

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

STEPHEN M. BOTTILA,

Petitioner,

v.

CITY OF MADISON and
MADISON METRO TRANSIT,

Respondent.

ORDER

08-00433-slc

Because Judge Shabaz is on a medical leave of absence from the court for an indeterminate period, the court is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. It is this court's expectation that the parties in a case assigned to the magistrate judge will give deliberate thought to providing consent for the magistrate judge to preside over all aspects of their case, so as to insure that all cases filed in the Western District of Wisconsin receive the attention they deserve in a timely manner. At this early date, consents to the magistrate judge's jurisdiction have not yet been filed by all the parties to this action. Therefore, for the sole purpose of issuing this order, I am assuming jurisdiction over the case.

This is a proposed civil action for monetary and injunctive relief brought by petitioner Stephen Bottila for violations of Title II of the Americans with Disabilities Act. 42 U.S.C. §§ 12131-12134. Petitioner has requested leave to proceed under the in forma pauperis statute, 28 U.S.C. §1915.

In a separate order entered today, 08-c-432-slc, I determined from petitioner's affidavit of indigency that he was qualified to proceed without prepayment of fees and costs of filing his action; that determination applies to this action as well. However, pursuant to 28 U.S.C. § 1915(e)(2), if a litigant is requesting leave to proceed in forma pauperis, the court must deny leave to proceed if the action is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks money damages from a defendant who is immune to such relief.

I conclude that petitioner has failed to allege a denial of public services, programs or activities by a public entity and therefore does not state a claim under Title II of the ADA. Accordingly, he will be denied leave to proceed on his claim against the City of Madison.

As an initial matter, petitioner names Madison Metro Transit as a respondent in this suit. Madison Metro Transit is an entity of the City of Madison and therefore, for the purpose of this suit, is the same legal entity.

In his complaint, petitioner alleges that he is an individual with a disability and that between November 1, 2007 and December 25, 2007, he was discriminated against and

harassed by various drivers of Madison Metro Transit buses. In particular, petitioner alleges that on eight separate occasions bus drivers required proof of his disability or of the training of his service dog or showed aggressive attitudes before allowing him to ride on the bus. Petitioner does not allege that a bus driver denied him the ability to ride the bus with his service dog.

Title II of the Americans with Disabilities Act prohibits discrimination by public entities against a qualified individual with a disability. 42 U.S.C. §§ 12131-34. Specifically, individuals cannot be “be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity.” 42 U.S.C. § 121312. In addition, it places a burden on public entities to make “reasonable modifications to rules, policies, or practices” to ensure that people with disabilities have access to these services. 42 U.S.C. § 12131 (2).

Although petitioner may believe that the bus drivers’ requests for proof of his disability and the training of his service dog are objectionable and violate his rights, he has failed to allege that he has been denied access to public transportation or other services. Allowing only documented service animals on a public bus is a reasonable modification to practices that ensures that people with disabilities have access to public transportation. At worst, the behavior of the bus drivers could be viewed as insensitive, but it does not constitute a violation of petitioner’s rights or restrict his access to public services. Thus,

petitioner has failed to state a claim against the City of Madison and his suit will be dismissed.

ORDER

IT IS ORDERED that petitioner Stephen Bottila is DENIED leave to proceed in forma pauperis on his claim that the City of Madison violated his rights under Title II of the Americans with Disabilities Act. This suit is DISMISSED for petitioner's failure to state a claim upon which relief may be granted. The clerk of court is directed to close the file.

Entered this 3rd day of September, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge