

**SUPREME COURT OF FLORIDA**

**CHRISTINE ASKEW, as Personal  
Representative of the Estate of  
Kevin Askew,**

**Petitioner,**

**CASE NO. SC23-1072  
FIRST DCA CASE NO. 1D21-2499  
L.T. CASE NO. 2017-CA-000966**

**v.**

**DEPARTMENT OF CHILDREN AND FAMILIES,**

**Respondent.**

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**ON APPEAL FROM THE FIRST DISTRICT COURT OF APPEAL**

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**APPENDIX TO PETITIONER'S BRIEF ON JURISDICTION**

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Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this appendix, required by Fla. R. App. P. 9.120(d), is in compliance with Fla. R. App. P. 9.220, and serves as an appendix to Petitioner’s Brief on Jurisdiction.

/s/ Ashley N. Richardson  
Ashley N. Richardson

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via electronic filing and email to all parties of record on this 7th day of August 2023, including:

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/s/ Ashley N. Richardson  
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FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D21-2499

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FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES,

Appellant,

v.

CHRISTINE ASKEW, as Personal  
Representative of the Estate of  
Kevin Askew,

Appellee.

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On appeal from the Circuit Court for Leon County.  
Angela C. Dempsey, Judge.

June 28, 2023

PER CURIAM.

The Department of Children and Families (“DCF”) appeals a verdict in favor of Kevin Askew\* for employment discrimination based on disability. He alleged that he was forced to resign or be terminated. But because there was no evidence of constructive

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\* After oral argument was held, Askew’s counsel notified the Court that Askew had died. We granted his motion to substitute the personal representative of Askew’s estate, Christine Askew, as Appellee.

discharge, the trial court erred in denying DCF's motion for directed verdict. Therefore, we reverse.

## I.

Askew filed his complaint against DCF under chapter 760, Florida Statutes, known as the Florida Civil Rights Act ("FCRA"). He alleged that he was investigated by the Office of the Inspector General ("IG") for DCF, as well as the Florida Department of Law Enforcement ("FDLE"), for violating DCF's policies and procedures on accessing confidential computer records. According to the complaint, Askew was wrongfully given a choice of either resigning or being terminated, which constituted constructive termination. He raised one count of disability discrimination and one count of gender discrimination.

At trial, Askew testified that he began working for DCF's predecessor, the Department of Health and Rehabilitative Services, in 1989. From 2000 until 2015, he worked at DCF in the department that handled cases under the Interstate Compact for the Placement of Children ("ICPC"). The ICPC is an agreement among states that facilitates the adoption of dependent children across state lines. Askew's duties did not include investigating reports of child abuse, nor was he assigned to any of the families or cases whose confidential files he accessed.

He testified that in August 2015, his wife told him that a friend was worried about the safety of her niece and nephew. Askew said that he accessed closed DCF case files on the Florida Safe Families Network ("FSFN") to find out what county the children lived in. He then told his wife's friend to call the sheriff's office for that county, as well as the local police department and the abuse hotline.

Askew later told a supervisor, Pat Badland, what he had done. He testified that Badland said she believed that he had improperly accessed the DCF database for personal reasons. The IG interviewed Askew and Badland as part of its internal investigation. During his interview, Askew admitted that his use of the FSFN was personal because he "wasn't dealing with a state child," and he "should never have looked up the county in the first

place.” But at trial, he said he meant that “I take any possibility of child abuse personal.” FDLE also investigated his use of the database, but no charges were filed.

According to Askew, Badland told him that the result of the IG investigation was that “they” were giving him the option to resign or be terminated at the end of that day. Askew assumed “they” referred to the IG, even though the investigator who interviewed him told him that the IG’s office was not involved with making a decision; they only reported the facts to his employer. Askew chose to resign. But he later learned that no decision had been made about whether he would be terminated, and if he had faced termination, he would have had the right to written notice and an opportunity to contest that decision. Askew believed that Badland misled him so he would leave the agency.

Badland testified that she was Askew’s indirect supervisor from 2005 until 2015. She was aware that Askew’s use of the database might lead to criminal charges being filed against him. She testified that several days after her IG interview, Askew resigned. According to her, Askew said that working at DCF for twenty-five years was enough and that he wanted to work on his family’s estate affairs with his mother. Badland denied telling him that he would be fired or should be fired.

