

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Ronald Wolfe,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 11AP-346
	:	(C.C. No. 2007-08902)
Ohio Department of Rehabilitation and	:	
Correction,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	
	:	

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D E C I S I O N

Rendered on December 30, 2011

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*Swope and Swope*, and *Richard F. Swope*, for appellant.

*Michael DeWine*, Attorney General, and *Amy S. Brown*, for appellee.

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APPEAL from the Ohio Court of Claims

KLATT, J.

{¶1} Plaintiff-appellant, Ronald Wolfe, appeals from a judgment of the Ohio Court of Claims in favor of defendant-appellee, the Ohio Department of Rehabilitation and Correction ("ODRC"). For the following reasons, we affirm.

{¶2} Wolfe filed suit against ODRC on November 26, 2007. In his complaint, Wolfe alleged that he was incarcerated in the Belmont Correctional Institution ("Belmont"). Wolfe further stated that, on August 14, 2006, he was working in Belmont's kitchen when he fell from a chair while attempting to reach for his cane. (R. 1 at ¶3.) Wolfe asserted

that ODRC was negligent in forcing him to work in the kitchen because he was disabled.

(R. 1 at ¶4.) Wolfe also asserted that:

[H]e was a disabled person entitled to the protections and benefits of the Americans with Disability [sic] Act and contrary to the accommodations which prohibited disabled persons to be assigned to work in the kitchen, [he] was forced to work there.

(R. 1 at ¶2.)

{¶3} A magistrate conducted a trial on Wolfe's claims. In his subsequent decision, the magistrate recounted the evidence adduced by Wolfe and ODRC. According to the magistrate, Wolfe testified that, on the date he fell, he was suffering from multiple ailments: severe arthritis in his left leg that caused it to occasionally "give out," dizziness and confusion due to medications for his diabetes, and an ankle injury. As a result of these maladies, a prison physician issued him a permit to use a cane and a medical restriction limiting him to light-duty work assignments.

{¶4} With regard to his fall, Wolfe testified that he was cleaning tables in Belmont's cafeteria when his cane slipped on the freshly mopped floor. Wolfe grabbed a wheeled chair to steady himself, but the chair rolled away from him. Wolfe fell to floor, injuring his right side and back.

{¶5} On the day of Wolfe's fall, Elmer Borsos, a correctional food-service coordinator, was working in Belmont's kitchen. Borsos testified that he did not see Wolfe fall, but Wolfe reported the fall to him after it occurred. Borsos completed an accident report, in which he detailed the accident as Wolfe explained it to him. That accident report states that Wolfe was "sitting in [a] chair by scanner on lines 1 & 2" when he "reach[ed] for [his] cane and fell out of [the] chair [and] hit [his] right side." The accident

report includes the signature of "Ron Wolfe" under the description of the accident. (Plaintiff's exhibit 11.)

{¶6} Based on the above evidence, the magistrate concluded that Wolfe failed to prove a claim under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12131 et seq., because he did not establish that ODRC denied him the benefits of any services, programs, or activities nor did he demonstrate that ODRC had discriminated against him because of his disability. As to Wolfe's negligence claim, the magistrate concluded that ODRC did not breach any duty of care owed to Wolfe. The magistrate found that ODRC acted reasonably when it assigned Wolfe to work a simple job in Belmont's cafeteria. The magistrate also found Wolfe's explanation for the fall not credible.

{¶7} Wolfe objected to the magistrate's decision. Due to his indigency, Wolfe supported his objections with an affidavit of evidence instead of a transcript. The trial court rejected Wolfe's affidavit of evidence, holding that Wolfe had an obligation under Civ.R. 53(D)(3)(b)(iii) to provide a transcript. Without considering the affidavit of evidence, the trial court overruled Wolfe's objections and adopted the magistrate's decision.

{¶8} Wolfe appealed the trial court's judgment to this court. We agreed with Wolfe that his indigency rendered the transcript unavailable and, thus, he could support his objections to the magistrate's decision through an affidavit of evidence. *Wolfe v. Ohio Dept. of Rehab. and Corr.*, 10th Dist. No. 10AP-443, 2010-Ohio-6180. We reversed the trial court's judgment and remanded the case.

{¶9} On remand, the trial court reconsidered Wolfe's objections in light of the affidavit of evidence. The reconsideration, however, did not alter the result. In a judgment dated March 8, 2011, the trial court again overruled Wolfe's objections and adopted the magistrate's decision.

