

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
A Court Publication Supported by the Attorney Admissions Fund
Vol. VII, No. 3, February 5, 2001

Announcement

Effective immediately, the court is submitting unpublished opinions to the University of Oregon website located at <http://www.law.uoregon.edu/court/opin.html>.

The court's unpublished opinions were first available electronically for members of the court through ISYS in 1995. We then met the growing demand to make our unpublished opinions electronically available to lawyers and the public by submitting them to Westlaw and Lexis starting in April 1999. However, many lawyers have requested that access should be free of charge. To accommodate these requests, the University of Oregon has generously agreed to place our unpublished opinions on its website in a searchable format.

Prisoner Rights

An inmate at EOCI was diagnosed as suffering from a bipolar disorder and was prescribed three different psychotropic medications. The doctor who

made the diagnosis then left the facility. Defendant, the manager of the Counseling Treatment Center, had a hostile encounter with the plaintiff shortly thereafter. Two days later, the defendant changed plaintiff's diagnosis and terminated his participation in mental health treatment. Plaintiff continued to receive psychotropic medications, but was not seen again for follow-up medical review.

Judge Ann Aiken denied a defense motion for summary judgment. The court held that a reasonable jury could find that defendant's actions constituted deliberate indifference to serious medical needs in violation of the Eighth Amendment. Page v. Norvell, CV 96-1511 (Lead) (Opinion, Dec. 21, 2000).

Plaintiff's Counsel:

Ken Wittenberg

Defense Counsel:

Jan Peter Londahl

Procedure

Plaintiff Alfredo Julian-Ocampo was hospitalized in Mexico City. He and his family hired the services of an air ambulance, operated by

defendants from Florida, to transport him to Portland, Oregon, so that he could be screened for a heart transplant. When the services provided by the air ambulance were not as expected, Julian-Ocampo sued the corporate defendants and a few of their employees for fraud, breach of contract, negligence, and the intentional infliction of emotional distress, among other claims. One individual defendant, who allegedly made the fraudulent statements that induced the plaintiffs to hire this particular service, moved to be dismissed for lack of personal jurisdiction. The only fact connecting the individual to Oregon was that she knew the flight would terminate here. Judge King dismissed her, reasoning that there were insufficient contacts, particularly since none of the plaintiffs live in Oregon so any long term effects of the alleged fraud and negligence would not be felt in this state. Julian-Ocampo v. Ambulance Network, Inc., CV00-1262-KI, (Opinion, Jan. 25, 2001).

Plaintiffs' Counsel:

Leta Gorman

2 The Courthouse News

Defense Counsel:

Gary Abbott

ADA

Plaintiffs filed an action against a City and a restaurant and wine shop located within that city claiming various violations of their rights under the Americans with Disabilities Act and related federal and state statutes. As to the two businesses, plaintiffs alleged that architectural barriers should have been removed to provide greater wheelchair accessibility. Because the buildings in which the businesses were located were built in 1946, ADA Accessibility regulations vary depending upon whether any alterations were made to the structures after January 22, 1992. Judge Dennis J. Hubel found that the fact that certain portions of a wooden path were replaced with brick after Jan. 22, 1992 did not constitute an alteration within the meaning of the regulations and legislative history. Applying the regulations to structures existing before 1992, architectural barriers need only be removed if "readily achievable."

Both parties submitted various cost estimates for construction of a ramp, rest room modifications and re-arranging interior aisles in the wine shop. Judge Hubel held that the restroom modifications were not "readily achievable" as a matter of law because, even

accepting plaintiff's lower bids, the cost estimate for this project exceeded the restaurant's net annual income. The court denied summary judgment relative to the ramp improvements which represented approximately 10% of the businesses' annual income and as to whether re-arranging interior aisles in the wine shop was feasible. In so holding, the court declined to consider plaintiffs' argument that the businesses could offset expenses through a tax credit, given the absence of evidence that either defendant had sufficient income to take advantage of such a credit.

Plaintiffs also claimed that they were verbally abused by one of the business owners when they attempted to demonstrate the lack of accessibility for a member of the press. Judge Hubel granted summary judgment on the ground that plaintiffs' actions did not constitute the exercise of a protected right under the ADA.

Judge Hubel also granted summary judgment against plaintiffs' parallel state claims under O.R.S. 447 since the businesses did not fit within the statutory definition of an "affected building."

Plaintiffs also asserted negligence claims against the businesses based upon alleged failures to comply with federal and state Disability Act requirements. Judge Hubel rejected these claims,

finding that violations of state and federal anti-discrimination laws is not a recognized legally protectable interest sufficient to allow a negligence claim in the absence of any physical injury.

Plaintiffs' claims against the city addressed accessibility issues at annual events such as the dog show, kite festival and sand castle building contest and the absence of sidewalks on certain city streets. Judge Hubel granted the City's motion for summary judgment in its entirety. The court held that because the City did not sponsor the annual events, but merely issued permits, Title II did not apply. The court found no statutory general obligation to build sidewalks and held that the City is not a proper defendant under the federal Rehabilitation Act. Finally, the court rejected any assertion that the City has any duty to force third party licensees or permittees to build ADA compliant structures. Alford v. City of Cannon Beach, CV 00-303-HU (Opinion, Jan. 17, 2001).

Plaintiffs' Counsel:

Dennis Steinman

Defense Counsel:

Karen O'Kasey

Copies? Questions?

kelly.zusman@ord.uscourts.gov
503-326-8363