

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

<i>DONNA L. WELLS,</i>)	
)	
<i>Plaintiff</i>)	
)	
<i>v.</i>)	<i>Docket No. 04-169-P-S</i>
)	
<i>STATE MANUFACTURED HOMES,</i>)	
<i>INC., et al.,</i>)	
)	
<i>Defendants</i>)	

**RECOMMENDED DECISION ON PLAINTIFF’S MOTION FOR PARTIAL SUMMARY
JUDGMENT**

The plaintiff, Donna L. Wells, moves for summary judgment as to liability on both counts of her complaint. Plaintiff Donna Wells’s Motion for Summary Judgment on the Issue of Liability, etc. (“Motion”) (Docket No. 17); Complaint (Docket No. 1). I recommend that the court deny the motion.

I. Summary Judgment Standards

A. Federal Rule of Civil Procedure 56

Summary judgment is appropriate only if the record shows “that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *Santoni v. Potter*, 369 F.3d 594, 598 (1st Cir. 2004). “In this regard, ‘material’ means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant. By like token, ‘genuine’ means that ‘the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party.’” *Navarro v.*

Pfizer Corp., 261 F.3d 90, 93-94 (1st Cir. 2001) (quoting *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995)).

The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences in its favor. *Santoni*, 369 F.3d at 598. Once the moving party has made a preliminary showing that no genuine issue of material fact exists, the nonmovant must "produce specific facts, in suitable evidentiary form, to establish the presence of a trialworthy issue." *Triangle Trading Co. v. Robroy Indus., Inc.*, 200 F.3d 1, 2 (1st Cir. 1999) (citation and internal punctuation omitted); Fed. R. Civ. P. 56(e). "As to any essential factual element of its claim on which the nonmovant would bear the burden of proof at trial, its failure to come forward with sufficient evidence to generate a trialworthy issue warrants summary judgment to the moving party." *In re Spigel*, 260 F.3d 27, 31 (1st Cir. 2001) (citation and internal punctuation omitted).

B. Local Rule 56

The evidence the court may consider in deciding whether genuine issues of material fact exist for purposes of summary judgment is circumscribed by the Local Rules of this District. *See* Loc. R. 56. The moving party must first file a statement of material facts that it claims are not in dispute. *See* Loc. R. 56(b). Each fact must be set forth in a numbered paragraph and supported by a specific record citation. *See id.* The nonmoving party must then submit a responsive "separate, short, and concise" statement of material facts in which it must "admit, deny or qualify the facts by reference to each numbered paragraph of the moving party's statement of material facts[.]" Loc. R. 56(c). The nonmovant likewise must support each denial or qualification with an appropriate record citation. *See id.* The nonmoving party may also submit its

own additional statement of material facts that it contends are not in dispute, each supported by a specific record citation. *See id.* The movant then must respond to the nonmoving party's statement of additional facts, if any, by way of a reply statement of material facts in which it must "admit, deny or qualify such additional facts by reference to the numbered paragraphs" of the nonmovant's statement. *See* Loc. R. 56(d). Again, each denial or qualification must be supported by an appropriate record citation. *See id.*

Failure to comply with Local Rule 56 can result in serious consequences. "Facts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted." Loc. R. 56(e). In addition, "[t]he court may disregard any statement of fact not supported by a specific citation to record material properly considered on summary judgment" and has "no independent duty to search or consider any part of the record not specifically referenced in the parties' separate statement of fact." *Id.*; *see also, e.g., Cosme-Rosado v. Serrano-Rodriguez*, 360 F.3d 42, 45 (1st Cir. 2004) ("We have consistently upheld the enforcement of [Puerto Rico's similar local] rule, noting repeatedly that parties ignore it at their peril and that failure to present a statement of disputed facts, embroidered with specific citations to the record, justifies the court's deeming the facts presented in the movant's statement of undisputed facts admitted." (Citations and internal punctuation omitted.)).

II. Factual Background

The plaintiff owns a mobile home located in Pinecrest Community in Scarborough, Maine, where she has lived since August 28, 1997. Plaintiff Donna Wells's Statement of Material Facts as to Which There is No Genuine Issue of Material Fact to be Tried ("Plaintiff's SMF") (Docket No. 18) ¶ 1; Defendants State Manufactured Homes, Inc. and Theresa M. Desfosses Opposing Statement of Material Facts ("Defendants' Responsive SMF") (Docket No. 26) ¶ 1. Pinecrest Community is owned by

defendant State Manufactured Homes, Inc. (“Homes”). *Id.* ¶ 2. The plaintiff rents a lot within the community for her mobile home. *Id.* The plaintiff has paid her rent regularly, including the period when the defendants were attempting to evict her. Plaintiff’s SMF ¶ 2.¹ The terms of the plaintiff’s tenancy are set forth in a booklet entitled “Requirements for Community Living,” last revised in April 1996. Plaintiff’s SMF ¶ 3; Defendants’ Responsive SMF ¶ 3. One of the terms contained therein prohibits residents from having pets in Pinecrest Community. *Id.*

The plaintiff suffers from Major Depressive Disorder. Plaintiff’s SMF ¶ 4.² As a result, she experiences social anxiety. *Id.* She also suffers from sleep apnea. *Id.* The plaintiff was hospitalized in 2001 due to her depression and because she was experiencing suicidal ideation. Plaintiff’s SMF ¶ 6. She began therapy with Alex Rossman immediately following her discharge from the hospital and has continued her therapy ever since. *Id.* Due to her major depressive disorder and its manifestations, the plaintiff avoids contact with other individuals and is unable to form significant relationships with other individuals. Plaintiff’s SMF ¶ 7. The disorder causes the plaintiff to isolate herself from others. Plaintiff’s SMF ¶ 8. She avoids leaving home, except when necessary for work or appointments. *Id.* At times the plaintiff’s symptoms have made her unable to work. Plaintiff’s SMF ¶ 9. She continues to have moments of suicidal ideation and severe feelings of hopelessness. Plaintiff’s SMF ¶ 10. She will sometimes sleep for up to 12 hours at a time

¹ The defendants do not respond to this portion of the second paragraph of the plaintiff’s statement of material facts. It is accordingly deemed admitted, to the extent that it is supported by the record citations given by the plaintiff. Local Rule 56(e).

² The defendants purport to qualify their response to this paragraph of the plaintiff’s statement of material facts, but their qualification is unaccompanied by any citation to the summary judgment record. Defendants’ Responsive SMF ¶ 4. Such citation is required by Local Rule 56(c). The absence of such citations means that each paragraph of the plaintiff’s statement of material facts to which a purported qualification or denial is made will be deemed admitted to the extent that such paragraph is supported by the citation given to the summary judgment record. Local Rule 56(e). Throughout this recommended decision, a citation to the plaintiff’s statement of material facts alone means that the defendants offered a purported denial or qualification of the cited paragraph and I have determined that the citation to the summary judgment record supports the paragraph, so that it is deemed admitted by the defendants.

and have no motivation to get out of bed. Plaintiff's SMF ¶ 11. At other times, she experiences insomnia. *Id.*

For several years, the plaintiff's only significant relationship has been with her dog, Shep. Plaintiff's SMF ¶ 12. This is the only relationship that the plaintiff truly trusts. *Id.* Shep has provided the plaintiff with significant assistance in dealing with her emotional disability. Plaintiff's SMF ¶ 13. Shep improves the plaintiff's depressed mood. *Id.* Shep also decreases her social isolation by forcing her to leave the house in order to walk Shep. *Id.* It is medically necessary for Shep to live with the plaintiff. Plaintiff's SMF ¶ 15. Shep is a therapeutic companion animal and a vital part of the treatment and management of the plaintiff's depressive disorder. Plaintiff's SMF ¶ 16. Shep has been critical to helping the plaintiff through her depressive state. *Id.* Shep's interaction with the plaintiff is at least as important as her therapy. Plaintiff's SMF ¶ 18.

