

## Lane v. Tennessee

United States District Court for the Middle District of Tennessee

August 17, 2004, Decided

NO. 3:98-0731

**Reporter:** 2004 U.S. Dist. LEXIS 25369; 16 Am. Disabilities Cas. (BNA) 189  
GEORGE LANE, et al. v. STATE OF TENNESSEE, et al.

**Prior History:** Lane v. Tennessee, 315 F.3d 680, 2003 U.S. App. LEXIS 303 (6th Cir. Tenn., 2003)

**Disposition:** Plaintiffs' motion for class certification and Plaintiffs' amended motion for class certification both denied.

**Counsel:** [\*1] For STATE OF TENNESSEE, POLK COUNTY, BLEDSOE COUNTY, CANNON COUNTY, CHESTER COUNTY, CLAIBORNE COUNTY, CLAY COUNTY, COCKE COUNTY, DECATUR COUNTY, FAYETTE COUNTY, GRAINGER COUNTY, HANCOCK COUNTY, HAWKINS COUNTY, HICKMAN COUNTY, HOUSTON COUNTY, JACKSON COUNTY, JEFFERSON COUNTY, JOHNSON COUNTY, LAKE COUNTY, LEWIS COUNTY, MEIGS COUNTY, MOORE COUNTY, PERRY COUNTY, PICKETT COUNTY, TROUSDALE COUNTY, VAN BUREN COUNTY, defendants: S. Elizabeth Martin, Thomas Marshall Donnell Jr., Stewart, Estes & Donnell, John Edward Quinn, Manier & Herod, David Randall Mantooth, Leitner, Williams, Dooley, and Napolitan, Sarannah L. McMurtry, Nashville, TN; Floyd W. Rhea, Rhea & Rhea Law Offices, Sneedville, TN; Nathan D. Rowell, Watson & Hollow, PLC, Pamela L. Reeves, Anderson, Reeves & Cooper, P.A., Knoxville, TN; Peggy L. Tolson, Stephen S. Ogle, Tolson & Associates, Brentwood, TN; William Lawrence Draper, Gainesville, TN; Howard L. Upchurch, Upchurch & Upchurch, Pikeville, TN; Larry B. Stanley, McMinnville, TN

For GEORGE LANE, BEVERLY JONES, DENNIS CANTREL, ANN MARIE ZAPPOLA, RALPH E. RAMSEY, A. RUSSELL LARSON, plaintiffs: Gary D. Housepian, Tennessee Protection and Advocacy, Inc., Martha M. Lafferty, [\*2] Nashville, TN; William J. Brown, Cleveland, TN; Roberta L. Steele, Linda M. Dardarian, Goldstein, Demchak, Baller, Borgen & Dardarian, Oakland, CA

**Judges:** TODD J. CAMPBELL, UNITED STATES DISTRICT JUDGE

**Opinion by:** TODD J. CAMPBELL

Opinion

### MEMORANDUM

Pending before the Court are Plaintiffs' Motion for Class Certification (Docket No. 155) and Plaintiffs' Amended Motion for Class Certification (Docket No. 186). The Court heard argument on Plaintiffs' Motions on August 13, 2004. For the reasons stated herein, Plaintiffs' Motions are DENIED.

Plaintiffs allege that the State of Tennessee and 25 counties therein have violated Title II of the Americans with Disabilities Act ("ADA") by denying Plaintiffs, and others similarly situated, access to the State's judicial program because of Plaintiffs' disabilities. Plaintiffs seek declaratory, injunctive and compensatory relief. This opinion is not a ruling on the merits of the Plaintiffs' case.

In the pending Motion, Plaintiffs seek certification of a "hybrid" class for injunctive relief and compensatory damages under Fed. R. Civ. P. 23(b)(2) for the discrimination imposed on them and other citizens similarly situated because of their mobility disabilities. [\*3] Plaintiffs ask the Court also to certify a sub-class, pursuant to Fed. R. Civ. P. 23(b)(3), for individuals who suffered additional personal damages, such as humiliation, embarrassment, and pain and suffering, in connection with the alleged discrimination.

Alternatively, Plaintiffs ask the Court to certify this litigation as a class action for declaratory relief, injunctive relief and "categorical" damages pursuant to Fed. R. Civ. P. 23(b)(2) and also to allow the named Plaintiffs to pursue their individual claims for compensatory damages. Thirdly, the Plaintiffs alternatively ask the Court to certify a class solely for declaratory relief and injunctive relief pursuant to Fed. R. Civ. P. 23(b)(2) and to allow the named Plaintiffs to pursue their individual claims for compensatory damages.

