACTS

On December 4, 2020, Mr. Becker filed a pro se complaint in the Circuit Court for Frederick County, alleging that his former employer, the appellees, violated his rights under FEPA, by failing to make reasonable work accommodations following his throat surgery in the middle of August 2018 for obstructive sleep apnea. Mr. Becker alleged that for three months following surgery, appellees would not allow him to return to work as the Manager of the Transportation and Travel Department at Buckingham's Choice, a retirement community located in Adamstown, Maryland, despite his surgeon's return to work authorizations that had only two restrictions: "minimize speaking" and "carry water."

Mr. Becker also alleged that he was denied a reasonable work accommodation in retaliation for submitting an Occupational Safety and Health Act ("OSHA") complaint. He sought over a million dollars in damages due to his reduced pay under his short-term disability insurance and the emotional stress his inability to return to work caused to his marriage.

Appellees removed the case to the United States District Court for the District of Maryland based on Mr. Becker's OSHA allegation, after which appellees filed a motion to dismiss the complaint. Mr. Becker amended his complaint, removing all references to OSHA and retaliation.[2] He also provided the following details:

1. Part of his job as Manager of the Transportation and Travel Department was to ensure that the several, mostly wheelchair accessible buses of various sizes, as well as a medical van, pickup truck, and several golf carts, were maintained and repaired properly.

2. The Department was "small," employing one full-time and several part-time drivers.

3. Following surgery, Mr. Becker developed a granuloma[3] on or near the larynx, which caused swelling, made it difficult for him to speak for extended amounts of time without drinking cool water to prevent a gag reflex.

[2] Under Federal Rule 15, "[a] party may amend its pleading once as a matter of course within [] 21 days after serving it[.]"

[3] "A granuloma is a small area of inflammation." Mayo Clinic Expert Answers, Pritish K. Tosh, M.D., Granuloma: What does it mean?, https://www.mayoclinic.org/granuloma/expert-answers/faq-20057838#:~:text=A%20granuloma%20is%20a%20small,body%20and%20head%20as%20well (last visited: Feb. 7, 2023).

4. On September 5, 2018, Mr. Becker's surgeon cleared him to return to work with the accommodation of "minimize speaking due to excessive gagging during phonation." [4]

5. On September 6, 2018, a human resource officer for the Department emailed Mr. Becker that his "doctor will need to clarify your restriction on minimize talking."

6. On September 11, 2018, the surgeon explained that Mr. Becker "could gag or vomit after speaking a few sentences" but stated that Mr. Becker might be able to return to work without any accommodations in two to three weeks. Two days later, Mr. Becker was told he could not return to work.

7. At some point Mr. Becker was placed on short-term disability, which paid two-thirds of his salary before tax.

8. On October 1, 2018, Mr. Becker emailed the human resource officer that he could speak paragraphs without gagging, and he could extend his ability to speak by drinking cool water. He offered to carry and show when necessary a written placard that he could not speak much and to carry a note pad and pen.

9. The human resource officer emailed Mr. Becker that the company was concerned that while driving residents/patients, he would be unable to respond in an emergency.

10. On October 5, Mr. Becker emailed the human resource officer asking if he could do office work and shuttling the vehicles to outside vendors for maintenance, advising her that scheduling and shuttling vehicles was a full-time job. He received no response.

11. On November 1, Mr. Becker's medical provider authorized him to return to work with the accommodation that he have "cool water to drink." This accommodation was not granted.

[4] "Phonation" is defined as "the production of vocal sounds and especially speech." Merriam-Webster.com, Phonation, http://www.merriam-webster.com/medical/phonation (last visited: Feb. 6, 2023).

12. Mr. Becker passed a Department of Transportation medical exam and sent the results to the human resource officer. She replied on November 15, that he was not allowed to return to work.

13. On December 4, 2018, Mr. Becker's medical provider[, Alpen Patel, M.D.] issued a second return to work authorization that stated "[p]atient should have water to drink[when driving]."

14. Mr. Becker's disability insurer subsequently issued a denial of benefits letter because it had "determined you are able to perform the duties of your occupation."

15. On December 18, 2018, Mr. Becker's medical insurance company supplied a return to work authorization with no restrictions. He returned to work on that day.

Mr. Becker subsequently filed a motion to remand his complaint to Maryland state court, and a motion to hold appellees' motion to dismiss in sub curia pending the court's decision on his motion to remand. Appellees filed a motion to dismiss the first amended complaint.

