

[J-59-1999]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

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| GERALDINE TROWBRIDGE AND GORDON TROWBRIDGE, HER HUSBAND, | : | No. 169 M.D. Appeal Docket 1998 |
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| Appellants | : | Appeal from the Order of the Superior |
| | : | Court entered January 20, 1998 at No. |
| | : | 1082PHL97, affirming the judgment |
| | : | entered January 27, 1997 at No. 90-CV- |
| v. | : | 3960, of the Court of Common Pleas of |
| | : | Lackawanna County, Civil Division. |
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| THE SCRANTON ARTIFICIAL LIMB COMPANY, | : | ARGUED: April 26, 1999 |
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| Appellee | : | : |
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CONCURRING OPINION

MR. JUSTICE CAPPY

DECIDED: March 23, 2000

I join in the majority opinion, however, I write to disassociate myself from that part of the opinion that concludes that the Pennsylvania Human Relations Act requires a duty of reasonable accommodation. Jurisprudentially, I do not believe that the court is required to address this crucial question of statutory interpretation, resolution of which will have far reaching ramifications.

The reason it is not necessary for our court to reach the issue of reasonable accommodation is that Appellee has never contended that it is not required to reasonably accommodate under the PHRA. On the contrary, Appellee has implicitly, if not expressly, acknowledged its agreement to reasonably accommodate and has contended in every pleading filed on its behalf that it has accommodated Ms. Trowbridge. See, Answer and

New Matter Raising Affirmative Defenses to Plaintiffs' Amended Complaint, Reproduced Record (RR), 40-43, 46-48, 50, 52, and especially, New Matter III, "Fulfillment of Duty To Make Reasonable Accommodations," RR. 59-61. Moreover, Appellee does not assert the lack of a duty to reasonably accommodate under the PHRA in its new matter.

The existence of a duty of reasonable accommodation under the PHRA is an issue of great import and involves serious consideration of the legislature's intent. The PHRA does not expressly recognize a duty to reasonably accommodate. I note that this court has suggested that silence on the part of the General Assembly is an indication that it did not intend to grant a particular right, or to impose a particular duty. See Wertz v. Chapman Township, 1999 Pa. Lexis 3750 (Pa. December 21, 1999); Hoy v. Angelone, 720 A.2d 745 (Pa. 1998). However, I also acknowledge that certain language in the PHRA could suggest a duty of reasonable accommodation. See, 43 P.S. §952(b)(it is the public policy of the Commonwealth to "foster the employment of all individuals in accordance with their *fullest capacities* regardless of their ... handicap or disability....")(emphasis supplied); 43 P.S. §952(a)("the ... failure to utilize the productive capacities of individuals to their *fullest extent*, deprives large segments of the population of the Commonwealth of necessary earnings")(emphasis supplied); see also, Jenks v. Avco, 490 A.2d 912, 916 (Pa. Super. 1985). Furthermore, the regulations promulgated pursuant to the PHRA mandate reasonable accommodation. 16 Pa. Code §44.5(b), §44.14(a).

Whether there exists a duty to reasonably accommodate under the PHRA is a decision of great consequence. I believe that the court should resolve this question only when it is squarely before us, and after the advocates have had an opportunity to fully brief and argue the issue.

Mr. Justice Zappala joins this concurring opinion.