

## **Court Report**

### **Mich. Flyer LLC v. Wayne Cty. Airport Auth., 860 F.3d 425 (6th Cir. 2017)**

Holding that the district court's dismissal of Plaintiff's retaliation case was proper, that the use of the term "individual" under 42 U.S.C. § 12203(a) is unambiguous and does not include corporations, that the district court did not abuse its discretion by finding that its decision was not an intervening change in controlling law, and that the district court's discretion was proper in not awarding attorney's fees.

Plaintiffs Michigan Flyer and Indian Trails, public transportation service providers on behalf of the Ann Arbor Area Transportation Authority, alleged that the Wayne County Airport Authority ("Airport") retaliated against Plaintiffs for their support of a lawsuit brought by two disabled individuals against the Airport by subsequently extending preferential access to all other transportation providers. Consequently, Plaintiffs sued the Airport for violating Title V of the Americans with Disabilities Act ("ADA"). The ADA sets forth under 42 U.S.C. § 12203(a) that no person shall discriminate against any individual who has opposed any unlawful act [of the ADA], and further, may not discriminate against an individual who assisted or participated in any investigation, proceeding, or hearing of potential violations.

The District Court granted the Airport's motion to dismiss, and three appeals, two by plaintiffs and one by the Airport, were filed. The plaintiffs appealed that (1) the term "individual" under 42 U.S.C. § 12203(a) should be interpreted broadly to include corporations per agency regulations, and (2) the district court erred in denying plaintiffs' request to amend their complaint and reopen the case. The Airport appealed the

district court's decision denying the Airport's motion to award attorney's fees.

Plaintiffs' first appeal contended that the remedial scheme of the ADA requires the term "individual" to be interpreted as broadly as possible, as a narrow interpretation would result in the unfair treatment of corporations that defend the rights of disabled individuals. The Sixth Circuit began its review with the plain language of the statute and found plaintiffs' arguments unpersuasive, concluding that even if a statute encompasses a broad remedial structure, the courts cannot interpret the statute's text in a way that conflicts with its plain language.

Fatal to plaintiffs' argument was that both "person" and "individual" are terms present in the text of 42 U.S.C. § 12203(a), and the term "person" as defined by Title I of the ADA includes "partnerships, associations, [and] corporations." Therefore, the Court reasoned the term "individual" is distinct from the term "corporation" and to replace "individual" with "corporate entity" in the statute would render it incoherent. Furthermore, the Sixth Circuit rejected Plaintiffs' argument that the Department of Justice's regulation provided relief for corporate entities that are retaliated against, holding the use of the term "individual" in the statute is unambiguous and no deference should be afforded to the Justice Department's interpretation.

Plaintiffs' second appeal was procedural in nature. Under Fed. R. Civ. P. 59, Plaintiffs moved to reopen the case and asked for leave to amend their complaint, arguing the district court's decision concerning the term "individual" constituted an intervening change in controlling law and the denial of plaintiffs' motion resulted in manifest injustice. However, the Sixth Circuit rejected these arguments, reasoning that Plaintiffs strategically delayed amending their complaint until after the lower court's ruling was entered. Consistent with its 2010 decision in *Moore*, the Sixth Circuit ruled no abuse of discretion exists when a district court dismisses claims because plaintiff(s) neglected to request remand prior to judgement. Finally, the court noted that manifest injustice did not occur, since Plaintiffs simply could have sought leave to amend their complaint after the Airport filed its motion to dismiss.

The final issue before the appellate court concerned the Airport's appeal of the district court's decision not to award attorney's fees. The Sixth Circuit again affirmed the lower court's decision, contending it did not abuse its discretion, since the Plaintiffs brought an action that was a matter of first impression with no Sixth Circuit precedent on point. Accordingly, the court reasoned the present litigation resulted in a clarifica-

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tion of the law unbeknownst to Plaintiffs, and thus, the lower court's discretion was properly exercised.

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