The United States District Court for the District of Maryland granted Mr. Becker's motion to file a first amended complaint and motion to remand to Maryland state courts. Once back in the Circuit Court for Frederick County, appellees again filed a motion to dismiss Mr. Becker's first amended complaint and requested a hearing. Mr. Becker filed a motion for leave to amend his complaint a second time, which appellees opposed.

At the ensuing hearing on the parties' motions on November 22, 2021, appellees argued that the circuit court should dismiss Mr. Becker's first amended complaint for two reasons: it was untimely and failed to adequately plead a claim under FEPA. Appellees argued that Mr. Becker's complaint was untimely because he filed his lawsuit on December 4, 2020, and therefore, any alleged denials of accommodations that occurred prior to December 4 were barred by the applicable two-year statute of limitations. *See* SG § 20-

1013(a)(3) (stating that a civil action under FEPA may be filed within two years after the alleged unlawful employment practice occurred).

Appellees also argued that Mr. Becker had failed to adequately plead a claim under FEPA because they had provided him with a "reasonable accommodation" when they permitted him to take a leave of absence for three months (from September 6, 2018, until December 18, 2018), at which time he returned to work without any medical restrictions. Appellees explained that following throat surgery, Mr. Becker had restrictions on his ability to speak, *i.e.*, he could not speak without gagging and needing to drink water. Appellees argued that given these limitations, Mr. Becker would have been unable to perform an essential function of his job of driving residents of their retirement/nursing facility to various places because he would have been unable to respond if an emergency arose by calling for help or speaking to emergency personnel. According to appellees, a leave of absence is by law a reasonable accommodation.

The circuit court asked Mr. Becker to respond to the merits of his FEPA claim, asking Mr. Becker to elaborate upon his assertions stating that appellees' leave of absence was unreasonable. Mr. Becker responded:

> MR. BECKER: So the first thing is I was the manager and my job was delegating the driving. I needed to spend most of my time doing scheduling and other administrative things of a management nature. So they could have accommodated me and I asked and they did not respond by just letting me do the administrative part of the work.
>
> It wasn't necessary for me to be driving. And I can bring in my former manager who can tell you that the manager needs to be in the office because there is just that much work to minimize the amount of time that they are actually driving around.

* * *

> MR. BECKER: They had provided light duty to other people in various situations who were injured or returned from surgery. That really had nothing –
>
> THE COURT: But you when [sic] off on leave and you got – you got paid. Right? You didn't lose any money.
>
> MR. BECKER: They didn't pay me. It was by the insurance.
>
> THE COURT: Okay. But you're still –
>
> MR. BECKER: They were saving payroll.
>
> THE COURT: Right but you're not coming in saying, you know, I lost my house because I couldn't pay the mortgage. You know.
>
> MR. BECKER: Well, I lost my marriage because I had to open up a second checking account to make sure all of the critical bills are paid and my wife just hated me ever since. . . .

The following exchange continued:

> THE COURT: Let me ask you this. Damages. So you were accommodated with a leave of absence. You were paid by disability and you were asked to return to your job once it was determined this was no longer a risk to them to have you working there. What are the damages? What are your damages?
>
> MR. BECKER: The cost of my marriage.
>
> THE COURT: The cost of your marriage. Okay. How do you put a monetary amount on that.
>
> MR. BECKER: I don't think you can, Your Honor. . . .

The court then issued its ruling:

> [Mr. Becker's] complaint states that he was discriminated against by being placed on a leave of absence by the defendant for a period of time after surgery on his throat which might be debatable whether that caused him some speech issues or unable to speak for a period of time. However, Buckingham's Choice who Mr. Becker would drive the residents around in transportation felt that it could potentially put the residents at risk. So they

> did place him on a leave of absence. He was paid during the leave of absence by disability and then invited back once the -- once the leave of absence was over.
>
> Mr. Becker claims that he lost his marriage over this because of having to separate checking accounts and things of that nature. And, while the court is not unsympathetic on that issue at all, the court does find that Mr. Becker has failed to state a claim upon which relief can be granted and, therefore, the defendant's motion is granted. . . .

The court subsequently issued a written opinion granting appellees' motion to dismiss Mr. Becker's first amended complaint and denying as moot Mr. Becker's motion for leave to amend his complaint a second time. Mr. Becker timely appeals.

We shall provide additional facts where necessary below.

DISCUSSION

I. Parties' Contentions

Mr. Becker argues on appeal that the circuit court erred when it granted appellees' motion to dismiss. He argues that a dismissal was inappropriate because "a trier of fact is needed to determine if I could have . . . just do[ne] the administrative portion of my work which took up most of my time and just drive vehicles back and forth to the repair shops instead of driving passengers . . . which Appellee (s) refused to engage with me." He also argues that although he answered "yes" to the circuit court's question of whether he was paid during his leave of absence, the leave of absence created financial difficulty for him, stating in his amended complaint that disability insurance only paid two-thirds of his salary.

Appellees respond that the circuit court properly granted their motion to dismiss. They argue that Mr. Becker failed to state a claim upon which relief could be granted because a leave of absence, which they had granted him, is, as a matter of law, a reasonable

accommodation. Appellees argue that the alternative accommodation proposed by Mr. Becker's medical provider, to minimize speech and drink cool water, was not reasonable because his medical condition meant he could not perform an essential function of his position, *i.e.*, respond in an emergency situation while driving residents. Appellees further argued that although Mr. Becker provided an alternative accommodation, he is not entitled to the accommodation of his choice.

II. Standard of Review

Pursuant to Md. Rule 2–322(b)(2), a trial court may grant a motion to dismiss if a complaint fails to state a claim upon which relief may be granted. *See Schisler v. State*, 177 Md. App. 731, 742 (2007). The Supreme Court described the standard of review of the grant of a motion to dismiss:

> [W]e accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party. Typically, the object of the motion is to argue that as a matter of law relief cannot be granted on the facts alleged. Thus, consideration of the universe of "facts" pertinent to the court's analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.

Litz v. Dep't of Env't, 434 Md. 623, 639 (2013) (some quotation marks and citations omitted). Essentially, the standard of review "is whether the trial court was legally correct." *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 71 (1998) (citations omitted); *see also ACLU of Md. v. John R. Leopold*, 223 Md. App. 97, 110 (2015). Although we assume "the truth of the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn from those allegations[,]" *Leopold*, 223 Md. App. at 110 (quotation marks and citation omitted), "[b]ald assertions and conclusory statements" shall

not suffice. *Adamson v. Correctional Med. Svcs., Inc*., 359 Md. 238, 246 (2000) (quotation marks and citation omitted).

A. The Maryland Fair Employment Practices Act

The Maryland Fair Employment Practices Act (FEPA) has stood as an important statutory protection for employee civil rights. *Peninsula Reg'l Med. Ctr. v. Adkins*, 448 Md. 197, 203 (2016). Most pertinent to the case at Bar, FEPA forbids an employer from discriminating against an employee on the basis of a disability. *See id.*; SG § 20-606.A disability under SG §20-601(b)(1);(2) is defined as:

> (i) 1. a physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy; or
> 2. a mental impairment or deficiency;
> (i) a record of having a physical or mental impairment as otherwise defined under this subsection; or
> (ii) being regarded as having a physical or mental impairment as otherwise defined under this subsection.
>
> (2) "Disability" includes:
> (i) . . . 4. **muteness or speech impediment**; . . .

Id. (emphasis added).

Specifically, it is unlawful for an employer to "fail or refuse to make a reasonable accommodation for the known disability of an otherwise qualified employee[.]"[5] SG § 20-606(a)(4). To establish a prima facie case of a failure to accommodate claim, an employee must show: "(1) that he or she was an individual with a disability; (2) that the employer had notice of his or her disability; (3) that with reasonable accommodation, he or she could

[5] The FEPA statute defines "employee" and "employer." *See* SG § 20-601 (c) and (d). Neither party argues that one or both of them fall outside these definitions.

perform the essential functions of the position . . . ; and (4) that the employer failed to make such accommodations." *Peninsula*, 448 Md. at 213 (citations omitted).

In the case before this Court, Mr. Becker has sufficiently alleged that he was a person with a disability because Mr. Becker had complications following his throat surgery that impeded his ability to speak. Appellees had notice of Mr. Becker's disability as evidenced by correspondence between Mr. Becker and the human resources officer working on behalf of appellees. It is the third and fourth elements that are at issue here.

1. Reasonable Accommodation

First, this Court must examine the legal framework pertinent to this case. The Maryland Commission on Human Relations[6] promulgated regulations on FEPA. The regulations provide that an employer:

> (1) Shall make a reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability;
>
> (2) Is not required to provide an accommodation, if it demonstrates that the accommodation would impose undue hardship on the operation of its business or program; and
>
> (3) May not deny an employment opportunity to a qualified individual with a disability, if the basis for the denial is the need to accommodate the individual's physical or mental limitations, and this accommodation, if attempted, would be reasonable.

COMAR 14.03.02.05. The regulation provides a non-exhaustive list of possible reasonable accommodations, including:

* * *

[6] Maryland Commission on Civil Rights was renamed to the Maryland Commission on Human Relations in 2011.

> (3) Job restructuring;
>
> (4) Part-time or modified work schedules;
>
> (5) Reassigning or transferring an employee to a vacant position, light duty job, different work location, or other alternative employment opportunity which is available under the employer's existing policies or practices;
>
> (6) Teleworking;
>
> (7) Permitting an employee to use paid or unpaid sick leave, disability leave, medical leave, or other leave which is available under the employer's existing policies or practices;
>
> * * *
>
> (11) Making reasonable modifications in the covered entity's rules, policies, and practices if the modification may enable an applicant or employee with a disability to perform the essential functions of the job[.] . . .

COMAR 14.03.02.05.

The Supreme Court in *Peninsula* discussed FEPA in a case where a disabled former employee brought an action against their employer under FEPA, and the employer's motion for summary judgment was erroneously granted by the circuit court. *Peninsula*, 448 Md. at 237. First, the Supreme Court set out some general rules about what is a reasonable accommodation. The Court was clear that "leave *may*, in some circumstances constitute a reasonable accommodation for the time period" under consideration. *Peninsula*, 448 Md. at 238. Also, "an employer must only provide a reasonable accommodation and not the accommodation of the employee's choice." *Id*. at 237-38 (citation omitted).

2. Individualized Assessment

The regulations governing FEPA further provide that it is an unlawful employment practice for an employer to "[f]ail to make an individualized assessment of a qualified

individual with a disability's ability to perform the essential functions of a job[.]" COMAR 14.03.02.04(B)(3). The Supreme Court in *Peninsula* stated that court interpretations of the Federal American with Disabilities Act ("ADA") provides "substantial guidance" in the interpretation of FEPA. 448 Md. at 209. In the context of the ADA, federal courts have held:

> Once a reasonable accommodation is requested by the disabled employee, "the employer must make a reasonable effort to determine the appropriate accommodation," which is typically determined through a "flexible, interactive process that involves both the employer and the individual with a disability." 29 C.F.R. § Pt. 1630, App. The goal of determining a reasonable accommodation is to "enable the individual with a disability to perform the essential functions of the position held or desired." *Id*. If multiple accommodation choices are identified, the employer has the ultimate discretion to choose which effective accommodation will be implemented as long as the chosen accommodation is effective.

Marquez v. Costco Wholesale Corp., 550 F.Supp.3d 1256, 1280 (S.D. Florida 2021); *cf. Peninsula*, 448 Md. at 212 (stating FEPA regulations provide for an interactive process to identify a reasonable accommodation, akin to the process set out in the ADA). Mirroring these federal standards outlined in *Marquez*, this Court has held in the context of FEPA that:

> once an employer is on notice that an employee has become disabled, the employer is required to assess the capabilities of the disabled employee to determine whether the employee is "otherwise qualified" for the same or another vacant position, and to determine what reasonable accommodation may be made without undue hardship to the employer, including reassignment.

Adkins v. Peninsula Reg'l Med. Ctr., 224 Md. App. 115, 122 (2015), aff'd, 448 Md. 197 (2016).

3. Essential Function of the Job

"Generally, the determination of whether a given function is essential is a factual question for the jury and thus not suitable for resolution by summary judgment." *Peninsula*, 448 Md. at 224-25 (citations omitted). Trial courts may defer, in part, to the employer's job description in making this determination:

> "[C]onsideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job." 42 U.S.C. § 12111(8). But this deference is not absolute:
>
> > The inquiry into whether a particular function is essential initially focuses on whether the employer *actually requires* employees in the position to perform the functions that the employer asserts are essential.

