

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

OHIO CIVIL RIGHTS COMMISSION,	:	
Plaintiff-Appellant,	:	CASE NO. CA2009-06-085
- vs -	:	<u>OPINION</u>
	:	11/2/2009
MELLON RIDGE, INC., et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 05CV64506

Richard Cordray, Ohio Attorney General, Duffy Jamieson, Civil Rights Section 30 East Broad Street, 15th Fl., Columbus, Ohio 43215, for plaintiff-appellant

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BRESSLER, P.J.

{¶1} Plaintiff-appellant, Ohio Civil Rights Commission (OCRC), appeals from the Warren County Court of Common Pleas' decision granting judgment in favor of defendant-appellee, Mellon Ridge Inc., the owner and operator of Pine Crest Villa (Pine Crest), a residential care facility, in an action alleging unlawful discriminatory practices.

{¶2} Rodney E. Jackson, on whose behalf OCRC brought its action, is a 45-year-old individual with numerous alleged health problems, which include, among others, obesity, high

blood pressure, hypertension, lung disease, sleep apnea, coronary artery disease, "frontal brain lobe damage," "testicular disorder," severe depression, anxiety attacks, "perhaps some grandiose delusions," and a "problem with constipation." Jackson has difficulty walking and uses a wheelchair to "deal with the falls" that began shortly after he suffered a stroke in the early 1990s.

{¶3} In 1999, at the suggestion of Dr. John Terlesky, a psychologist with Warren County Mental Health Services, Jackson acquired a dog from Four Paws for Ability (Four Paws), an agency that places service dogs with disabled individuals. According to Karen Shirk, the executive director of Four Paws, the dog Jackson received "didn't have the aptitude" to become a "mobility assistance dog, or do seizure work, or work with an autistic child," and therefore, based on Jackson's psychiatric diagnosis, the dog was suitable to provide him only with emotional support. Jackson named the dog "Lieutenant."¹

{¶4} In the early morning hours of October 30, 2003, Jackson, who was accompanied by Lieutenant, drove to the Bethesda North Hospital (Hospital) emergency room where he complained of severe anxiety. Believing Jackson to be "kind of delusional," Hospital staff contacted Jeff Rhein, a crisis therapist with Hopewell Crisis Services, a contract agency associated with Warren County Mental Health Services. After speaking with Jackson, who indicated he was "stressed where he was living," Rhein believed Jackson would benefit from receiving respite care at Pine Crest, a residential care facility that was occupied exclusively by disabled individuals. After discussing the matter with Dr. Emmett Cooper, the medical director of the Warren County Mental Health Services, Rhein contacted Pine Crest to inquire if a "crisis stabilization bed" was available and, if so, to make

1. Before being taken in by Four Paws, Lieutenant was part of the Rover Rehab Program at the Warren County Correctional Institute. The Rover Rehab Program gives inmates the opportunity to train dogs while incarcerated. Evidence also indicated Lieutenant received some specialized training from Circle Tail, Inc., a non-profit organization that trains and places assistance dogs, where the animal was taught to, among other things, provide "bracing" in an effort to prevent Jackson from falling.

arrangements to admit Jackson with Lieutenant, his dog, later that afternoon.

{¶15} Upon contacting Pine Crest, Rhein spoke with Jennifer Peters, a nurse who "took care of the admissions." Peters informed Rhein that space was available, but, since Jackson was accompanied by his dog, he needed to talk with Brenda Cain, Pine Crest's general manager. However, when Rhein's attempts to contact Cain proved unsuccessful, Peters contacted Cain, who, in turn, contacted Oscar Jarnicki, the owner of Mellon Ridge, Inc., and its subsidiary, Pine Crest. After speaking with Jarnicki, who is a licensed nursing home administrator, Cain informed Peters that it was "okay to [admit Jackson and Lieutenant] as long as the proper documents and vaccination records and medical necessities for the dog were received."

{¶16} After speaking with Cain, Peters then contacted Rhein and informed him that Jackson would be admitted with Lieutenant so long as she received the dog's vaccination records. Rhein then contacted Countryside Animal Hospital (Countryside), Lieutenant's current veterinarian, in an attempt to retrieve the necessary documentation.² However, instead of obtaining Lieutenant's veterinary records, a Countryside receptionist informed Rhein that "there would need to be a release filed." Rhein then relayed this information to Jackson, who, after refusing to sign a release, instructed the Countryside receptionist to fax its records on Lieutenant to Pine Crest.³ Jackson then left the Hospital with Lieutenant and drove home to pick up clothes and dog food.

