

Third Circuit Ruling Potentially Expands Application of American's With Disabilities Act to Create Cause of Action for Police Actions Alleged to be Discriminatory

A Third Circuit decision, issued on March 20, 2018, potentially opens the door to a broader application of the Americans with Disabilities Act (ADA) to impose liability on police departments. In *Haberle v. Troxell*, No. 16-2074, a three judge panel of the United States Court of Appeals for the Third Circuit substantially upheld the dismissal of a lawsuit by the United States District Court for the Eastern District of Pennsylvania, but directed that plaintiff be given an opportunity to amend her complaint to attempt to enunciate a cause of action under Title II of the ADA.

In May 2013, Timothy Nixon, who had a history of mental health issues including severe depression, informed his girlfriend Nicole Aberle that he was feeling suicidal. He broke into a friend's home and stole a handgun, and then went to his cousin's apartment. Ms. Haberle called the Borough of Nazareth Police Department, in fear that he would attempt suicide. An officer obtained an arrest warrant, and several police officers converged on Mr. Nixon's location. Outside the apartment, the officers considered setting up a perimeter and summoning the State Police to send crisis negotiators, but an officer of the Nazareth P.D. called the others cowardly (in more colorful language) and said he would enter the apartment immediately because "this is how we do things in Nazareth." The officer knocked on the door and announced that he was a police officer. Mr. Nixon then immediately went into one of the bedrooms and fatally shot himself.

Ms. Haberle, as the administratrix of Mr. Nixon's estate, brought suit against the officers and the Borough of Nazareth, among other public entities and officials, raising a number of legal claims, including a claim that the Borough violated the ADA by failing to modify or adopt police department policies which would protect disabled people. The district court, by Judge Leeson, granted the defendants a complete dismissal, and Ms. Haberle appealed.

A three judge panel of the Third Circuit, (Jordan, Greenaway, Rendell) heard the case and the opinion was authored by Judge Jordan. The court substantially upheld nearly all of the rulings of the district court, finding that there was no Fourth Amendment "seizure," and that the more aggressive police officer's actions did not constitute a "state created danger." It did not think that the police officer's actions shocked the conscience, and noted that the fact that one officer chose to knock while the others suggested waiting "manifests only a disagreement over how to manage a risk, not a disregard of it."

Turning to the ADA claim, the Court first agreed with the district court that Ms. Haberle failed to state a claim under the ADA, but the Court then engaged in a lengthy consideration of how the ADA might apply to police activities. First, the Court held that Title II of the ADA does generally apply to arrests by police officers. Title II claims under the ADA require proof of four elements: (1) a person must demonstrate that he is a "qualified individual;" (2) with a disability; (3) [who] was excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was subjected to discrimination by any such entity; (4) by reason of his disability. The Court held that "a potentially violent person with mental health problems who, while possessing a gun, barricades himself in another person's apartment" could be a "qualified individual."

The Court considered the second element - whether an arrestee may be a person "with a disability," - and without much discussion considered that to be obviously true. Skipping the third element, the Court considered element four, and wrote: "that the claimant has been excluded from a service, program, or activity or discriminated against by reason of his disability, is also one that can be satisfied in the context of

an arrest." The Court succinctly wrote that this can be satisfied "if the arrestee's disability played a role in the decision making process and had a determinative effect on the outcome of that process," and equated this to a "but for" causation requirement.

The Court then considered the element it considered the most complex - #3 - whether arrests made by police officers are "services, programs, or activities of a public entity," or alternatively, whether police officers may be liable under the ADA for "subject[ing a qualified individual] to discrimination" while effectuating an arrest. The Court noted that the final phrase "subjecting to discrimination," is easier to apply than deciding whether arrests are "services, programs, or activities," and wrote:

"[P]olice officers may violate the ADA when making an arrest by failing to provide reasonable accommodations for a qualified arrestee's disability, thus subjecting him to discrimination."

The Court cited for support to cases from the 8th and 5th Circuits which it stated reached a similar conclusion that arrests are subject to Title II of the ADA.

Before wrapping up, the Court then made a series of additional holdings of importance - it held that even if the ADA applies, compensatory damages would not be recoverable without proof of intentional discrimination, requiring pleading of "deliberate indifference to the risk of an ADA violation;" and that municipalities cannot be held liable for "considering yet not adopting new policies," lest that create a deterrent to voluntary reform.

There is already a plenitude of legal theories through which a police department can be sued for officers' peace-keeping activities, and this holding invites yet another theory of liability - that officers discriminated against a plaintiff on the basis of their disability. Notably, this is a cause of action premised on Title II of the ADA, and there is ample precedent holding that individuals cannot be sued under Title II, but only governmental bodies. Accordingly, such a claim is probably not viable against individual police officers, but only the political subdivisions to which their police departments are attached. The Haberle case raises many more questions than it answers, leaving much for future jurists to sort out: Can a police officer's decision to arrest or detain a person who is perceived to be mentally ill, itself, constitute an act of discrimination against their "disabled" status? What "accommodations" are police departments expected to provide to avoid accusations of discrimination? These questions remain to be addressed in the future.

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