Id. at 225 (some quotation marks and citations omitted). "Fact-finders must determine whether a function is 'essential' on a case-by-case basis." *Id*. at 226 (quotation marks and citations omitted). Factors a court may look to include:

> (1) whether the reason the position exists is to perform that function; (2) whether there are a limited number of employees available among whom the performance of that job function can be distributed; and/or (3) whether the function is highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

Id. (citations omitted). The Supreme Court in *Peninsula* observed that an employer "is not required to reallocate job responsibilities to another employee when doing so would shift the essential functions of the position." *Id*. at 236 (citing *Benson v. Northwest Airlines, Inc.*, 62 F.3d 1108, 1112-13 (8th Cir.1995) ("An employer need not reallocate the essential functions of a job, which a qualified individual must perform") and *Borkowski v. Valley*

Cent. Sch. Dist., 63 F.3d 131, 140 (2d Cir.1995) (observing that an employer is not required to accommodate an individual with a disability by eliminating essential job functions, and that "having someone else do part of a job may sometimes mean eliminating the essential functions of the job").

III. Mr. Becker's Case

Following a review of the pertinent statutory and legal framework, this Court must evaluate Mr. Becker's complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party – Mr. Becker. *Litz v. Maryland Dep't of Env't*, 434 Md. 623, 639 (2013). When reviewing the complaint, this Court reviews whether "the trial court was legally correct[,]" in granting the appellees' motion to dismiss. *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 71 (1998) (citations omitted);*see also ACLU of Md. v. John R. Leopold*, 223 Md. App. 97, 110 (2015). For the following reasons, this Court holds that the circuit court erred in granting the appellees' motion to dismiss.

Here, Mr. Becker focuses on the several accommodations he offered appellees in the interactive process of assessing what might be a reasonable accommodation following his throat surgery. Mr. Becker first suggested, per his surgeon's instructions, that he be allowed to minimize speaking. Appellees did not respond to this request. A month later, Mr. Becker suggested that he could carry cold water to drink, a pad and paper, and a placard stating that he could not speak much. Appellees rejected this offer because of their concern that Mr. Becker could be unable to perform an essential function of his job, *i.e.*, call for help if the situation arose. Mr. Becker then suggested that he be allowed to do administrative work and to shuttle the various vehicles for scheduled maintenance and

repair. He argued in his complaint that driving passengers was not an essential function of his job, that others could have performed that function, and that an unpaid leave of absence was not a reasonable accommodation when he could have worked in the office scheduling the driving of others and shuttling the vehicles for maintenance and repair. Appellees apparently also rejected this suggestion for they did not respond to it nor did they allow him to return to work until he received a return to work authorization with no restrictions.

Appellees focus on the accommodation they suggested and ultimately provided, a leave of absence, arguing that a leave of absence is, as a matter of law, a reasonable accommodation. Indeed, in *Peninsula*, 448 Md. at 238, the Supreme Court held that a "leave *may, in some circumstances* constitute a reasonable accommodation for the time period" (emphasis added). However, to determine whether an unpaid leave of absence was a reasonable accommodation, the factfinder would need to know the essential duties of Mr. Becker's employment. Mr. Becker alleged that the substantive portion of his work is administrative work, he was capable of driving vehicles to and from repair shops, and driving passengers in vehicles was not an essential function of his position as the Manager of the Transportation and Travel Department at Buckingham's Choice. Appellees make no argument on this point.

The reasonableness of accommodations is a fact specific analysis, which must be tailored to individual employee's circumstances. To adopt appellees' argument without an understanding of the essential duties of a position or without knowing what other accommodations were available would mean that an employer could provide for a leave of absence under any circumstances, regardless of the reasonableness of that accommodation.

For example, a leave of absence may not be reasonable accommodation in certain circumstances where other reasonable solutions exist, such as allowing for the employee to perform a "light duty" variation of the scope of their assigned work, reassigning an employee to another department, or permitting teleworking for a period of time. *See* COMAR 14.03.02.05.

On a motion to dismiss, the moving party, appellees, bear the burden of demonstrating that as a matter of law relief cannot be granted on the facts alleged when viewed in the light most favorable to the non-moving party, Mr. Becker. Viewing the case by this standard, we are unable to say that a leave of absence in the circumstances of this case was, as a matter of law, a reasonable accommodation without the factfinder understanding what the essential functions of Mr. Becker's job were.

Accordingly, we shall reverse the circuit court's grant of appellees' motion to dismiss and remand for further proceedings consistent with this opinion. Because we are reversing and remanding for further proceedings, Mr. Becker's remaining questions are moot, except for his argument regarding the circuit court's denial of his request to amend his complaint a second time. The court did not rule on this request because it dismissed his complaint. On remand, the circuit court must rule on this request.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY REVERSED AND REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS ASSESSED TO APPELLEES.