

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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KATHLEEN ERMER,

Plaintiff,

v.

TAYLOR COUNTY, WISCONSIN;  
SUSAN HARDY, Director,  
Taylor County Human Services; and  
DAN BROST,

Defendants.  
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OPINION AND  
ORDER

05-C-346-C

In this civil action for monetary and declaratory relief brought under the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134, plaintiff Kathleen Ermer contends that her rights were violated when defendants refused to allow her to bring her “assistance dog” into the building housing Taylor County Human Services. Plaintiff filed a motion for summary judgment in January 2006. In an order dated January 13, 2006, I denied plaintiff’s motion, explaining that the motion did not comply with this court’s summary judgment procedures. Subsequently, defendants filed a motion for summary judgment, which is presently before the court. Plaintiff was instructed that she had until February 10, 2006, to file a brief

opposing defendants' motion and to respond to the proposed facts defendants submitted with their motion. On February 11, plaintiff sent the court a letter requesting additional time to respond to defendants' motion. In an order dated February 22, 2006, Magistrate Judge Crocker extended plaintiff's deadline to March 3, 2006. Despite the extended deadline, plaintiff has not submitted anything in response to defendants' motion for summary judgment. Therefore, the only facts before the court are those submitted by defendants. Because plaintiff has not submitted a response to these facts and has not proposed new facts of her own, I will assume plaintiff has stipulated to defendants' proposed facts and I will accept them as true. Defendants' motion for summary judgment will be granted because plaintiff has not adduced any evidence from which a reasonable jury could infer that defendants refused to allow her to bring her "assistance dog" into the building housing Taylor County Human Services in violation of the Americans with Disabilities Act.

#### UNDISPUTED FACTS

Plaintiff receives psychological treatment from the Taylor County Department of Human Services. In the past, plaintiff was allowed to bring a small white terrier dog into the Taylor County building where she received therapy. Later, plaintiff was also allowed to bring a large German Shepard dog to her therapy sessions. On several occasions, the German

Shepard was disruptive and other patients complained about the dog's presence. On one occasion, the German Shepard injured an employee in the building. After these incidents, plaintiff was told that if she wanted to bring her dog into the building, she would have to schedule her appointments for particular hours, which defendants had chosen as hours when the presence of a dog would be less disturbing for other patients in the building.

Plaintiff does not suffer from a disability that requires the use of a service dog. Plaintiff's German Shepard is not trained to assist disabled persons and its presence was not necessary to enable plaintiff to access the facilities and services offered by Taylor County.

## DISCUSSION

The Americans with Disabilities Act prohibits discrimination against qualified persons with disabilities. Title II of the Act is concerned with public entities. It prohibits such entities from excluding qualified persons with disabilities from participation in or receiving the benefits of the services, programs or activities offered by the entity and from discriminating against qualified disabled persons. 42 U.S.C. § 12132. "Public entity" includes any department, agency or instrumentality of a state or local government. 42 U.S.C. § 12131(1)(B).

The ADA defines a "qualified individual with a disability" as:

an individual with a disability who, with or without reasonable modifications

to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 U.S.C. 12131.

A person is disabled within the meaning of the ADA if she suffers from a physical or mental impairment that substantially limits one or more major life activities. 42 U.S.C. § 12102(2). Major life activities include “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.” 29 C.F.R. § 1630.2(I) (1998). A major life activity is “substantially limited” when the person is unable to perform it or is significantly restricted in the manner, condition or duration in which she can perform it in comparison to the general population. 29 C.F. R. § 1630.2(j) (1998); Byrne v. Board of Education, 979 F.2d 560, 563 (7th Cir. 1992).

Also, 28 C.F.R. 35.130(b)(7) provides that

[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

Although plaintiff contends that defendants violated her rights under the ADA, she has adduced no evidence that she was entitled to protection under the ADA because she has

not shown that she was “disabled,” as defined in the statute. If plaintiff had shown that she was disabled, then defendants would have been required to accommodate her disability. If plaintiff’s disability were such that she required a service dog, defendants would have had to permit her to enter the Taylor County building accompanied by her dog.

However, plaintiff has failed not only to introduce facts showing she was entitled to protection under the ADA, but to rebut the showing defendants have made that she did not suffer from a disability that required the company of a service dog. Therefore, even though defendants imposed limitations on plaintiff’s ability to bring her dog into the Taylor County building, I conclude that they did not violate the ADA. Because plaintiff’s claim that her rights under the ADA were violated is without merit, I will grant defendants’ motion for summary judgment.

ORDER

IT IS ORDERED that the motion for summary judgment filed by defendants Taylor County, Susan Hardy and Dan Brost is GRANTED on plaintiff's claim that defendants violated her rights under the Americans with Disabilities Act.

The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 23d day of March, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge