

Dover Downs v. Thompson

C.A. No. 004A-01-003

December 30, 2004

OPINION

The appellant, Dover Downs, appeals from a decision of the State Human Relations Commission of the State of Delaware (“the Panel”), finding that Dover Downs acted in a discriminatory manner towards the appellee, Mr. Vernon E. Thompson, in violation of Delaware’s Equal Accommodations Law, 6 *Del. C.* §4504(a). The Panel awarded damages of \$5,000 to Mr. Thompson and assessed a \$5,000 civil penalty against Dover Downs. For the reasons which follow, the Panel’s decision is reversed.

I. FACTS

At approximately 5:00 p.m. on the evening of July 31, 2002, Vernon E. Thompson attempted to enter the Dover Downs Casino with his dog, Barak. Barak was wearing a support animal vest and was tied at the neck with a nylon type line similar to a clothesline, in place of a leash. Mr. Thompson was stopped at the entrance of the casino by Dover Downs Security Officer Kevin Brown, who informed Mr. Thompson that pets were not allowed in the casino. Mr. Thompson explained that his dog was a trained support animal and not a pet and provided Officer Brown with an identification card for the dog. Officer Brown, who had encountered support animals before but did not recognize Appellee’s dog to be a trained support animal because of its apparent young age, asked Appellee what his dog was trained to do. Mr. Thompson refused to answer the question. Officer Brown testified that he was concerned about the dog's safety inside the crowded casino. He then radioed for a supervisor. Security Supervisor George Bryan responded and began to speak with

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Mr. Thompson. Mr. Thompson informed Supervisor Bryan that he was disabled and wanted to enter the casino with his support dog. Supervisor Bryan then inquired as to the specifics of the dog's training. Thompson again refused to answer this question and insisted that such questioning was a violation of his civil rights. Supervisor Bryan advised Mr. Thompson that unless he provided more information about the dog's training, Bryan could not allow the dog onto the casino floor.

After further refusal by Mr. Thompson to answer any questions as to his dog's training, Supervisor Bryan radioed for his Manager to come to the scene. At approximately 5:30 p.m. Security Shift Manager Bill Beever ("Beever") arrived in the foyer where Mr. Thompson was talking to the other officers. Shift Manager Beever inquired as to Mr. Thompson's dog's training. Shift Manager Beever testified that he was concerned about the safety of the customers inside the casino. Thompson refused to answer the question about the dog's training but did reveal that his dog was approximately four (4) months old. Mr. Thompson also handed Beever a card which contained a printed number for an "ADA Information Line" which Mr. Thompson suggested Beever call.

Shift Manager Beever then telephoned the ADA Information Line and spoke to an ADA Representative, whose name Beever did not obtain. After listening to Beever's description of the circumstances, the ADA representative informed Beever that he could not ask Mr. Thompson about the nature of his disability, but he was entitled to ask Mr. Thompson what the dog was trained for. According to Shift Manager Beever, the ADA representative also informed him that he could deny entry

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to the dog if Mr. Thompson refused to provide information about the dog's training. Shift Manager Beever also testified that the ADA representative indicated that a vest, such as the one worn by Mr. Thompson's dog, could not be considered proof of training or other status and could be obtained easily in a store. The representative also noted that it was unlikely the dog could be fully trained at only 4 months old because it takes approximately one to one and a half years to train a support animal.

After speaking with the ADA representative, Shift Manager Beever returned to the main entrance of the casino to resume his conversation with Mr. Thompson. Beever advised Mr. Thompson that the representative had informed him that he was permitted to inquire about what training the dog had received and could refuse access if he refused to answer. Beever again asked Mr. Thompson what his dog was trained to do. When Mr. Thompson still refused to provide any more information, Shift Manager Beever made the decision not to permit the dog to enter the casino. Beever informed Mr. Thompson that, under the circumstances, he could not identify the dog as a support animal and could not allow the dog into the casino. He also made clear, however, that Thompson was still welcome to enter the casino without his dog.

Mr. Thompson then departed from the casino entrance. On or about September 27, 2002, appellee filed a complaint with the Delaware Human Relations Commission for alleged discrimination by Dover Downs because of his disability. Thompson based his complaint on the Delaware Equal Accommodations Law, 6 *Del. C.* §§ 4501, *et. seq.* The Panel issued a Decision and Order on December 11, 2003.