At the close of Askew’s case, DCF moved for directed verdict. The trial court took the matter under advisement without ruling. The jury then found that Askew was constructively discharged with a motivating factor being his disability, but not his gender. The jury awarded him lost wages and benefits up to the date of trial, along with past and future damages for emotional pain and suffering. Following trial, DCF filed a renewed motion for directed verdict and a motion for judgment notwithstanding the verdict. The trial court denied the motions without discussion. This appeal follows.

## II.

“A ruling on a motion for directed verdict is reviewed de novo, ‘reading the evidence and inferences of fact in a light most favorable to the non-moving party.’” *Vitro Am., Inc. v. Ngo*, 304 So.

3d 379, 383 (Fla. 1st DCA 2020) (quoting *Philip Morris USA Inc. v. Allen*, 116 So. 3d 467, 469 (Fla. 1st DCA 2013)). “In other words, a trial court should grant a motion for directed verdict only ‘when the evidence, viewed in the light most favorable to the non-moving party, shows that a jury could not reasonably differ about the existence of a material fact and the movant is entitled to judgment as a matter of law.’” *Id.* (quoting *Allen*, 116 So. 3d at 469).

Florida courts “often find guidance from federal decisions interpreting Title VII of the Civil Rights Act of 1964 in cases like this one because the FCRA is patterned after Title VII.” *Richardson v. Recreational Vehicle Park Mgmt., LLC*, 330 So. 3d 104, 106 n.\* (Fla. 1st DCA 2021).

To sustain a verdict for disability discrimination under the FCRA, an employee must first show that he suffered an adverse employment action. *Sutherland v. Boehringer-Ingelheim Pharms., Inc.*, 700 Fed. App’x 955, 959 (11th Cir. 2017). When an employee resigns, he must prove that he was constructively discharged to show that he suffered an adverse employment action. *See Davis v. Legal Servs. Ala., Inc.*, 19 F.4th 1261, 1267–68 (11th Cir. 2021). That is because resignations are presumed to be voluntary unless the employee presents sufficient evidence showing his resignation was involuntary. *Hargray v. City of Hallandale*, 57 F.3d 1560, 1568 (11th Cir. 1995).

An employee can show that his resignation was involuntary in two situations: “(1) where the employer forces the resignation by coercion or duress, or (2) where the employer obtains the resignation by deceiving or misrepresenting a material fact to the employee.” *Id.* at 1568 (citations omitted).

#### A. *Coercion or Duress*

When considering the first theory, several non-exclusive factors are used to determine whether the employer forced the resignation by coercion or duress:

- (1) whether the employee was given some alternative to resignation;
- (2) whether the employee understood the nature of the choice he

was given; (3) whether the employee was given a reasonable time in which to choose; (4) whether the employee was permitted to select the effective date of the resignation; and (5) whether the employee had the advice of counsel.

*Id.* Here, the evidence does not support a finding that Askew was forced to resign by coercion or duress.

First, “that the employee may perceive his only option to be resignation . . . is irrelevant” because “whether real alternatives were offered is gauged by an objective standard rather than by the employee’s purely subjective evaluation.” *Id.* (quoting *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 167, 174 (4th Cir. 1988)). “[R]esignations can be voluntary even where the only alternative to resignation is facing possible termination for cause.” *Id.* “Resignations obtained in cases where an employee is faced with such unpleasant alternatives are nevertheless voluntary because ‘the fact remains that the plaintiff *had a choice*. [Plaintiff] could stand pat and fight.’” *Id.* (alterations in original) (quoting *Christie v. U.S.*, 518 F.2d 584, 587 (Ct. Cl. 1975)). “The one exception to this rule is where the employer actually lacked good cause to *believe* that *grounds* for the termination . . . existed.” *Id.* (emphasis added).

In this case, Askew had a choice to resign or fight his termination. He was a permanent career service employee who had worked for DCF for twenty-five years. He knew that DCF had a Human Resources Department, an Equal Employment Opportunity Office, and he had received a copy of the employee handbook. Yet he chose not to visit either office or to consult the handbook to see what his rights were when facing termination. *See McLaughlin v. State, Dep’t of Nat. Res.*, 526 So. 2d 934, 939 (Fla. 1st DCA 1988) (“Of course, if an employer threatens or proposes to take certain action against an employee, the alternative of opposing or defending against the action is always available to the plaintiff,” and “an employee may reasonably be held to have constructive knowledge of agency rules available to contest or appeal certain actions”); *see also* § 110.227(5)(a), Fla. Stat. (describing an employee’s rights such as written notice of any proposed dismissal and the alleged charges, an opportunity to

rebut the charges before a dismissal can become final, and post-dismissal rights).

