

STATE OF MICHIGAN
COURT OF APPEALS

AMOS WELLS,

Plaintiff-Appellant,

v

COUNTY OF BAY,

Defendant-Appellee.

UNPUBLISHED

January 19, 2006

No. 257610

Bay Circuit Court

LC No. 02-004063-CL

Before: Bandstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting defendant summary disposition pursuant to MCR 2.116(C)(10) of his claim under the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.* We affirm in part and reverse in part.

Plaintiff is an amputee. To cope with the pain associated with the amputation of his leg, plaintiff had a spinal cord stimulator implanted. Among other things, plaintiff testified that he was advised not to pass through metal detectors, as they could destroy his implant. Thereafter, plaintiff sought to attend a hearing at defendant's court facility. He presented identification to defendant's security personnel verifying his implant and requested that he be permitted to bypass the metal detector. This request was refused. Plaintiff was presented with the options of passing through the metal detector or leaving defendant's facility. He chose the former and was allegedly injured when, soon after passing through the metal detector, his stimulator ceased working due to a disconnected lead wire. Plaintiff nevertheless attended the court hearing.

We review the circuit court's determination on a summary disposition motion *de novo*. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim; where there is no genuine issue of material fact the moving party is entitled to judgment as a matter of law. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). In reviewing a motion, we must consider "the pleadings, depositions, admissions, and documentary evidence" submitted by the parties in the light most favorable to the non-moving party. MCR 2.116(G)(5); *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 721; 691 NW2d 1 (2005). This Court also reviews *de novo* questions of statutory interpretation. *Ayar v Foodland Distribs*, 472 Mich 713, 715-716; 698 NW2d 875 (2005).

The PWDCRA, formerly the Handicappers' Civil Rights Act, prohibits discrimination on the basis of disability. *Spagnuolo v Rudds # 2, Inc*, 221 Mich App 358, 362; 561 NW2d 500 (1997). "It requires persons to accommodate a [disabled person] for purposes of public accommodation unless they can demonstrate that the accommodation would impose an undue hardship." *Id.*, citing MCL 37.1102(2). "It forbids persons to deny individuals 'the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a place of public accommodation' because of a [disability] unrelated to the use and benefit thereof." *Spagnuolo, supra* at 362, citing MCL 37.1302(a). The PWDCRA is to be construed reasonably and liberally to effectuate its remedial purposes. *Bachman v Swan Harbour Ass'n*, 252 Mich App 400, 414; 653 NW2d 415 (2002).

In order to make a prima facie showing under the PWDCRA, a plaintiff must show that the defendant has failed to accommodate his disability, i.e., a plaintiff must demonstrate "that he is able to benefit from services provided by a place of public accommodation and that he is being denied an 'equal opportunity' to do so because of a 'physical or mental characteristic.'" *Cebreco v Music Hall*, 219 Mich App 353, 359; 555 NW2d 862 (1996), quoting MCL 37.1103(e)(1). The facility then has a duty to accommodate the person, i.e., the burden of proof shifts to the defendant to establish that the accommodation required would impose an undue hardship. *Cebreco, supra* at 360.

The circuit court granted defendant summary disposition on the basis that plaintiff received access to defendant's facility. Access, however, is not the PWDCRA's requirement. Rather, "full and equal enjoyment" of the public service is required under its terms. § 1302(a).¹ This connotes something more than bare access. In providing its facility, defendant is required to accommodate persons with disabilities. § 1102(2). Mere access does not equate to accommodation under the PWDCRA. See *Cebreco, supra* at 360-361.

We conclude that viewed in the light most favorable to plaintiff, plaintiff established a prima facie case under the PWDCRA. *Nastal, supra* at 721; *Cebreco, supra* at 360-361. Plaintiff presented evidence that he requested to be allowed to bypass the metal detector due to his implant, showed the security officer his Medtronic card explaining that he had such an implant, and that the security officer refused plaintiff's request, stating that plaintiff could either go through the metal detector or leave the facility. Plaintiff thus presented evidence that defendant failed to accommodate him, and defendant presented no evidence that such an accommodation would have imposed an undue hardship on defendant.

¹ Defendant argues that *Spagnuolo, supra*, precludes plaintiff's claim as he was granted access in any event. Defendant misinterprets *Spagnuolo*, however. The *Spagnuolo* Court concluded that the plaintiff could not sustain a cause of action under the PWDCRA because there was no question that the plaintiff was "fully accommodated during her visit to defendant's restaurant," despite the fact that one of the entrances, designated as a handicapped entrance but no different than any other entrance, was inaccessible on her arrival at the restaurant. *Id.*, 221 Mich App at 362-363.

Defendant argues in the alternative that it was nevertheless entitled to summary disposition because plaintiff is not disabled under the terms of the act. The circuit court concluded that defendant was not entitled to summary disposition on this basis.

For purposes of public accommodations and services, the PWDCRA defines disability as “[a] determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic . . . is unrelated to the individual's ability to utilize and benefit from a place of public accommodation or public service.” MCL 37.1103(d)(i)(B). Article 3 of the PWDCRA provides that the full and equal enjoyment of facilities of public service shall not be denied because of a disability unrelated to the individual’s ability to utilize and benefit from the facilities, or because of the use of an adaptive device or aid. MCL 37.1302(a).

Plaintiff suffers from a determinable physical characteristic- he is an amputee. *Sanchez v Lagoudakis*, 217 Mich App 535, 542; 552 NW2d 472 (1996), rev’d on other grds 458 Mich 704; 581 NW2d 257 (1998). This characteristic is unrelated to his ability to utilize defendant’s courthouse, as evidenced by his prior and subsequent use of the same. § 1103(d)(i)(B). Plaintiff also uses an adaptive device or aid, an implanted spinal cord stimulator, to assist him with his disability.

Whether viewed as a denial of full and equal enjoyment based on plaintiff’s disability or based on the adaptive device or aid necessitated by his disability (the implanted spinal cord stimulator), the circuit court thus properly denied defendant summary disposition on this basis.

Lastly, defendant presents no authority in support of his remaining argument that plaintiff refused a reasonable accommodation by failing to turn off his Medtronic device while he went through the metal detector. While this fact may have evidentiary significance, it does not negate defendant’s duty to accommodate under the act.

We affirm the circuit court’s denial of summary disposition to defendant on the question whether plaintiff is disabled under the PWDCRA. We reverse the court’s grant of summary disposition on the question whether defendant accommodated plaintiff’s disability. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Helene N. White