

ADA CLAIM TO ALLOW EMOTIONAL SUPPORT HOG IN PARKS

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Many legal problems start out as public relations problems. While certainly challenging, accommodation as opposed to confrontation may be preferable to a potential costly and time consuming lawsuit in court. In the particular instance described herein, an individual wanted to be accompanied by his emotional support "Hog" when he visited public parks. His request to do so, however, was denied. He also claimed he was removed from various parks on several occasions, presumably based upon existing park rules and regulations. These actions and administrative decision gave rise to a claim in federal district court under the Americans with Disabilities Act (ADA).

In the spirit of accommodation, as opposed to confrontation, particularly in the context of the ADA, instead of asking "Why?," it may be better to ask "Why Not?" An emotional support hog in a park may seem strange, but it may be worth a try to see if it works in a particular situation. Moreover, in the unlikely event of future litigation, providing such an accommodation on a trial basis could put a public agency in a more favorable light, providing a reviewing federal court with a record documenting any significant problems associated with good faith efforts to allow this particular emotional support hog in the parks.

Existing rules and regulations may understandably prohibit emotional support hogs, or similar large farm animals, in the parks. That being said, allowing one allegedly disabled individual to bring his emotional support hog into a park may not necessarily pose an eminent threat to himself or other park users. On the contrary, it may prove to be good public relations whether or not a federal court would ultimately find the ADA required such an accommodation. In today's litigious society, a satisfied citizen may be preferable to a disgruntled individual and potential litigant.

NO PIG PARK ACCOMMODATION

In the case of *Mayle v. Chicago Park District*, 2019 U.S. Dist. LEXIS 110428 (N.D. Ill. 7/2/2019), plaintiff Kenneth Mayle alleged the defendants City of Chicago and the Chicago Park District (CPD) had violated the Americans with Disabilities Act (ADA) when he was repeatedly denied the right to bring his Guinea Hog to places of public accommodation in and around the Chicago area. These places included: North Avenue Beach, Montrose Beach, Millennium Park, Grant Park, and other unnamed parks maintained by the Illinois Department of Natural Resources. As cited by the federal district court, Title II of the ADA provides as follows:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation. 42 U.S.C. § 12182(a)

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Plaintiff Mayle claimed he suffers from bipolar disorder. Because Mayle is allergic to dogs, he stated he depends on his Guinea Hog, Chief Wiggum, to provide service and emotional support. In particular, the Guinea Hog performs tasks such as massage therapy on Mayle's hands to mitigate feelings of anxiety and depression. The Guinea Hog also encourages Mayle to engage in physical activity. Mayle transports the Guinea Hog with a shopping cart attached to his bike.

Mayle filed and litigated his ADA claim in federal district court "pro se," i.e., without the assistance of an attorney. As a general rule, the federal district court indicated it would treat allegations of a pro se complaint to less stringent standards than formal pleadings drafted by lawyers.

In this case, CPD argued the federal district court should summarily dismiss Mayle's claim based upon the pretrial record because he had failed to state a claim under the ADA for the following three reasons:

(1) he is not a qualified individual with a disability; (2) his Guinea Hog is not a service animal; and (3) his requested accommodation is not reasonable under the ADA.

In determining whether or not to grant CPD's motion for summary judgment, the court would resolve any doubt in favor of Mayle, allowing him to proceed and have his day in court. In so doing, the court would consider whether the pretrial evidence conclusively established Mayle's failure to state a claim under the ADA.

INDIVIDUAL WITH A DISABILITY

To bring a claim under the ADA, a plaintiff must show that he or she is a qualified individual with a disability. The disability must substantially limit major life activities. 42 U.S.C. § 12102(1)(A). Federal courts consider several factors when deciding whether a disability substantially limits major life activities, including one's ability to sleep, hear, see, walk, breath, or learn. 29 C.F.R. § 1630.2(i). In his complaint, Mayle alleged his bipolar disorder impairs his ability to breathe, concentrate, and sleep. Resolving any doubt in Mayle's favor at this very preliminary stage of the proceedings, the federal district court found this statement in the complaint was "sufficient to plead that Mayle is a qualified individual with a disability under the ADA."

SERVICE ANIMAL

Within the context of the ADA, Mayle claimed his Guinea Hog was a "service animal equal to dogs and miniature horses." Accordingly, Mayle argued "Defendants Chicago Park District's and City of Chicago's refusal to treat his Guinea Hog as service animal violated the ADA."

As cited by the federal district court, "Title II protects the right of a disabled individual to have a service animal in public facilities." 28 C.F.R. § 35.136(g). Moreover, the court noted: "The ADA authorizes the Department of Justice ("DOJ") to promulgate regulations for the

implementation of Title II." As cited by the court, one such DOJ regulation defines service animals as follows:

Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. 28 C.F.R. § 36.104.

While this regulations sets "the minimum requirements of what constitutes a service animal," the court acknowledged the ADA "does not limit the kind of tasks a service animal can perform."

However, under 28 C.F.R. § 36.104, the federal district court found "animals that perform only tasks that provide comfort and emotional support are not sufficient to constitute a service animal under the ADA." Moreover, under the "other species" restriction within the regulation, the court found "a Guinea Hog is not a service animal." Regardless of the species, the court further found Mayle had "failed to plead sufficient facts of how the Guinea Hog's performance of such tasks assists with his disability." While Mayle's Guinea Hog allegedly "assists in and performs emotional support tasks," as noted above, the court found this claim was insufficient to establish a "service animal" under the ADA regulations.

EQUAL PROTECTION

In his complaint, Mayle had also argued that the federal regulations promulgated by the Department of Justice (DOJ) limiting service animals to dogs and miniature horses had denied him his constitutional rights to due process and equal protection. The Due Process clause of the Fifth Amendment "forbids the federal government from denying equal protection of the laws." Mayle claimed federal regulations which limited the definition of "service animals" to dogs and miniature horses effectively excluded other animals providing such service, like his Guinea Hog, which were also "individually trained to do work or perform tasks for the benefit of an individual with a disability."

As cited by the federal district court: "Equal protection violations can occur when regulations draw distinctions among people in a 'suspect' class." Generally, a suspect class involving a classification based upon race, creed, color or national origin would be subject to very demanding judicial scrutiny. According to the court, under general principles of constitutional law, "People with disabilities have not been distinguished as a suspect or a quasi-suspect class [e.g. gender]." As a result, equal protection claims brought by individuals with disabilities would be subject to a much less stringent standard of judicial review under the following "rational relationship" test:

When a regulation does not involve a suspect class, a court will uphold the regulation if there is a rational relationship between the disparity of treatment and a legitimate governmental purpose. To overcome this analysis, a plaintiff must

allege facts sufficient to overcome the presumption of rationality that applies to government classification.

In this particular instance, the federal district court noted Mayle had alleged that he was "aggressively ridiculed, harassed, and heckled by patrons when he brought the Guinea Hog to public recreational services." Further, the federal district court found the DOJ service animal regulations had identified a legitimate governmental interest in "maintaining public order and imposing limits on the types of animals allowed in public places." According to the court, "Mayle's own recounting of the disruption that ensued when he took his Guinea Hog into public parks demonstrates why the regulation is rational."

Having found a rational relationship between the limited regulatory definition of "service animals" and a legitimate governmental interest in maintaining public order in public places, the federal district court rejected Mayle's equal protection claim.

REASONABLE ACCOMMODATIONS

In his complaint, Mayle had also claimed "the denial of his Guinea Hog is a violation of the public entities' responsibility to provide reasonable accommodations to people with disabilities under the ADA." The federal district court acknowledged this allegation could provide a sufficient legal basis for Mayle to pursue in federal court because "failure to accommodate is an independent basis for liability under the ADA":

A reasonable accommodation is one that is efficacious. Public entities are generally required to make reasonable accommodations unless making such modifications would fundamentally alter the nature of the entities' goods, services, facilities, privileges, advantages, or accommodations.

Further, as noted by the court, a requested modification would be considered "reasonable" under the ADA if an accommodation was found "necessary" for the disabled individual to "fully enjoy the services and facilities of a public entity without fundamentally altering the nature of the public services and facilities." In determining whether a requested accommodation was reasonable under the ADA, the federal would conduct "a highly fact-specific inquiry" which would require "balancing the needs of the parties."

To hold a place of public accommodation liable under the ADA, the federal district court found a plaintiff need only show one of the following:

(1) the defendant intentionally acted on the basis of the disability, (2) the defendant refused to provide a reasonable accommodation, or (3) the defendant's rule disproportionately impacts disabled people.

In this particular instance, the federal district court found CPD had not clearly articulated "a reason why Mayle failed to state a reasonable accommodation claim." Instead, CPD had simply concluded "Mayle is not entitled to the Guinea Hog as an accommodation because it is not a service animal."

In limiting consideration of Mayle's accommodation request to ADA regulations governing service animals, the federal district court found CPD had failed to determine whether Mayle was "entitled to a reasonable accommodation in the form of being allowed to take his Guinea Hog into the public spaces that the City and Park District administer." Accordingly, to defeat Mayle's ADA claim, the federal district court would require CPD to show Mayle's requested accommodation was "unreasonable, imposes significant costs, or fundamentally alters the nature of their services." As a result, the federal district court rejected defendants' pretrial motion for summary judgment to effectively dismiss Mayle's reasonable accommodation claim under the ADA.

CONCLUSION

Having alleged a sufficient legal basis for his ADA claim, and CPD's failure to show otherwise in responding to Mayle's complaint, the federal district court would allow Mayle to continue to pursue his reasonable accommodation claim against CPD. In other words, in response to Mayle's ADA claim, CPD had failed to conduct an individualized assessment to establish that Mayle's accommodation request was in fact unreasonable under the circumstances.

Absent an appeal and/or settlement granting Mayle a mutually agreeable accommodation, the federal district court would conduct further trial proceedings. A trial would test Mayle's allegations that he is indeed an "otherwise qualified individual with a disability" under the ADA and, if so, whether CPD was justified in rejecting his requested accommodation as unreasonable.

INDIVIDUALIZED ASSESSMENT REQUIREMENT

In responding to accommodation requests by disabled individuals, the ADA requires a individualized decision making process which is not based on "one size fits all" stereotypes under applicable rules and regulations. An individualized assessment must consider what reasonable accommodations are required for an "otherwise qualified" disabled individual to have "full and equal enjoyment" of "any place of public accommodation," including public parks.

Once a disabled individual requests an accommodation, the ADA shifts the burden to the public entity to conduct the required individualized assessment and, if the request is rejected, demonstrate it would be unreasonable to grant the request. In so doing, mere safety concerns are an insufficient legal basis under the ADA to reject the requested accommodation. On the contrary, the public entity must demonstrate the requested accommodation is unreasonable because it would constitute a direct threat to the disabled individual or others.

A direct threat determination must be based on an individualized assessment that relies on current medical evidence, or on the best available objective evidence to assess the following: (1) The nature, duration, and severity of the risk; (2) The probability that the potential injury will actually occur; and (3) Whether reasonable modifications of policies, practices, or procedures will mitigate or eliminate the risk.

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In this particular instance, CPD did not conduct an individualized assessment to establish the existence of a "direct threat" posed by Mayle's emotional support Hog in a public park. Had CPD done so, it may have been able to demonstrate the existence and severity of a direct threat based upon Mayle's own admission that he was "aggressively ridiculed, harassed, and heckled by patrons when he brought the Guinea Hog to public recreational services."

In addition to a direct threat determination, a requested accommodation could also be rejected as unreasonable if it would fundamentally alter the nature of public service. In this particular instance, allowing an accommodation for one emotional support hog would not fundamentally alter a public park into a de facto "farm park" or petting zoo. Moreover, granting the requested accommodation would presumably not create the type of significant financial or administrative burden on the public entity which would also justify rejection of a request as unreasonable.

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