Plaintiffs request that the Court certify a class of all persons who (1) were Tennessee residents over 18 years of age; (2) had a physical disability that impaired their ability to walk and/or climb stairs at any time during the period from January 26, 1993 to the present; (3) were otherwise qualified to participate in or receive the benefits of the judicial program of the State of Tennessee; and [\*4] (4) were discriminated against because of their disability.

Title II of the ADA provides that no qualified individual with a disability<sup>1</sup> shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132. The ADA is designed to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. Tennessee v. Lane, 541 U.S. 509, 158 L. Ed. 2d 820, 124 S. Ct. 1978, 1984 (2004).

[\*5] A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities, except the law does not (1) necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities; (2) require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or (3) require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. 28 C.F.R. § 35.150(a).

A public entity may comply with Title II through a variety of means. As the Supreme Court has stated:

The remedy Congress chose is nevertheless a limited one. Recognizing that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion, Congress required the States to take reasonable measures to remove architectural and other barriers to accessibility. But Title II does not require States to employ [\*6] any and all means to make judicial services accessible to persons with disabilities, and it does not require States to compromise their essential eligibility criteria for public programs. It requires only "reasonable modifications" that would not fundamentally alter the nature of the service provided, and only when the individual seeking modification is otherwise eligible for the service. As Title II's implementing regulations make clear, the reasonable modification requirement can be satisfied in a number of ways. In the case of facilities built or altered after 1992, the regulations require compliance with specific

architectural accessibility standards. But in the case of older facilities, for which structural change is likely to be more difficult, a public entity may comply with Title II by adopting a variety of less costly measures, including relocating services to alternative, accessible sites and assigning aides to assist persons with disabilities in accessing services. Only if these measures are ineffective in achieving accessibility is the public entity required to make reasonable structural changes. And in no event is the entity required to undertake measures that would impose [\*7] an undue financial or administrative burden, threaten historic preservation interests, or effect a fundamental alteration in the nature of the service. Lane, 124 S. Ct. at 1993-94 (citations omitted).

The party seeking class certification bears the burden of proof. In re American Medical Systems, Inc., 75 F.3d 1069, 1079 (6th Cir. 1996). In order for a class to be certified, the Plaintiffs must first establish the requirements of Rule 23(a) of the Federal Rules of Civil Procedure: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a).

The district courts must conduct a "rigorous analysis" into whether the prerequisites of Rule 23 are met before certifying a class. American Medical Systems, 75 F.3d at 1078-79. The trial court has broad discretion in deciding whether to certify a class, but that discretion must be exercised [\*8] within the framework of Rule 23. Id.

The dispositive question for purposes of Rule 23(a) in this case is whether there are questions of law or fact common to the proposed class. Fed. R. Civ. P. 23(a)(2). As the Supreme Court has stated, class relief is peculiarly appropriate when the issues involved are common to the class as a whole and when they turn on questions of law applicable in the same manner to each member of the class. General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 72 L. Ed. 2d 740, 102 S. Ct. 2364, 2369 (1982).

The Court finds that because of the individualized, diverse issues as to both liability and relief in this case, the

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<sup>1</sup> Persons with disabilities are "qualified" if they, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provisions of auxiliary aids and services, meet the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. 42 U.S.C. § 12131(2); Tennessee v. Lane, 541 U.S. 509, 158 L. Ed. 2d 820, 124 S. Ct. 1978, 1984 (2004).

Plaintiffs have not met the requirement of sufficiently common questions of law or fact. The legal question of whether the Defendants are subject to the ADA is not contested. The issue here, however, is whether the Defendants have discriminated against the Plaintiffs because of the Plaintiffs' disabilities, and to determine that, the Court must decide whether the individual Defendant counties are complying with the ADA with regard to providing access to the courts, a question that is unique to each Defendant and courthouse.<sup>2</sup>

[\*9] The State of Tennessee's judicial program is held in each Defendant county at the county courthouses. Access to courts in the named Defendant counties is the fundamental issue presented. The State's liability depends upon the compliance of the various county courthouses with the ADA and thus involves individualized issues as well. Although the Plaintiffs argue that the State's failure to conduct self-evaluations and file a transition plan is the common element that ties these Defendants together, whether the Defendant counties are in compliance or not is a courthouse-by-courthouse inquiry.