{¶10} Wolfe now appeals from the March 8, 2011 judgment, and he assigns the following errors:

[I.] THE COURT AND MAGISTRATE ERRED AS A MATTER OF LAW IN RULING THAT [THE] ADA, U.S.C. 12132[,] DOES NOT REQUIRE PRISON ADMINISTRATION, WHO ARE AWARE OF SEVERE PHYSICAL DISABILITIES, [TO] ACCOMMODATE INMATES BY PLACING THEM IN A LESS DANGEROUS AND DEMANDING WORK ENVIRONMENT.

[II.] THE COURT AND MAGISTRATE ERRED AS A MATTER OF LAW IN RULING DEFENDANT-APPELLEE DID NOT DENY SERVICES, ACCOMMODATIONS OR DISCRIMINATE AGAINST A PERSON WITH DISABILITIES.

[III.] THE COURT'S AND MAGISTRATE'S FINDINGS AS TO PLAINTIFF-APPELLANT'S PHYSICAL CONDITION, BASED ON PLAINTIFF-APPELLANT'S MEDICAL RECORDS AND THE MAGISTRATE'S FINDINGS AS TO CREDIBILITY ARE INCONSISTENT WITH THE EXHIBITS AND TESTIMONY AS TO PLAINTIFF-APPELLANT'S DISABILITY AND HIS FALL.

[IV.] THE TRIAL COURT AND MAGISTRATE ERRED BECAUSE THEIR DECISIONS ARE CONTRARY TO LAW AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶11} Because they are interrelated, we will address Wolfe's first and second assignments of error together. Essentially, by these assignments of error, Wolfe contends that the trial court erred in finding ODRC not liable for a violation of the ADA. We disagree.

{¶12} Congress enacted the ADA "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. 12101(b)(1). The ADA forbids discrimination against persons with disabilities in three different areas of public life: employment, which is covered by Title I of the statute; public services, programs, and activities, which are covered by Title II; and public accommodations, which are covered by Title III. *Tennessee v. Lane* (2004), 541 U.S. 509, 516-17, 124 S.Ct. 1978, 1984.

{¶13} Because inmates are not employees, statutes designed to protect employees do not apply to inmates. *Barnett v. Ohio Dept. of Rehab. and Corr.*, 10th Dist. No. 09AP-1186, 2010-Ohio-4737, ¶11; *McElfresh v. Ohio Dept. of Rehab. and Corr.*, 10th Dist. No. 04AP-177, 2004-Ohio-5545, ¶14. Consequently, Title I of the ADA does not apply to inmates who work in a prison. *Battle v. Minnesota Dept. of Corr.* (C.A.8, 2002), 40 Fed.Appx. 308, 310; *Murdock v. Washington* (C.A.7, 1999), 193 F.3d 510, 512; *Cox v. Jackson* (E.D.Mich.2008), 579 F.Supp.2d 831, 850. Therefore, to the extent that Wolfe asserted a Title I claim, he cannot recover.

{¶14} Title II of the ADA, unlike Title I, covers state prisons and prisoners. *Pennsylvania Dept. of Corr. v. Yeskey* (1998), 524 U.S. 206, 209, 118 S.Ct. 1952, 1954.

Title II provides that:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. 12132. Thus, prisons cannot use an inmate's disability as a reason to bar that inmate from participating in or receiving the benefits of, for example, recreational

activities, medical services, or educational or vocational programs. *Yeskey*, 524 U.S. at 210, 118 S.Ct. at 1955.

{¶15} Title II does not contain a specific accommodation requirement. However, the Attorney General, pursuant to Congress' instruction, has issued implementation regulation that delineates a public entity's duty to reasonably accommodate the needs of the disabled. See 42 U.S.C. 12134(a) ("[T]he Attorney General shall promulgate regulations in an accessible format that implement this part."). The relevant regulation states:

A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

28 C.F.R. 35.130(b)(7). Thus, Title II requires public entities to make reasonable accommodations to enable disabled individuals to receive meaningful access to the services, programs, or activities that the public entities offer. *Miller v. Hinton* (C.A.4, 2008), 288 Fed.Appx. 901, 902; *Ability Ctr. of Greater Toledo v. Sandusky* (C.A.6, 2004), 385 F.3d 901, 907; *Chaffin v. Kansas State Fair Bd.* (C.A.10, 2003), 348 F.3d 850, 857; *Henrietta D. v. Bloomberg* (C.A.2, 2003), 331 F.3d 261, 279. A proposed modification only qualifies as a reasonable accommodation if it allows the disabled individual to obtain access that he or she would not normally have by reason of his or her disability. *Wisconsin Community Servs., Inc. v. Milwaukee* (C.A.7, 2006), 465 F.3d 737, 754.

{¶16} To prove a violation of Title II of the ADA, a plaintiff must establish that: (1) he or she is a qualified individual with a disability; (2) the defendant is subject to the ADA; and (3) the plaintiff was denied the opportunity to participate in or benefit from the

defendant's services, programs, or activities or was otherwise discriminated against by the defendant, by reason of the plaintiff's disability. *Franks v. Ohio Dept. of Rehab. and Corr.*, 10th Dist. No. 10AP-770, 2011-Ohio-2048, ¶17; *Thomson v. Ohio Dept. of Rehab. and Corr.*, 10th Dist. No. 09AP-782, 2010-Ohio-416, ¶26. A defendant discriminates against a qualified individual with a disability if it denies him or her a reasonable accommodation. *Tylicki v. St. Onge* (C.A.2, 2008), 297 Fed.Appx. 65, 67; *R.K. v. Bd. of Edn. of Scott Cty., Kentucky* (E.D.Ky.2010), 755 F.Supp.2d 800, 808; *Muhammad v. Dept. of Corr.* (D.N.J.2008), 645 F.Supp.2d 299, 313, affirmed, (C.A.3, 2010), 396 Fed.Appx. 789.

{¶17} Here, the trial court did not address whether Wolfe was a qualified individual with a disability. Apparently, the trial court simply assumed that Wolfe satisfied the first element. The trial court dispensed with the second element by acknowledging that, under *Yeskey*, ODRC is subject to Title II of the ADA. The trial court's resolution of Wolfe's ADA claim turned on the third element; namely, Wolfe's failure to prove that ODRC denied him meaningful access to a service, program, or activity or otherwise discriminated against him because of his disability.

{¶18} On appeal, Wolfe identifies the activity that ODRC allegedly precluded him from participating in as the ability to seek limited duty or a "lay in." The facts, however, do not establish that ODRC denied Wolfe the opportunity to request a medical restriction to accommodate his physical limitations. The record contains a medical restriction, issued by a prison physician, which limited Wolfe to light duty. Thus, the evidence shows that Wolfe participated in the very activity that he alleges was denied him.

{¶19} Wolfe next argues that ODRC denied him the benefits of the light-duty restriction he received by assigning him to clean tables in the cafeteria. Evidence of this alleged denial is lacking. Nothing in the magistrate's decision or the affidavit of evidence indicates whether Wolfe's assigned job qualified as light duty or not. Absent evidence that Wolfe's assigned job demanded more than light-duty work, the record fails to establish that ODRC prevented Wolfe from receiving the benefit of his medical restriction.

{¶20} Wolfe also contends that ODRC discriminated against him by not granting him the accommodation that he requested. Wolfe's description of the requested accommodation varies throughout his brief. In the affidavit of evidence, however, Wolfe only named a single request that he made prior to the fall: that the Belmont administrative staff not assign him to work in the kitchen. As we explained above, the ADA only requires that a prison provide an accommodation that would permit an inmate meaningful access to a service, program, or activity. The ADA does not entitle a prisoner to whatever accommodation he desires. *Thomas v. Pennsylvania Dept. of Corr.* (W.D.Pa.2009), 615 F.Supp.2d 411, 425-26. As Wolfe did not present evidence showing that the requested accommodation would have facilitated meaningful access to any service, program, or activity, he cannot prevail on his reasonable accommodation claim.

{¶21} Because Wolfe failed to prove a violation of the ADA, the trial court did not err in granting judgment to ODRC on Wolfe's ADA claim. Accordingly, we overrule Wolfe's first and second assignments of error.

{¶22} By his third assignment of error, Wolfe challenges the trial court's factual findings. Initially, Wolfe argues that the trial court erred in ruling that he was not disabled.

The trial court, however, never made such a finding. Logically, then, the trial court could not err in the manner Wolfe contends it did.

{¶23} Wolfe next attacks the trial court's finding that his account of his fall was not credible. An appellate court defers to a trial court's findings of fact. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. Even if we were inclined to second guess the trial court, the ample evidence in the record contradicting Wolfe's version of events would preclude us from finding any error. Not only does Wolfe's story differ from the description of the fall in the accident report that Wolfe signed, it also contravenes the facts as originally alleged in Wolfe's complaint. Accordingly, we overrule Wolfe's third assignment of error.

{¶24} Wolfe's fourth assignment of error merely repeats the arguments set forth in his first through third assignments of error. Therefore, for the foregoing reasons, we overrule it, too.

{¶25} In conclusion, we overrule Wolfe's four assignments of error, and we affirm the judgment of the Ohio Court of Claims.

*Judgment affirmed.*

BROWN and DORRIAN, JJ., concur.

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