

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHNATHAN LACY, *et al.*,

Plaintiffs,

-vs-

SHERIFF OF COOK COUNTY and
COOK COUNTY, ILLINOIS,

Defendants.

No. 14 CV 6259

Judge Gettleman

DEFENDANT DART'S STATUS REPORT

Defendant THOMAS J. DART, in his official capacity as Sheriff of Cook County (the "Sheriff"), by his attorney, KIMBERLY M. FOXX, State's Attorney of Cook County, through her assistants, RAANA V. HAIDARI and MICHAEL GORMAN, submits the following status report in this matter:

1. The Sheriff appealed this Court's order granting summary judgment as to liability. One of the issues on appeal was as follows:

When granting Plaintiffs' motion for summary judgment as to liability, did the district court err when it relied on disputed evidence from an evidentiary hearing on Plaintiffs' motion for injunctive relief?

The Seventh Circuit concluded that this Court did err:

Based on the record before us, we have no doubt that the district court failed to communicate its intent to make conclusive factual determinations in the hearing on injunctive relief. Given these particular circumstances, the defendants' participation in and failure to object to the hearing cannot be understood as "clear, unequivocal evidence" of waiver. (citation omitted). Absent such a waiver, the court should have held a hearing on the preliminary injunction, then tried the legal issues to a jury, and then held a hearing on the permanent injunction. (citation omitted).

Instead, by granting a permanent injunction without clear notice of consolidation, and then affording preclusive effect to its own findings of fact on central disputed questions, the court deprived the defendants of their right to a jury trial on ADA liability. This is reversible error.

Lacy v. Cook County, 897 F.3d 847, 860-861 (7th Cir. 2018).

2. The Seventh Circuit then noted that this Court's "error in relying on its own factual findings with respect to the damage claims has several important ramifications." *Id.* at 861.

3. With respect to the damage claims that went to trial, the Seventh Circuit stated:

First, it follows from our decision above that we must vacate the jury's verdicts on the question of damages. Accordingly, the jury's verdicts respecting Mr. Lacy, Mr. Boston, and Mr. Bowers are vacated for further proceedings. Mr. Dawson entered into a monetary settlement with the defendants, and Mr. Farris consented to a judgment of \$0 in damages. It is unclear from the record, however, whether either of these agreements was conditioned on the defendants' right to challenge the underlying proceedings or whether the defendants waived their rights to review as to those two plaintiffs. *See McMillian v. Sheraton Chicago Hotel & Towers*, 567 F.3d 839, 843-44 (7th Cir. 2009) (noting that consensual nature of a judgment does not affect appellate jurisdiction but may affect the consenting party's right to review); *Hudson v. Chicago Teachers Union, Local No. 1*, 922 F.2d 1306, 1312-13 (7th Cir. 1991) (emphasizing the importance of "practicalities" and explaining that, although settlements generally are not appealable, a stipulated judgment may not foreclose appellate review if the stipulation extends only to the matter of damages). We thus leave it to the district court, which is far more familiar with the record, to determine whether it is proper to include Mr. Farris and Mr. Dawson in the jury trial on remand.

Id.

4. A jury verdict entered for plaintiff Johnathan Lacy and against the Sheriff on Lacy's damage claim in the amount of \$600.00. (R. 341.) The Sheriff submits that Mr. Lacy's ADA claim for damages needs to be re-tried. That claim should be set for trial.

5. With respect to the claims of Plaintiffs Bowers and Boston, those claims should not be re-tried. Even though the juries in the Bowers and Boston trials assumed that the Sheriff was liable for violating the ADA, those juries still awarded no damages to either Bowers or Boston. (R. 342; R. 346.)

6. As two juries -- even assuming liability under the ADA -- have already found that Bowers and Boston had no injury, Bowers and Boston no longer have Article III standing to seek damages. *See Ewell v. Toney*, 853 F.3d 911, 917 (7th Cir. 2017) (without a redressable injury, a plaintiff lacks Article III standing to press a damages claim). Lack of Article III standing may be raised at any time. *See Lewis v. Casey*, 518 U.S. 343, 349 n.1 (1996) (holding that Article III "standing . . . is jurisdictional and not subject to waiver").

7. Plaintiffs Dawson and Ferris entered into settlement agreements with the Sheriff and the Seventh Circuit's remand of this matter does not disturb those agreements.