The Panel found that: 1) Dover Downs was a place of Public Accommodation;

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2) Mr. Thompson is a handicapped individual within the meaning of the statute; 3) Mr. Thompson's dog was a support animal within the meaning of the statute; 4) Mr. Thompson had met his burden of making a *prima facie* case of discrimination by showing he was denied access to a place of public accommodation when members of the general public were not denied access; and 5) Dover Downs failed to show a non-discriminatory reason for denial of access. The Decision awarded Mr. Thompson \$5,000 in damages for humiliation and embarrassment allegedly caused by the conduct of the Dover Downs employees and also assessed a \$5,000 penalty against Dover Downs as a "first offense" under Delaware's Accommodations Law. In addition, the Decision required Dover Downs to "establish a policy for dealing with handicapped patrons using support animals."

II. STANDARD OF REVIEW

The function of this Court in reviewing an appeal from the Delaware State Human Relations Commission is to determine whether the Panel's decision is supported by substantial evidence and is free from legal error.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.³ It merely determines

¹ *Quaker Hill Place v. State Human Relations Commission*, 498 A.2d 175, 178 - 79 (Del. Super. Ct. 1985), *aff'd*, 531 A.2d 201 (Del. 1987) .

² *Oceanport Ind. v. Wilmington Stevedoes*, 636 A.2d 892, 899 (Del. 1994) (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. Ct. 1986), *app. disp.*, Del. Supr., 515 A.2d 397 (Del. 1986).

³ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

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whether the evidence is legally adequate to support the agency's factual findings.⁴ In order to stand, the decision of the Panel must also be "the product of an orderly and logical deductive process."⁵ Therefore, if there is substantial evidence for the Panel's decision and there is no mistake of law, the decision will be affirmed.

III. DISCUSSION

The Delaware Equal Accommodations Law, 6 *Del. C.* § 4504, on which Mr. Thompson bases his claim of discrimination, states:

No person being the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation, shall directly or indirectly refuse, withhold from or deny to any person, on account of race, age, marital status, creed, color, sex, handicap or national origin, any of the accommodations, facilities, advantages or privileges thereof. For the purposes of training support animals to be used by the handicapped, all trainers and their training support animals shall be included within those covered by this subsection.⁶

The Equal Accommodations Law defines a "support animal" as "any animal individually trained to do work or perform tasks to meet the requirements of a

⁴ 29 *Del. C.* §10142(d).

⁵ *Quaker Hill Place*, 498 A.2d at 179 (citing *Baker v. Connell*, 488 A.2d 1303, 1309 (Del. 1985)).

⁶ 6 *Del. C.* §4504(a).

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physically disabled person, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair or fetching dropped items.”⁷

The federal equivalent of Delaware's Equal Accommodations Law is found at Title III of the Americans with Disabilities Act of 1990 (“the ADA”). Delaware courts frequently rely on principles of federal law as an interpretive framework to inform their own decisions if the language of the federal statute is “substantially the same” as the Delaware statute.⁸ The pertinent provision of Title III of the ADA is sufficiently similar to Delaware’s Equal Accommodations Law to allow its use as a guide in this Court’s decision.⁹

The test for discrimination under Title III of the Americans with Disabilities Act is encapsulated in *McDonnell Douglas Corp v. Green*.¹⁰ The three-pronged

⁷ 6 *Del. C.* §4502(8). This definition is very similar to the Code of Federal Regulations, which defines a “service animal” as “any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair or fetching dropped items.” 28 C.F.R. § 36.104.

⁸ See *Giles v. Family Court of Delaware*, 411 A.2d 599, 601-02 (Del. 1980). See also *Riner v. National Cash Register*, 434 A.2d 375, 376 (Del. 1981).

⁹ The pertinent section of Title III of the Americans with Disabilities Act reads:
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).

¹⁰ *McDonnell Douglas Corp. v Green*, 411 U.S. 792, 802-03 (1973).