{¶17} That afternoon, Pine Crest received a two-page fax from Countryside. However, the fax did not contain any information regarding Lieutenant's vaccinations.

2. Jackson testified that before taking Lieutenant to Countryside he was "seeing a Dr. [Thomas] Meade at Lebanon Animal Hospital." However, Jackson made no attempt to contact the Lebanon Animal Hospital to obtain Lieutenant's records, if any, from Dr. Meade.

3. Specifically, Rhein testified that after he informed Jackson that Countryside needed "some sort of release," Jackson told him "I'm not going to sign it, but hand me the phone." Rhein then testified that he heard Jackson tell the Countryside receptionist, "It's me. You can release on the records on the animal."

Instead, according to Peters, the fax contained information "on the dog's stool pattern." Thereafter, upon receiving the fax about Lieutenant's stool, which "wasn't what [Pine Crest] was looking for," Peters attempted to contact Countryside "a couple times" in order to obtain the records necessary to admit Jackson with his dog. Peters' efforts to obtain the necessary records proved futile, however, as Countryside had already closed its office for the evening.

{¶8} After failing to contact Countryside, Peters then contacted Cain and informed her that she had not received the documentation necessary to admit Jackson with Lieutenant. Cain, complying with Pine Crest written policy, instructed Peters not to admit Jackson because she had not received the necessary paperwork.⁴ Peters then called Rhein to inform him that she had not received the necessary information on Lieutenant, and therefore, Jackson could not be admitted into Pine Crest with his dog. Because Jackson had already left the Hospital, Rhein informed Peters that she needed to notify Jackson that he could not be admitted with Lieutenant when he arrived at the facility.

{¶9} Shortly after arriving at Pine Crest, and while he was sitting in the lobby, Peters informed Jackson that she had not received his dog's vaccination records, and therefore, he could not be admitted to the facility with Lieutenant. In response, Jackson became upset, indicated that he was the Chief of the Morrow Police Department, and threatened to have Peters arrested and placed in handcuffs. After making these threats, Jackson left Pine Crest with Lieutenant and drove home.

{¶10} The next day, a Mellon Ridge employee contacted Rhein and offered to admit Jackson and Lieutenant into its Pine Ridge facility. However, Jackson refused the invitation

4. {¶a} Pine Crest's written policy regarding the admission of animals states, in pertinent part:

{¶b} "This facility will not accept pets from prospective admitted clients unless authorized by the administrator in advance. The pet *must be evaluated by a vet and be up to date on all vaccinations* and client *must provide proof of such before admittance.* * * * *All pets will be evaluated* on an individual basis this includes but not limited to: seeing eye dogs, therapeutic animals, pets used for companionship to enhance mood, and all pets used by those with a mental or physical disability." (Emphasis added)

because he believed Jarnicki, Mellon Ridge's owner, was a member of the Ku Klux Klan.

{¶11} On May 5, 2004, some five months after he was denied admission to Pine Crest, Jackson filed a charge with OCRC alleging unlawful discrimination against Mellon Ridge based on race and disability. In response, OCRC conducted an investigation from which it ultimately determined that there was probable cause to believe Mellon Ridge unlawfully discriminated against Jackson based on his alleged disability in violation of R.C. 4112.02(H), also known as Ohio's Fair Housing Act. On June 29, 2005, after attempts to conciliate proved unsuccessful,⁵ and after being authorized by the Office of the Attorney General, OCRC filed a complaint against Mellon Ridge in the Warren County Court of Common Pleas alleging that it had violated a number of provisions found in Ohio's Fair Housing Act.