If the courthouse in one of the county Defendants is in compliance with the ADA -- by any of the variety of means available -- then there is no liability as to that Defendant. On the other hand, if "reasonable modifications" taken by an individual county Defendant are not effective in achieving accessibility, then liability may be found. What is reasonable modification in one county courthouse, however, may or may not be reasonable modification, or required, in another county courthouse.

The courthouses in the individual Defendant counties are not the same. They have unique designs and unique [\*10] features or lack thereof. The individual courthouses were built at different times, are in different states of repair, and are maintained and operated by different entities. Liability for one courthouse does not necessarily mean liability for another courthouse. Reasonable accommodation in one county courthouse is not necessarily reasonable accommodation in another county courthouse. In other words, the issues for determining liability to the putative Plaintiff class are not common to all Defendants.<sup>3</sup> Whether the focus of this action is on the accessibility of courthouses or the accessibility of court proceedings, the questions remain independent from county to county.

[\*11] Further, even if the issue of liability were common to all Defendants, the issue of injunctive relief would be different for each Defendant, decided on a courthouse-by-courthouse basis. Plaintiffs argue that the appropriate injunctive relief is to order the Defendants to comply with the ADA. But complying with the ADA is not simply one action that the Court can order and all Defendants can take uniformly.

How to make reasonable modifications and how to make the courts accessible in compliance with the ADA differs from county to county, depending upon the unique buildings, courts, personnel, and alternative facilities involved. In other words, remedies in this case, should Plaintiffs prevail, would not be the same for all Defendants.

Moreover, the issue of damages would be different for each Plaintiff. No party has identified any persuasive authority for the "categorical" damages of several hundred million dollars claimed by the putative class. As for compensatory damages, any harm suffered by an individual Plaintiff is unique to that Plaintiff, so there is no common question as to damages.

Accordingly, the Court denies the Motion for Class Certification because the Plaintiffs have [\*12] not carried their burden under Rule 23(a)(2). Having found that Plaintiffs fail to meet the second requirement of Rule 23(a), the Court need not address the other elements of subsection (a).

Alternatively, even if the Plaintiffs had carried their burden under Rule 23 (a), the Court finds that they have not carried their burden of demonstrating that their case falls within at least one of the subcategories of Rule 23(b).

Subsection (b) of Rule 23 provides that an action may be maintained as a class action if the prerequisites of subsection (a) are met and one of three specific conditions is met. Plaintiffs here do not argue that they fall within the first category under Rule 23 (b)(1). Therefore, Plaintiffs must show that one of the two other subsections is met: (b)(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or (b)(3) the questions of law or fact common to the members

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<sup>2</sup> Common questions may not be found when the decision regarding the propriety of injunctive or declaratory relief turns on a consideration of the individual circumstances of each class member or the defendant has not engaged in a common course of conduct toward them. Wright, Miller & Kane, *Federal Practice and Procedure*: Civil 2d § 1763.

<sup>3</sup> For example. Defendants assert that the current Jefferson County courthouse is a building on the National Historic Register, built before 1900. It has a large courtroom on the first floor and a smaller courtroom on the second floor. The Hickman County courthouse, on the other hand, is a one-story building, constructed after the enactment of the ADA. Docket No. 180.

of the class predominate over any questions affecting only individual members and that a class action is superior to other available [\*13] methods for the fair and efficient adjudication of the controversy. *Fed. R. Civ. P. 23(b) (2)* and *(3)*.

For the same reasons that Plaintiffs have not shown commonality under *subsection (a)*, Plaintiffs have failed to show that the Defendants have "acted or refused to act on grounds generally applicable to the class." Further, the uncommon questions of law and fact predominate over any common questions of law or fact. Thus, Plaintiffs have not shown that they meet the additional requirements of *Rule 23(b)(2)* and *(3)*.

CONCLUSION

For these reasons, Plaintiffs' Motion for Class Certification (Docket No. 155) and Plaintiffs' Amended Motion for Class Certification (Docket No. 186) are **DENIED**. Nothing herein prevents the named Plaintiffs from pursuing their ADA claims against the named Defendants. Trial remains scheduled for March 15, 2005.

**IT IS SO ORDERED.**

TODD J. CAMPBELL

UNITED STATES DISTRICT JUDGE