

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 12-16144
Non-Argument Calendar

D.C. Docket No. 0:11-cv-61472-RSR

BOBBY SAVAGE,

Plaintiff-Appellant,

versus

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(July 9, 2013)

Before TJOFLAT, PRYOR and ANDERSON, Circuit Judges.

PER CURIAM:

Bobby Savage appeals the grant of summary judgment to South Florida Regional Transportation Authority (“SFRTA”) on his claims of disability discrimination in violation of Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131 *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Savage argues that SFRTA intentionally discriminated against him by failing to inform him of the company’s “envelope policy” established for disabled passengers and that SFRTA employees failed to provide him with a reasonable accommodation as required by law. After thorough review of the record and the parties’ briefs, we affirm.

I.

SFRTA receives federal funding to operate commuter trains in the tri-county area of Broward, Miami-Dade, and Palm Beach counties in southern Florida. SFRTA does not sell tickets on board its commuter trains. Passengers have several options to purchase tickets before boarding, including: (1) contacting SFRTA’s customer service center; (2) purchasing tickets with the help of a station agent (agents are present at only a handful of SFRTA stations); (3) purchasing and loading money onto an “Easy Card”; or (4) using a ticket vending machine (“TVM”), which are located at every station. Until February 2012, SFRTA’s web site advertised one additional ticketing option for disabled passengers.¹ Disabled

¹ In February 2012, SFRTA discontinued the envelope policy.

passengers who did not purchase a ticket in advance and who were unable to purchase a ticket through the TVM could “request a self-addressed envelope from onboard security personnel, in order to mail payment after their trip.”² All passengers traveling without a valid ticket receive a Fare Evasion Warning (“FEW”) for their first violation, which does not require any legal action or payment of a fine. Subsequent violations, however, may trigger a citation and fine.

Plaintiff is a legally blind resident of Broward County, Florida, who uses SFRTA trains to travel in the tri-county area. On April 6, 2011, Savage boarded a train operated by SFRTA without a ticket.³ Traveling from an unmanned station, and without purchasing a ticket in advance, he argues that the only ticketing option of which he was aware was to use the station’s TVM. However, he testified that he could not use the TVM at the station because (1) he could not find the machine, and (2) he could not see to use the machine even if he could find it.⁴ Based on a telephone conversation he had with a SFRTA customer service representative, in which Savage reports that he was told that he could board the train without a ticket and pay when he arrived at his destination, Savage boarded the train. En route to his destination, he was issued a FEW for not having a ticket and threatened with

² This policy was only posted on the SFRTA web site.

³ The record shows that Savage had ridden the train several times without a ticket and had received three FEWs in 2009. Doc. 45-1 at 2-4.

⁴ Apparently, on other occasions, Savage relied on others to help him purchase a ticket from the TVM, or traveled from one of the manned stations. Although he does not dispute that the TVM complies with the ADA Accessibility Guidelines, Savage maintains that he could not use the TVM because of his disability.

ejection from the train unless he agreed to sign the FEW, which he did. Savage filed a discrimination claim against SFRTA, arguing that it was intentional disability discrimination that he was not told of the company's envelope policy and also discrimination for SFRTA not to make a reasonable accommodation for him to pay for his ticket at the end of his trip. He brought his claims under the ADA and Section 504 of the Rehabilitation Act.

The district court granted summary judgment to SFRTA on both of Plaintiff's claims. In granting summary judgment, the court found that SFRTA had satisfied the requirements of the ADA in providing a method for disabled individuals to obtain tickets to ride its trains. Because there was no discrimination against Savage because of his disability, the court found that he had failed to demonstrate any dispute of a material fact and hence granted summary judgment for SFRTA.

II.

We review the district court's order granting summary judgment *de novo*, viewing the facts in the light most favorable to the non-moving party and drawing all reasonable inferences in his favor. *Sims v. MVM, Inc.*, 704 F.3d 1327, 1330 n.2 (11th Cir. 2013). Summary judgment is proper if the movant shows that "there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

III.

