FOR THE RECORD

BY CRAIG SANDBERG

U.S. Court of Appeal for the Seventh Circuit Permits Claim Against School District for Failure-to-Accommodate Under the Americans with Disabilities Act for Plaintiff with Seasonal Affective Disorder

On October 6th, Chief Judge Frank Easterbrook, writing on behalf of a unanimous three-judge panel of the U.S. Court of Appeals for the Seventh Circuit (*Renae Ekstrand v. School District of Somerset*; No. 09-1853), ruled, three weeks after hearing arguments, that the Wisconsin district court erred when it granted summary judgment in favor of the defendant on the plaintiff's failure-to-accommodate claim, under the Americans with Disabilities Act ("ADA"). The decision, however, upheld the lower court's decision granting summary judgment on the plaintiff's claim alleging she was constructively discharged in violation of the ADA.

Renae Eskstrand taught successfully at Somerset Elementary School (Somerset, Wisconsin) from 2000-2005. For the 2005-2006 school year, she requested a move from kindergarten to the first grade, and the school reassigned her to a first-grade classroom lacking exterior windows. Ekstrand told the principal that she had seasonal affective disorder, a form of depression, and would have difficulty functioning in a room with artificial light rather than natural light. She repeatedly requested an alternate room with natural light before the school year began, throughout the first five or six weeks of the school year as her health declined, and during the following month while she was on disability leave. During this time there were two alternate rooms available: the room of Ann Jacquet, a first-grade teacher willing to switch with Ekstrand; and an empty room being held open for a possible additional third-grade section pending the school board's approval. While the school district worked with Ekstrand to remedy a number of other issues that impaired her ability to effectively function and exacerbated her symptoms of seasonal depression, *e.g.*, noise distractions from adjacent common areas and inadequate ventilation, the district did not reassign her to a room with natural light despite Ekstrand's repeated requests. In October 2005, Ekstrand sought medical attention for her depression, which continued to worsen and she began suffering post-traumatic stress symptomology. Ekstrand did not return to work.

The Court disagreed with the district court that no reasonable jury could find in favor of Ekstrand's failure-to-accommodate claim. In doing so, the Court noted that in order to survive the school district's motion for summary judgment on her failure-to-accommodate claim, Ekstrand needed to present evidence that, if believed by a trier of fact, would show (1) she is a qualified individual with a disability; (2) the school district was aware of her disability; and (3) the school district failed to reasonably accommodate that disability. Here, the Court, focusing on the aforementioned third-prong, stated that the "critical issue on this appeal is whether Ekstrand presented evidence that the school district failed to reasonably accommodate her" and stated that "[l]ittle hardship would have been imposed in providing Ekstrand an available classroom."

Circuit Judge Terence T. Evans, in his concurring opinion, notes that the typical ADA case involves the interests of two sides, the employer and the employee. In this case, however, the interests and concerns are of others, namely the first-grade students and their parents. Judge Evans notes the aforementioned because it make him "wonder if Ms. Ekstrand, in the context of teaching, could ever establish that she was a '*qualified* individual with a disability' under the ADA in the fall of 2005 or that an accommodation that would be necessary to ameliorate her condition would be 'reasonable."

Illinois Supreme Court Bars Sexual Abuse Victim's Lawsuit After Defendants' Rights Vested Following the Running of the Statute of Limitations

On September 24th, Justice Llloyd A. Karmeier writing on behalf of the Illinois Supreme Court (*John Doe A. v. Diocese of Dallas*; Docket No. 106546) refused to apply retroactively a 2003 amendment to Illinois law extending the statute of limitations in civil actions alleging child sexual abuse. The suit was filed by plaintiff who had been abused by a Catholic priest when he was 14 years old in 1984. However under prior law, the statute of limitations had run on his claim before the 2003 amendments took effect. The court concluded that even though the legislature had intended for the amended statute of limitations to apply retroactively, the Court noted that "once a claim is time barred, it cannot be revived through subsequent legislative action without offending the due process protections of our state's constitution."

The pleadings and supporting documents in this case indicated that when plaintiff was 14 years old, he was sexually molested by defendant Kenneth Roberts, a Catholic priest. At the time of the molestation, which tool place in 1984, plaintiff was an eighth-grade student at St. Mary's Parochial School in Belleville and Father Roberts was spending a week at the school as a guest lecturer. Among his lecture topics was sex education. Father was allowed to speak to the children on this topic notwithstanding the fact that church officials were aware that he had previously engaged in the sexual abuse of children, including a boy in Dallas, Texas. Plaintiff did not disclose Father Roberts' sexual abuse to anyone until 1998, when acute psychological problems forced plaintiff to leave work and seek treatment at the emergency room of St. Louis University Hospital (St. Louis, Missouri). Plaintiff filed his lawsuit in November 2003.

The Court stated the issue in the case was whether 735 ILCS 5/13-202.2 "may be applied to permit an action for personal injury based on childhood sexual abuse to proceed where that action would otherwise have been time-barred under the law as it existed when the amendment took effect" on July 24, 2003. First, the Court concluded that because the 12-year repose period in the version of section 13-202.2 in effect in 1991 had not expired, there was never a time when it operated to insulate defendants from liability, never vested any rights of defendants, and conferred no constitutional protections on defendants. Next, as to the version of section 13-202.2 in effect following the 1993 amendment (taking effect in 1994), which precluded litigants from commencing an action for personal injuries based on childhood sexual abuse more than 12 years after the date on which they attained the age of 18, the Court concluded that because the defendants' rights had vested before both plaintiff filed his lawsuit and the 2003 version of section 13.-202.2 took effect, plaintiffs claims were barred by the statute of limitations. Citing, parenthetically, *Sepmyer v. Holman*, 162 Ill. 2d 249, 254 (1994) as instructive, the Court noted that "the legislature lacks the power to reach back and breath life into a time-barred claim…the expiration of the statute of limitations creates a vested right beyond legislative interference."

U.S. Court of Appeal Rejects District Court's Certification of Putative Class in Cook County Jail Lawsuit

On September 8th, Circuit Judge William J. Bauer, writing on behalf of a unanimous three-judge panel of the U.S. Court of Appeals for the Seventh Circuit (*Robert Harper v. Sheriff of Cook County*; No. 08-3413), ruled that the district court abused its discretion in certifying a putative class without a clear definition of what the class is comprised of.

Robert Harper was arrested by a Chicago police officer on the evening of September 29, 2005. The next day, he was brought before a judge around 1:00 p.m. for a probable cause hearing. The judge found probable cause, set bond at $15,000, and remanded Harper to the Sheriff's custody. Harper claims that his wife attended the probable cause hearing and immediately sought to post cash bond, but was not permitted to post bond until sometime after 4:00 p.m. Harper was released from the Sheriff's custody around 11:00 p.m.

When a detainee returns to the Cook County Jail after a probable cause hearing, he is placed in a bull pen and begins to be processed into the jail. This involves assigning the detainee an identification number, taking his picture and fingerprints, collecting any property carried by the detainee, conducting a personal history interview, performing a psychiatric screening, assigning the detainee to a division within the jail, conducting a medical examination, and a strip search. Family members or friends who want to post bond for a detainee do so, not with the Sheriff, but with the Office of the Clerk of the Circuit Court of Cook County. The Sheriff's policy directs that "[i]nmates who have their bo\nd posted while going

continued on page 57

For The Record
continued from page 10

through the intake process are moved ahead of the other inmates in order to speed up their release…In some instances, the psychiatric interview and the medical examination are eliminated."

Before releasing a detainee, the Sheriff takes a number of steps to ensure that he is releasing the right person. This process includes checking the detainee's photograph, comparing the detainee's fingerprints with those taken during the intake procedure, and requiring the detainee to provide answers to personal questions that were asked during the prior personal history interview that only the detainee should know.

Harper brought this action to challenge his detention and treatment in the jail. In his complaint, Harper explained that he "was required to submit to the processing required by the Sheriff's policies of a person being admitted to the Cook County Jail while plaintiff's family members posted cash bond." He went on to describe the processing, which "began with placement into an overcrowded and unsanitary animal cage, and include a chest x-ray, the non-consensual insertion of a swab into plaintiff's penis [to test for STDs], the nonconsensual taking of blood, and a strip search which was conducted in a manner calculated to embarrass and humiliate."

In his motion to certify the case as a class action, Harper sought to represent "[a]ll persons who were processed into the Cook County Jail on and after May 2, 2005 while persons acting on behalf of the arrestee sought to post cash bond." He later changed his proposed class definition to "[a]ll persons processed into the Cook County Jail on and after May 2, 2005 while that person, or someone acting on his (or her) behalf, sought to post cash bond." The district court granted Harper's motion to certify the case as a class action, but found that Harper's proposed class definition was too broad and ordered him to provide a new class definition within fourteen days. Pursuant to Federal Rule of Civil Procedure 23(f), the Sheriff filed its petition for permission to appeal within 10 days after the order was entered and before Harper was required to provide a new class definition.

The Court understood, following oral argument, that Harper's claim is that the Sheriff is unconstitutionally holding detainees after bond has been posted, but noted that the constitutionality of this detention depends on whether the length of the delay between the time the Sheriff was notified that bond had been posted and the time that the detainee was released was reasonable in any given case. Thus, common issues do not predominate over individual issues, making this case inappropriate for class disposition, pursuant to Federal Rule of Civil Procedure 23(b)(3). The matter was remanded for resolution of Harper's individual claims. ■

YLS CHILDREN'S BOOK DRIVE

The YLS will collect new and gently used children's books from November 9 to December 11. All books will donated to homeless shelters, the children's waiting room at the Daley Center, the Cook County Juvenile Justice Center, and the William C. Goudy Elementary School (the CBA's adopted school). Donations may be dropped off in the CBA lobby at 321 S. Plymouth Court.

President's Page
continued from page 12

In 2006, the Illinois Supreme Court enacted new Rule 756(f) requiring lawyers to annually report their pro bono service hours and approximate monetary contributions to a legal service organization. This data is compiled by the Illinois Attorney Registration & Disciplinary Commission and included in their Annual Report. The ARDC's 2009's Annual Report indicates that almost 14,000 lawyers in the state provided pro bono services totaling 2,192,345 hours. This number includes over one million hours of direct pro bono legal service work to persons of limited means. These statistics are very encouraging and the volunteer efforts from Illinois lawyers helps to underpin the growing need for legal services throughout the state. Also encouraging is the fact that lawyer contributions in Illinois in 2008 to organizations that provide legal services to people of limited means was almost $15 million. This is truly an extraordinary amount of money and reflects the profession's generosity and commitment to legal services.

CBA's Pro Bono Standard

For many years, the CBA has promoted a suggested pro bono standard for our members. The suggested standard asks members to: (1) consider providing a minimum of 50 hours in pro bono activities; or (b) to contribute a minimum of $250 annually to an organization that provides grants and other support to legal service organizations, e.g., The Chicago Bar Foundation or to organizations that provide free and/or low-cost legal services to Chicago and Cook County's low-income and disadvantaged residents. The CBA's pro bono standard calls on each of us to support pro bono services in some tangible way, recognizing that together we can make a real difference and, hopefully, fulfill the unmet legal needs of people in Cook County.

I recognize that the legal profession, at all levels, continues to feel the deep pain of this recession. It has affected thousands of our members in private practice, the corporate sector, and in government service. In a very real sense, however, each of us is a public servant and as difficult as the recession is or may yet become, we need to carry on the important mission of the legal profession in greater service to those in need of our help.

Collectively, we must consider new and more effective ways to meet the growing unmet legal needs of the public. I am happy to report that the Association and our Bar Foundation are exploring programs that will help fill this void. In the meantime, I hope that you will continue to share your time, talent, and financial support to ensure that access to our courts is not just a dream but a reality for all. ■