Assuming that Badland told him “they” (meaning the IG) were giving him the option to resign or be terminated by the end of the day based on the results of the IG’s investigation, she had good cause to believe that grounds for his termination existed based on his own admissions that he had accessed the FSFN database for reasons unrelated to his job duties. No evidence suggested that DCF or Badland knew or believed that the allegations against Askew could not be supported. Under an objective standard, his resignation was voluntary even though he faced unpleasant alternatives, because legitimate grounds for his termination existed. *See Rademakers v. Scott*, 350 Fed. App’x 408, 412 (11th Cir. 2009) (holding that an employee was not coerced to resign when she knew the specific allegations of misconduct against her and was aware of the employer’s investigation before deciding to resign, the grounds for termination were supported by substantial evidence, and she wanted to protect her employment record).

Second, nothing showed that Askew failed to understand the nature of the choice he was given between resigning and termination. He knew that Badland believed his conduct was “very serious” and the IG had opened an investigation. By resigning, he avoided the negative consequences associated with termination. He also admitted that he had given “a lot of thought” to these competing considerations before deciding to resign. Put simply, Askew determined that it was too risky to “stand pat and fight” being terminated, so he chose the safer route of resigning. *See Ross v. City of Perry, Ga.*, 396 Fed. App’x 668, 670 (11th Cir. 2010) (holding that there was no evidence an employee failed to understand the nature of the choices he was given between resigning or being fired when he could have refused to resign and later appealed his termination; fact that he may have been intimidated by his superiors and believed he had no choice but to resign was unimportant).

Third, Askew was given a reasonable time in which to make his decision. On August 25, he knew that Badland believed his conduct was wrong and “very serious.” Three days later, he was interviewed by the IG. On September 1, he submitted his

resignation letter, which was not effective until ten days later on September 10. In sum, he had about one week before submitting his resignation to consider his options while facing the allegations against him, and another week after he submitted his resignation letter to reconsider his decision. There is no evidence Askew asked for and was denied additional time to make a decision. To the contrary, Badland granted his request to make the effective date of his resignation ten days later. *Cf. Hargray*, 57 F.3d at 1570 (discussing cases finding a resignation to be involuntary based on coercion or duress when, among other factors, the employee was forced to resign immediately or denied repeated requests to have more time to make a decision).

The fourth factor also fails to support a finding that Askew was forced to resign by coercion or duress. Badland permitted him to select the effective date of his resignation, making it ten days after the day he was given the ultimatum and submitted his letter.

Finally, no evidence shows that he was denied access to counsel by his employer. Instead, Askew chose not to seek legal advice before making his decision, even though he had ample time to do so before he resigned and then before it became effective.

### *B. Misrepresentation of a Material Fact*

As for the second theory that his resignation was involuntary, there is no evidence that DCF or Badland obtained Askew's resignation by deceiving or misrepresenting a material fact to him. Under this theory, Askew had to show: (1) that Badland knew, or reasonably should have known, that his threatened termination could not be substantiated, and (2) that he reasonably relied on her misrepresentation. *See Hargray*, 57 F.3d at 1570–71.

Askew faced termination for his unauthorized access of a confidential government database. The question was not whether he in fact had violated DCF's policy, but whether Badland had sufficient cause to believe those allegations could be substantiated. She did, because Askew admitted what he had done. It is also immaterial that Badland had no basis for telling Askew that the IG had completed its investigation and they were giving him the option to resign or be terminated by the end of the day. Badland

had her own independent basis for believing the allegations would support his termination, even if she were wrong about the timing. Nor did anyone misinform Askew about why he faced possible termination. Accessing information in DCF's confidential database without authorization is a terminable offense. And because his employer did not misrepresent a material fact, he could not have reasonably relied on any such a misrepresentation. Thus, Askew's resignation was not involuntary under this theory. *See City of Miami v. Kory*, 394 So. 2d 494, 498 (Fla. 3d DCA 1981) (holding that to set aside an act based on coercion or duress it "must be caused by some improper or illegal conduct of the defendant," and "it is not improper and therefore duress to threaten what one has a legal right to do").

### III.

As there was no evidence of constructive discharge, we do not reach the remaining issues raised by DCF. Because the trial court erred in denying DCF's motion for directed verdict, we reverse and remand for entry of a final judgment in favor of DCF.

REVERSED and REMANDED with instructions.

RAY, OSTERHAUS, and NORDBY, JJ., concur.

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***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

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