Title II of the ADA states that “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.” 42 U.S.C. § 12132. Section 504 of the Rehabilitation Act provides, similarly, that “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794.⁵ Because causes of action brought under Title II of the ADA and Section 504 of the Rehabilitation Act are “essentially identical,” they can be analyzed together. *See Everett v. Cobb Cnty. Sch. Dist.*, 138 F.3d 1407, 1409 (11th Cir. 1998); *Cash v. Smith*, 231 F.3d 1301, 1305 (11th Cir. 2000) (“Discrimination claims under the Rehabilitation Act are governed by the same standards used in ADA cases, and therefore we will discuss these two claims together.” (citation omitted)).

“In order to state a Title II claim, a plaintiff generally must prove (1) that he is a qualified individual with a disability; (2) that he was either excluded from participation in or denied the benefits of a public entity’s services, programs, or activities, or was otherwise discriminated against by the public entity; and (3) that

⁵ It is undisputed that SFRTA receives federal funds for purposes of Section 504.

the exclusion, denial of benefit, or discrimination was by reason of the plaintiff's disability." *Bircoll v. Miami-Dade Cnty.*, 480 F.3d 1072, 1083 (11th Cir. 2007). A discrimination claim can proceed on theories of intentional discrimination, disparate treatment, or failure to make a reasonable modification. *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1212 n.6 (11th Cir. 2008).

The regulations implementing Title II of the ADA⁶ require that "[a] public entity must make its services, programs, or activities 'readily accessible' to disabled individuals." *Shotz v. Cates*, 256 F.3d 1077, 1080 (11th Cir. 2001) (citing 28 C.F.R. § 35.150 ("A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.")). Specifically addressing ticketing policies, the regulations require a public entity to "modify its policies, practices, or procedures to ensure that individuals with disabilities have an equal opportunity to purchase tickets . . . [t]hrough the same methods of distribution . . . [and] [u]nder the same terms and conditions as other tickets sold." 28 C.F.R. § 35.138. A public entity is required to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability." *Id.* § 35.130(b)(7).

⁶ *See Shotz v. Cates*, 256 F.3d 1077, 1079 n.2 (11th Cir. 2001) ("Because Congress explicitly authorized the Attorney General to promulgate regulations under the ADA, *see* 42 U.S.C. § 12134(a), the regulations 'must [be given] legislative and hence controlling weight unless they are arbitrary, capricious, or plainly contrary to the statute.'" (quoting *United States v. Morton*, 467 U.S. 822, 834, 104 S. Ct. 2769, 2776 (1984))).

It is undisputed that Savage, who is legally blind, is a qualified individual for purposes of the ADA and Section 504. The parties dispute whether SFRTA discriminated against Savage because of his disability. We agree with the district court that SFRTA's ticket-purchasing system complies with the regulations and guidelines, and hence that Savage has not been excluded from or denied the benefits of SFRTA's services because of his disability. The record shows that SFRTA had established its ticketing policy such that disabled passengers had an equal opportunity to purchase tickets for the train through the advanced purchasing, kiosk, and TVM options. Additionally, the evidence shows, and Savage does not dispute, that the TVMs were designed to meet the ADA Accessibility Guidelines.⁷ Furthermore, we agree that Savage has not demonstrated that he was intentionally discriminated against on the basis of his disability when he was not offered an envelope or informed of SFRTA's envelope policy. At the most, he has demonstrated that SFRTA's policy was ineffective (because it required the disabled passenger to request the envelope)—however, he has not made out a claim for intentional discrimination.⁸

⁷ And although SFRTA might more effectively serve its visually impaired passengers by adding a noise-emitting device to the TVM, we find, as did the district court, that this does not provide a legal basis for ordering SFRTA to do more than the law requires.

⁸ Additionally, taking Savage's statements as true, we find it unfortunate that he was threatened with eviction from the train after being told by a customer service agent that he could ride without a ticket and pay at his destination. However, this is not a discriminatory ticketing policy on the part of SFRTA.

Because Savage has failed to show that SFRTA's ticketing policy was discriminatory, we find that SFRTA was not required to make additional reasonable modifications to its ticketing policy. Therefore, the district court's order granting summary judgment to SFRTA is affirmed.

AFFIRMED.