8. Consequently, the only ADA damages claim to be tried in Lacy's claim. That claim should be set for trial.

9. The Seventh Circuit made further observations about the remand:

Second, we must address the effect of our holding on the district court's grant of permanent injunctive relief with respect to the Sheriff's ramp policy. Had the district court followed the instruction in *Beacon* and submitted the common questions of fact to a jury before rendering its own decision on the permanent injunction, the court would have been bound by the jury's factual determinations. *See Allen v. Int'l Truck & Engine Corp.*, 358 F.3d 469, 471-72 (7th Cir. 2004); *Hussein v. Oshkosh Motor Truck Co.*, 816 F.2d 348, 355 (7th Cir. 1986). Therefore, if not for the court's error, the defendants would have been entitled to a jury determination on all of the facts underlying the alleged ADA violations. Because "most if not all of [the] elements [of the damage claims were] presented to the wrong trier of fact," the court's error "infect[ed] the disposition" of the equitable claims as well. *Bouchet v. Nat'l Urban League, Inc.*, 730 F.2d 799, 803 (D.C. Cir. 1984).

In these circumstances, "relitigation is the only mechanism that can completely correct the error of the court below." *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 553 (1990). This approach comports with the practice of the Supreme Court in related cases. *See id.* at 552-53 (listing cases where Court has "reversed and remanded each case in its entirety for a trial before a jury" where petitioners were wrongfully denied their right to a jury trial on legal issues). Moreover, it protects "the integrity of the judicial process" by avoiding "the possibility of inconsistent determinations of the same question." *Heyman v. Kline*, 456 F.2d 123, 131 (2nd Cir. 1972). In order to vindicate fully the defendants' jury trial rights, we hereby vacate the district court's October 8, 2015, judgment on the merits of the plaintiffs' first equitable claim. After a jury decides the common questions of fact, the court will be "prohibited from reconsidering any issues necessarily and actually decided by the jury." *Hussein*, 816 F.2d at 355.

Lacy, 897 F.3d at 861-862

10. The Seventh Circuit vacated the October 8, 2015 judgment on the merits of the plaintiffs' first equitable claim. This order stated, in part, that:

2. Plaintiffs' request for mandatory injunctive relief requiring defendants to alter Sheriff's Order 11.14.35.0 to state that: "Employees of the Sheriff *shall* push each detainee who is using a wheelchair up and down ramps in all courthouses," is denied, in light of paragraph 3 below; and
3. Defendant Sheriff is directed to amend the order referenced in paragraph 2 above with language ensuring that wheelchair-using detainees are consistently assisted when maneuvering courthouse ramps that are not compliant with the ADA, explaining clearly what exigent circumstances would excuse such assistance. The Sheriff is directed to submit a proposed amended order on or before October 29, 2015.

The Sheriff subsequently amended Sheriff's Order 11.14.35.0 to comply with the relief issued in this order. Accordingly, any future request from Plaintiffs for this relief is moot. Plaintiffs lack Article III standing to seek this relief. *Lewis v.*, 518 U.S. at 349, n.1.

11. Consequently, this matter was solely remanded for jury trial on the issue of whether the "Defendants violated the ADA for purposes of" Lacy's damage claim and if that was done with intentional discrimination. (17-2141, Dkt. 63 at p. 40). *See Lacy*, 897 F.3d at 863 (adopting deliberate indifference as the standard for establishing intentional discrimination in a Title II damage action).

12. That is the only matter to be considered on remand. This matter was not remanded to re-open discovery on the issues. As such, Defendants do not believe it would be prudent to re-open discovery.

13. The Seventh Circuit never reversed the class certification, the class is not at issue here, therefore, there is no reason to re-open class discovery or determine if there are still inmates who would qualify under the class.

14. This matter was also not remanded on the status of construction of the Leighton courthouse. The status of the construction is irrelevant to the relevant issues on remand.

15. As previously discussed, the Sheriff's General Order has been changed since the onset of this litigation, to say that detainees in wheelchairs will be offered assistance to be pushed up the ramps at the court houses. Re-opening discovery for incidents that occurred after the appeal is outside the scope of this matter.

16. The Sheriff submits that the only order of business for this Court is to set Lacy's ADA damages claim for trial.

Respectfully submitted,
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