{¶12} In May of 2006, a two-day bench trial was conducted before a magistrate, during which time testimony was heard from nine witnesses, including Jackson. Over a year later, on May 13, 2007, the magistrate issued a decision granting judgment in favor of Mellon Ridge. In its decision, the magistrate determined that Mellon Ridge "did not discriminate against Jackson on the basis of *disability* * * *." Instead, the magistrate determined that Mellon Ridge refused to admit Jackson with Lieutenant, his dog, into its Pine Ridge facility "due to a lack of the dog's vaccination records." On June 5, 2009, after OCRC filed a number of objections, the trial court adopted the magistrate's decision in its entirety. OCRC now appeals from the trial court's order.

{¶13} In its brief, OCRC provides this court with a smorgasbord of arguments in an effort to support its claim that the trial court erred by adopting the magistrate's decision

5. Jarnicki, the owner of Mellon Ridge, testified that he was "more than willing to meet with Mr. Jackson, and the commission, to try to come to some resolution of this matter." However, according to Jarnicki, Jackson was "not interested in meeting, and was interested in monetary settlement."

granting judgment in favor of Mellon Ridge. However, without diving into *either* of the parties' arguments, which, as the magistrate found, and to which we agree, "merely [muddy] the water and take focus off the more germane issues," we affirm the trial court's decision.

{¶14} In ruling on objections to a magistrate's decision, Civ.R. 53(D)(4)(d) requires a trial court to undertake an independent review of the objected matters to ascertain whether the magistrate properly determined the factual issues and appropriately applied the law. *Koeppen v. Swank*, Butler App. No. CA2008-09-234, 2009-Ohio-3675, ¶26; see, also, *McCarty v. Hayner*, Jackson App. No. 08CA8, 2009-Ohio-4540, ¶17, citing *Knauer v. Keener* (2001), 143 Ohio App.3d 789, 793-794. In so doing, a court may reject or adopt the magistrate's decision in whole or in part, and with or without modification. Civ.R. 53(D)(4)(b); *Hampton v. Hampton*, Clermont App. No. CA2007-03-033, 2008-Ohio-868, fn. 3. In turn, the trial court has the "ultimate authority and responsibility over the [magistrate's] findings and rulings," and its independent analysis may result in a different conclusion than that of the magistrate. *State ex rel. Hrelec v. Campbell*, 146 Ohio App.3d 112, 117, 2001-Ohio-3425, quoting *Hartt v. Munobe*, 67 Ohio St.3d 3, 5, 1993-Ohio-177; *McElrath v. Travel Safe.com Vacation Ins.*, Trumbull App. No. 2002-T-0085, 2003-Ohio-7206, ¶25. As a result, the trial court's rulings on objections to a magistrate's decision lies within its sound discretion and will not be reversed on appeal absent an abuse thereof. *Setzekorn v. Kost USA, Inc.*, Warren App. No. CA2008-02-017, 2009-Ohio-1011, ¶9; *Bartlett v. Sobetsky*, Clermont App. No. CA2007-07-085, 2008-Ohio-4432, ¶8, citing *Foster v. Foster*, 150 Ohio App.3d 298, 2002-Ohio-6390, ¶9. An abuse of discretion is more than error of law or judgment; it requires a finding that the trial court's attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶15} Throughout all of its assignments of error, OCRC insists that Mellon Ridge engaged in unlawful discriminatory practices in violation of Ohio's Fair Housing Act by

refusing to admit Jackson as a client into Pine Crest, a resident care facility, because he was accompanied by Lieutenant, his dog, an alleged "service animal," thereby discriminating against him based on his purported disabilities.⁶ However, upon a thorough review of the record, including the transcript of the two-day bench trial, it is clear, just as the magistrate found, and to which the trial court agreed, Mellon Ridge's refusal to admit Jackson as a client into their facility was not based on any unlawful discrimination against individuals with service animals, but instead, was simply "due to a lack of the dog's vaccination records," something the Pine Crest staff required of *all* prospective clients seeking to be admitted with *any* animal.⁷ See *McIntyre v. Northern Ohio Properties* (1979), 64 Ohio App.2d 179, 183 (no evidence of discriminatory act where residential policy applied to *all* residents).

{¶16} In addition, although it should go without saying, it is clear that Mellon Ridge's written policy, which allowed animals to be admitted only after receiving proof of vaccinations, is certainly reasonable and appropriate as it promotes and protects the health and safety of residents and staff members alike. See Ohio Adm.Code 3701-17-61(D) (requiring residential care facilities that allow animals to "implement a written protocol regarding animals and pets that protects the health and safety of residents and staff members"). As Jarnicki testified, "I've got 33 other people I've got to be concerned about at that location, and I'm concerned about their health, safety and welfare * * * the health, safety and welfare of other people, who are all mentally disabled, is paramount."