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McDonnell Douglas test establishes the burden of proof to be carried by each party in any discrimination case and requires that:

1. The plaintiff must establish a *prima facie* case of discrimination;
2. Once the *prima facie* case is established, the burden shifts to the defendant to produce evidence of a legitimate, non-discriminatory reason for plaintiff's denial of access;
3. After this production, the plaintiff retains the burden of persuading by a preponderance of the evidence, that the defendant's proffered reason was a pretext for discrimination.¹¹

The Panel applied this test in performing its analysis. It concluded that Mr. Thompson had established a *prima facie* case of discrimination by establishing that he was a handicapped person who was denied access to the casino with his support animal. It also concluded that the non-discriminatory reason asserted by Dover Downs for denying access was that its employees doubted that the animal was a support animal. Specifically, the Panel concluded that Dover Downs employees cited the dog's young age, the nylon cord affixing the support vest, and Mr. Thompson's refusal to answer questions about the dog's training. The Panel found that Dover Downs' reasons for denying Mr. Thompson's dog access were "unworthy of credence," that Mr. Thompson's access to the casino had "already been denied by the time the supervisors asked questions concerning the dog's training"; and that "the Panel does not believe that Thompson's answers to oral questions [by Dover Downs'

¹¹ *Uncle Willie's Deli*, 1998 WL 960709, at *4 (Del. Super.) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-03 (1973)).

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security officers] would have gained him entrance into the facility.”

While the parties have presented extensive analysis applying the *McDonnell Douglas* test to the facts, this case presents one central issue: under the Delaware Equal Accommodations Law, were the Dover Downs security people entitled to ask Mr. Thompson what tasks his dog was trained to perform, and, upon his refusal to answer, deny him access with the dog?

The Civil Rights Division of the United States Department of Justice has issued an ADA Business Brief which offers guidance to business owners to assist them in avoiding violations of the ADA in cases involving disabled individuals accompanied by support animals.¹² It is part of the record in this case. One of the guidelines in the Civil Rights Division's "ADA Business Brief" essentially duplicates the advice Shift Manager Beever testified he was given by the person answering the "ADA information line," and states:

Businesses may ask if an animal is a service animal or ask what tasks the animal has been trained to perform, but cannot require special ID cards for the animal or ask about the person's disability.¹³

Thus the Civil Rights Division of the Department of Justice has determined that under the ADA a business owner may ask the owner of a support animal what tasks the animal is trained to perform. This inquiry seems reasonable. I give deference to

¹² *Id.* See U.S. Department of Justice: Civil Rights Division, *ADA Business Brief*, available at www.ada.gov (Last visited December 27, 2004).

¹³ *Id.*

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the Civil Rights Division of the Department of Justices' interpretation of the ADA and hold that under the analogous Delaware Equal Accommodations Law, a business owner may ask what tasks the support animal has been trained to perform. This question may be asked if the animal is wearing a support vest, or if it is not and the disabled person simply identifies it as a support animal. In some cases those tasks may be a matter of common knowledge, such as in the case of a seeing eye dog. That was not the case here. The tasks to be performed by the support animal in this case were not readily apparent. Once the disabled person states the tasks that the support animal is trained to perform, access must be granted. If the disabled person refuses to answer the question, access of the disabled person with the animal may be denied.

It is notable in this case that one of the first questions, if not the first, that Officer Brown asked of Mr. Thompson, was what the dog was trained to do, i.e. what tasks the dog was trained to perform. Mr. Thompson refused to answer. Each security official who appeared on the scene repeated the question, and Mr. Thompson continued to refuse to answer. Since Mr. Thompson refused to identify the tasks his support animal was trained to perform, Dover Downs' refusal to allow access with the dog did not violate the Delaware Equal Accommodations Law.

The decision of the Panel does not duly recognize that a business owner may lawfully ask the disabled person what tasks his support animal is trained to perform. The Panel's failure to do so may be understandable given the absence of any prior Delaware case law on the issue. Nonetheless, its failure to do so constitutes legal error. In addition, since Dover Downs was entitled to ask what tasks the animal was trained to perform, the Panel's finding that the explanations for denial of access

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offered by Dover Downs “are unworthy of credence” loses any legal force. It is undisputed that Mr. Thompson was asked what his dog was trained to do and refused to answer. His position at the hearing was that he didn’t have to answer the question. Finally, the Panel’s finding that Mr. Thompson would have been denied access regardless of answers he might have given to Dover Downs’ questions is not supported by substantial evidence. Since Mr. Thompson would not explain what tasks his animal was trained to perform, the facts are undeveloped as to what might have happened if he had done so initially in response to Officer Brown’s question, or later when asked by Officer Bryan and then Shift Manager Beever.

IV. CONCLUSION

Dover Downs was permitted to ask Mr. Thompson what his service animal was trained to do. Because Mr. Thompson refused to answer, Dover Downs’ refusal to allow him access with his dog did not violate the Delaware Equal Accommodations Act. Accordingly, the decision of the Human Relations Commission is *reversed*.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
File