

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UNPUBLISHED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.

BANDSTRA, P.J., (*concurring*).

I concur with the decision of the majority opinion, but question its conclusion that plaintiff's access to the courthouse was denied because of a "disability."

A "disability" is defined by the PWDCRA primarily to mean "[a] determinable physical or mental characteristic of an individual. . . ." MCL 37.1103(d)(i). While plaintiff alleges that he has conditions that fall within that definition, i.e., an amputated leg and associated pain, he does not allege that either of those conditions was the reason that his access to the courthouse was limited by the security procedures employed by defendant. In other words, his claim is not that his lost leg or associated pain prevented him from passing through the metal detector. Instead, his claim is that he had difficulty passing through the detector because of an implanted spinal cord stimulator. I question whether such a stimulator is a "physical or mental characteristic" of plaintiff.

Nonetheless, MCL 37.1302 also prohibits denial of the full and equal enjoyment of the facilities of a place of public service because of the use of an adaptive device or aid. The implanted spinal cord stimulator is an adaptive device or aid, the use of which allegedly prevented plaintiff from the full and equal enjoyment of the courthouse.¹

/s/ Richard A. Bandstra

¹ I note that the "prohibited conduct" section of Article 3 does not apply "where permitted by law." MCL 37.1302. Defendant does not suggest that the security procedures that plaintiff complains about in this case were permitted by some other law.