{¶17} Furthermore, because Mellon Ridge seeks to utilize animals "to enhance the emotional and psychological well being of [its] clients," we find it abundantly clear that had he

6. The Ohio Revised Code does not define "service animal." However, R.C. 955.011(B)(6) defines "service dog" as "a dog that has been trained or is in training to assist a mobility impaired person."

7. As noted previously, "all pets," including, but not limited to, "seeing eye dogs, therapeutic animals, pets used for companionship to enhance mood, and all pets used by those with a mental or physical disability," must be accompanied by proof that the animal is up to date on all vaccinations before being admitted.

merely provided the Pine Crest staff with the necessary vaccination records, Jackson, as well as his dog, would have certainly been admitted into Mellon Ridge's residential care facility.⁸ In fact, Jarnicki, who had final say on Jackson's admission into Pine Crest, testified, in response to OCRC's questioning, as follows:

{¶18} "Q: Brenda Cain had called you and inquired about the admission of Mr. Jackson with his dog; correct?

{¶19} "A: Yes.

{¶20} "Q: And you asked Brenda Cain whether there was proper documentation for the animal; correct?

{¶21} "A: That's correct.

{¶22} "Q: The only concern that you had regarding Mr. Jackson's admission was that there be proper information regarding the dog; correct?

{¶23} "A: That's correct.

{¶24} "Q: In fact, that was the only reason why Mr. Jackson was not admitted; correct?

{¶25} "A: That's correct.

{¶26} "Q: There were no other reasons for not admitting Mr. Jackson; correct?

{¶27} "A: That's correct.

{¶28} " * * *

{¶29} "Q: Again, it ultimately was your decision not to admit Mr. Jackson; correct?

{¶30} "A: That's correct.

{¶31} "Q: And the reason why you did not admit Mr. Jackson, according to Interrogatory Number 7, was that he did not provide information regarding his dog; is that

8. Cain testified that a number of animals have been admitted into Pine Crest. In addition, Jarnicki testified that "all types of pets and animals" had been admitted into Mellon Ridge facilities.

correct?

{¶32} "A: That's stated there, yes, it is.

{¶33} "Q: Is that correct?

{¶34} "A: That's correct.

{¶35} "Q: I mean that is the reason why he was not admitted; right?

{¶36} "A: That's what it says in there and –

{¶37} "Q: No, I'm asking you.

{¶38} "A: And I'm telling you, yes.

{¶39} "Q: Okay. That's the only reason?

{¶40} "A: That's correct.

{¶41} "Q: No other reason for not admitting Mr. Jackson, other than what you provided in Interrogatory Number 7?

{¶42} "A: That's correct."

{¶43} Jarnicki also testified that Jackson would have been admitted with Lieutenant had he provided "some information about the dog, in terms of its background, a history, a physical, any vaccinations that are required * * *."

{¶44} A housing discrimination claim based on disability must, at the very least, show that the complainant was discriminated because of his disability. See *McIntyre*, 64 Ohio App.2d at 183; see, generally, *Eppler v. Cleveland* (2001), 142 Ohio App.3d 91, 100; *Community Services, Inc. v. Wind Gap Mun. Authority* (C.A.3, 2005), 421 F.3d 170, 178-179. In turn, because the record is completely devoid of any evidence to support OCRC's claim that Jackson was turned away from Pine Crest based on any of his purported disabilities, or on his alleged need for a "service animal," we find that the trial court did not err, let alone abuse its discretion, in adopting the magistrate's decision granting judgment in Mellon

Ridge's favor in its entirety. Therefore, as there is simply no evidence that Mellon Ridge engaged in any unlawful discriminatory practices by refusing to admit Jackson into its Pine Crest facility, OCRC's assignments of error are overruled.

{¶45} Judgment affirmed.

YOUNG and RINGLAND, JJ., concur.

[Cite as *Ohio Civ. Rights Comm. v. Mellon Ridge, Inc.*, 2009-Ohio-5807.]