In or about April 2003 defendant Desfosses learned as a result of an anonymous call from another tenant that the plaintiff was keeping a dog in her home in violation of the lease terms. [Defendants' Additional Material Facts] ("Defendants' SMF") (beginning on page [3] of Defendants' Responsive SMF) ¶ 27; Plaintiff's Reply Statement of Material Facts ("Plaintiff's Responsive SMF") (Docket No. 30) ¶ 27. A letter was sent to the plaintiff on April 1, 2003 notifying her that she was violating the no-pets provision of her rental agreement and demanding that she remove the dog. *Id.* ¶ 28. On April 15, 2003 the plaintiff notified the defendants that the dog was not hers and belonged to Diane Cook of Westbrook. *Id.* ¶ 29. Based on the plaintiff's continued failure to abide by the no-pets policy, the defendants wrote to the plaintiff on May 15, 2003 notifying her that she had 45 days to move from the community. *Id.* ¶ 30.

On June 13, 2003 Pine Tree Legal Assistance, on behalf of the plaintiff, requested that the defendants make a reasonable accommodation for the plaintiff's disability by permitting her to retain Shep in

her home. Plaintiff's SMF ¶ 21. The request was accompanied by a letter from the plaintiff's social worker and psychiatrist stating that Shep was a therapy dog and that it was medically necessary for Shep to live with the plaintiff. *Id.*

Although they refused the plaintiff's request for an accommodation, the defendants would waive the no-pets policy to permit a service animal for a person who is deaf or blind. Plaintiff's SMF ¶ 23. The defendants do not contend that it would be an undue hardship to accommodate the plaintiff's disability by permitting Shep to live with her in Pinecrest. Plaintiff's SMF ¶ 24.

The plaintiff's mobile home and the lot on which it rests qualify as "housing accommodation" subject to the provisions of the Maine Human Rights Act, 5 M.R.S.A. § 4553(6), Plaintiff's SMF ¶ 25; Defendants' Responsive SMF ¶ 25, and as a "dwelling" subject to the provisions of the Fair Housing Act, 42 U.S.C. §§ 3602(b), 3603, *id.* ¶ 26.

III. Discussion

The complaint alleges that the defendants have violated the Maine Human Rights Act, 5 M.R.S.A. § 4582, and the federal Fair Housing Act, 42 U.S.C. § 3602 *et seq.* Complaint, ¶¶ 19-24, 26-28. This court has held that it will analyze claims under the Maine Human Rights Act and the federal Americans with Disabilities Act ("ADA") under the same standards. *Soileau v. Guilford of Maine, Inc.*, 928 F. Supp. 27, 45 (D. Me. 1996). Claims alleging failure to accommodate under the ADA and the Fair Housing Act are also analyzed according to the same standards. *See Good Shepherd Manor Found., Inc. v. City of Momenca*, 323 F.3d 557, 561 (7th Cir. 2003). My analysis accordingly applies to both of the plaintiff's claims unless otherwise noted. The defendants contend that the plaintiff is not a qualified disabled individual under the statutes she invokes and that Shep does not qualify as a service animal, which they assert is a requirement if he is to be allowed to live with the plaintiff as an accommodation. Defendants State

Manufactured Homes, Inc. and Theresa M. Desfosses’ Opposition to Plaintiff’s Motion for Summary Judgment, etc. (“Opposition”) (Docket No. 27) at [3]–[10].

The Maine statute at issue makes it unlawful housing discrimination to withhold housing from any individual on the basis of mental disability, to discriminate against any individual in the conditions or privileges of lease of housing or to evict or attempt to evict any tenant because of mental disability, 5 M.R.S.A. § 4582; or to refuse to make reasonable accommodations in rules, policies, practices or services “when those accommodations are necessary to give that person equal opportunity to use and enjoy the housing,” 5 M.R.S.A. § 4582-A(2). The portion of the federal Fair Housing Act at issue provides that it shall be unlawful to discriminate in the rental of a dwelling to a renter because of a handicap, 42 U.S.C. § 3604(f)(1), and discrimination includes refusal to make reasonable accommodations in rules, policies, practices or services “when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling,” 42 U.S.C. § 3604(f)(3)(B).

Under the ADA, a plaintiff must establish that her condition constitutes a mental or physical impairment and that the impairment substantially limits a major life activity. *Bailey v. Georgia-Pacific Corp.*, 306 F.3d 1162, 1167 (1st Cir. 2002). To establish a *prima facie* case under the Fair Housing Act, a plaintiff must show that she suffers from a handicap as defined in 42 U.S.C. § 3602(h), that the defendants knew or reasonably should be expected to have known of it, that accommodation of the handicap may be necessary to afford the plaintiff an equal opportunity to use and enjoy the dwelling at issue and that the defendants refused to make such an accommodation. *Green v. Housing Auth. of Clackamas County*, 994 F. Supp. 1253, 1255 (D. Or. 1998). Section 3602(h) defines “handicap” to include a mental impairment which substantially limits one or more of a person’s major life activities. The plaintiff contends that her major depressive disorder “substantially limits her ability to perform several major life activities,”

Motion at 7, although she does not specify those activities in terms of the relevant statute or regulation. She states instead that she “experiences moments of suicidal ideation, hypertension, breathing difficulties and social anxiety disorder;” that she “avoids contact with other individuals, and currently is unable to form significant relationships with others;” that she avoids leaving her home “except when necessary for work or for other necessary reasons;” and that “at times” she has been unable to work. *Id.*

The term “major life activities” is defined for purposes of the ADA as “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” 28 C.F.R. § 36.104. Only the allegations of breathing difficulties and inability to work among the plaintiff’s proffered list of symptoms appear to constitute major life activities. The plaintiff adds the major life activities of caring for herself and sleeping to this list in her reply memorandum. Plaintiff’s Reply Memorandum in Support of Her Motion for Summary Judgment, etc. (“Reply”) (Docket No. 29) at 3-4. However, the plaintiff’s statement of material facts provides no support for an assertion that her mental impairment affects in any way her ability to care for herself. I will therefore not consider that argument further. The plaintiff does submit evidence that she “experiences sleep disorders” and “sometimes will sleep for up to 12 hours at a time;” “[a]t other times, she experiences insomnia.” Plaintiff’s SMF ¶ 11. With respect to her alleged breathing impairment, the plaintiff’s entire factual submission is her own report that she “suffers from . . . difficulty breathing” which is “worse when she is asleep.” *Id.* ¶ 5. With respect to her ability to work, the plaintiff offers only the assertion that her symptoms have rendered her unable to work “at times.” *Id.* ¶ 9.

The impairment at issue must “substantially” limit a major life activity. The phrase “suggests ‘considerable’ or ‘specified to a large degree,’” although it should not be equated with utter inability. *Calero-Cerezo v. United States Dep’t of Justice*, 355 F.3d 6, 21 (1st Cir. 2004) (quoting *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 491 (1999)). An impairment which causes limitations “at times” or

for which no characterization of degree is offered in evidence cannot be deemed a “substantial” limitation. The plaintiff has not offered sufficient evidence with respect to her breathing difficulties, sleep disorders or inability to work to entitle her to summary judgment on this basis.

The plaintiff also contends that her mental impairment substantially limits her major life activity of interacting with others. Reply at 3. This is not listed as a major life activity in the ADA regulation, but some courts have found it to be one. *E.g.*, *McAlindin v. County of San Diego*, 192 F.3d 1226, 1234 (9th Cir. 1999). In *Soileau v. Guilford of Maine, Inc.*, 105 F.3d 12 (1st Cir. 1997), the First Circuit suggested that the ability to get along with others does not constitute a major life activity under the ADA or the Maine Human Rights Act. Specifically, the First Circuit said:

The concept of “ability to get along with others” is remarkably elastic, perhaps so much so as to make it unworkable as a definition. While such an ability is a skill to be prized, it is different in kind from breathing or walking, two exemplars which are used in the regulations [concerning major life activities]. Further, whether a person has such an ability may be a matter of subjective judgment; and the ability may or may not exist depending on context. . . . To impose legally enforceable duties on [a defendant] based on such an amorphous concept would be problematic. It may be that a more narrowly defined concept going to essential attributes of human communication could, in a particular setting, be understood to be a major life activity, but we need not address that question here.

105 F.3d at 15. The court further stated:

Under the relevant ADA regulation an individual faces a “substantial limitation” when he is:

- (i) Unable to perform a major life activity that the average person in the general population can perform; or
- (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

Id. (citation omitted).

Eighteen months after the decision in *Soileau* was issued, the First Circuit, in another ADA case, analyzed the question whether the plaintiff had a disability in the following manner:

[B]y the time Criado requested the leave of absence she had become unable to perform some of the functions of her job. She was having trouble dealing with stress and relating to both co-workers and clients. Depression and anxiety were causing sleep deprivation which affected her timeliness and ability to report to work. This evidence showed that her mental impairments had substantially limited her ability to work, sleep, and relate to others. Overall, there was evidence indicating that she was unable to adequately perform her job as she had in the past.

Criado v. IBM Corp., 145 F.3d 437, 442 (1st Cir. 1998). The *Criado* court cited *Soileau, id.*, but not with respect to its discussion of the ability to relate to others or to get along with others, terms which the *Soileau* court used interchangeably, 105 F.3d at 14-15. Thus, the First Circuit in *Criado* appears to have suggested that the ability to relate to others is a major life activity.

It is not necessary to resolve the question of the First Circuit's position on the question whether ability to interact with others or to get along with others is a major life activity for the purposes of the present motion, however, because the plaintiff has not submitted sufficient evidence to allow this court to determine as a matter of law that her depression substantially limited that activity. In her statement of material facts, the plaintiff offers the following with respect to limitations on her ability to interact with others:

7. Because of her major depressive disorder and its manifestations, including social anxiety, Ms. Wells avoids contact with other individuals, and is unable, at this time in her life, to form significant relationships with other individuals.

8. Ms. Wells's major depressive disorder causes her to isolate herself from others. She avoids leaving her home, except when necessary for work or for other appointments, such as therapy.

Plaintiff's SMF ¶¶ 7-8 (citations omitted). No context is provided for the modifier "significant" in paragraph

7. It would only be by virtue of extremely generous inferences drawn in the plaintiff's favor — inferences which are unavailable to the party moving for summary judgment — that these statements could be

construed to establish either that the plaintiff is unable to perform the major life activity of interacting with others (again, assuming there is such a major life activity) or that she is significantly restricted in the condition, manner or duration under which she interacts with others. No information has been provided about the nature of the plaintiff's work. In the absence of such information, I cannot conclude that an inability to work "at times," Plaintiff's SMF ¶ 9, demonstrates a substantial limitation on the plaintiff's inability to interact with others. The ability to maintain a job may well demonstrate the opposite. Nor can I equate, without more, avoiding contact with others with a substantial limitation on the ability to interact with others. Considering the First Circuit's discussion of the amorphous nature of the basic concept, more specific evidence would be necessary in order to conclude that the plaintiff has established on this record that she is disabled as a matter of law within the scope of the Fair Housing Act.

Because the plaintiff has not established that her mental impairment substantially limits a major life activity as a matter of law, based on the undisputed material facts as she has presented them and as supported in the summary judgment record, she is not entitled to summary judgment on liability. It is therefore unnecessary to reach the defendants' second contention, that Shep must be a service animal in order for the plaintiff's requested accommodation to be recognized as reasonable under the relevant statutes.

IV. Conclusion

For the foregoing reasons, I recommend that the plaintiff's motion for summary judgment be **DENIED**.

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 11th day of March 2005.

/s/ David M. Cohen
David M. Cohen
United States Magistrate Judge

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