STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1254

Major Linear, a/k/a Elijah Neumann,
Appellant,

vs.

Joan Fabian, individually and in her official capacity as the Commissioner of the Minnesota Department of Corrections, et al.,
Respondents.

Filed June 3, 2008
Affirmed
Connolly, Judge

Ramsey County District Court
File No. C2-06-001289

Bradford Colbert, Forrest Hopper, Certified Student Attorney, Legal Assistance to MN Prisoners, 875 Summit Avenue, Room 254, St. Paul, MN 55105 (for appellant)

Lori Swanson, Attorney General, Angela Behrens, Assistant Attorney General, 445 Minnesota Street, Bremer Tower, Suite 900, St. Paul, MN 55101-2127 (for respondents)

Considered and decided by Peterson, Presiding Judge; Minge, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges the district court's grant of summary judgment arguing that it erred by holding that (1) rigorous physical activity is an essential component of the

Challenge Incarceration Program and (2) any accommodation that would have allowed appellant to stay in CIP would not have been reasonable. Because appellant failed to establish that he was a "qualified individual with a disability" within the meaning of the Americans with Disabilities Act, 42 U.S.C. § 12131(2) (2006), we affirm.

FACTS

While serving time at the Moose Lake correctional facility, appellant Major Linear applied for entrance into the Challenge Incarceration Program (CIP). CIP is essentially a boot-camp-style rehabilitation program aimed at providing inmates the skills they need to successfully reintegrate into society. Minn. Stat. § 244.171, subd. 1 (2006) ("The program shall have the following goals: . . . to prepare the offender for successful reintegration into society."). After successfully completing CIP, inmates are eligible for a reduction in their sentences. Minn. Stat. § 244.172, subd. 3 (2006) ("If an offender successfully completes [CIP] before the offender's sentence expires, the offender shall be placed on supervised release for the remainder of the sentence.").

CIP is primarily governed by statute. Most relevant to this appeal are CIP's statutorily required components:

> Program components. The program *shall* contain *all* of the components described in paragraphs (a) to (e).
>
> (a) The program shall contain a highly structured daily schedule for the offender.
>
> (b) The program *shall* contain *a rigorous physical program* designed to teach personal discipline and improve the physical and mental well-being of the offender. It shall include skills designed to teach the offender how to reduce and cope with stress.

> (c) The program shall contain individualized educational programs designed to improve the basic educational skills of the offender and to provide vocational training.
>
> (d) The program shall contain programs designed to promote the offender's self-worth and the offender's acceptance of responsibility for the consequences of the offender's own decisions.
>
> (e) The program shall contain culturally sensitive chemical dependency programs, licensed by the Department of Human Services and designed to serve the inmate population. It shall require that each offender submit to a chemical use assessment and that the offender receive the appropriate level of treatment as indicated by the assessment.

Minn. Stat. § 244.171, subd. 2 (2006) (emphasis added).

On April 15, 2003, appellant was admitted into a CIP program at the Moose Lake correctional facility. Respondents admitted appellant into the program despite several serious, preexisting health conditions. Most notably, appellant had been diagnosed with a condition called symptomatic pulmonary sarcoidosis (sarcoidosis), a condition that adversely affects the functionality of lungs and other organs. Appellant's medical records indicate that, prior to his entrance into the program, he had difficulty breathing, experienced chest discomfort, and had a cough that produced phlegm and blood. Although appellant was able to pass CIP's preadmission fitness test, his health problems soon severely impaired his participation in the physical activities associated with CIP.

Less than two weeks after his entrance into CIP, appellant was ordered by a prison doctor to power walk instead of running. This occurred after x-ray results revealed that sarcoidosis had reduced appellant's lung capacity by as much as 50%. Appellant also began complaining about back and knee pain. Soon appellant was restricted from

engaging in step aerobics, heavy lifting, bending, and twisting. On May 20, 2003, about a month after appellant entered CIP, he complained of sharp chest pains while engaging in aerobic activities. This, combined with appellant's other physical ailments, prompted a prison doctor to recommend that the department of corrections (DOC) drop appellant from CIP. The prison doctor noted that further involvement in CIP put appellant at "risk for an adverse event that would be some problem with his lungs or some problem with his heart." The doctor went on to note that appellant's termination from CIP "has to do with potential for [appellant] to have a *sudden death event* . . . ." (Emphasis added.) Prison officials agreed, and appellant was dropped from CIP on May 22, 2003. He was ultimately placed on supervised release in October 2005.

In February 2006, appellant filed an action in the district court, alleging a number of statutory violations by the DOC. Relevant to this appeal, appellant argued that his dismissal from CIP violated Title II of the Americans with Disabilities Act (ADA). 42 U.S.C. §§ 12131 to 12165 (2006). Respondents moved for summary judgment. The district court granted summary judgment, holding that, even though appellant was a disabled individual as defined by the ADA, appellant was not a qualified individual with a disability under the ADA because any accommodation that would have permitted him to remain in CIP would not have been reasonable. This appeal follows.

D E C I S I O N

"On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

> [T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions.

DLH, Inc. v. Russ, 566 N.W.2d 60, 71 (Minn. 1997). We "must view the evidence in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

To establish a claim of disability discrimination under Title II of the ADA, appellant bears the burden of proving that (1) he is a qualified individual with a disability and (2) he was excluded from a public-entity-provided benefit because of discrimination based on his disability. *Randolph v. Rogers*, 170 F.3d 850, 858 (8th Cir. 1999). If appellant carries this burden, respondents may defend themselves by showing that any modification that is reasonable on its face would fundamentally alter the nature of the service, program, or activity. *Id.*

A "qualified individual with a disability" is a disabled individual who "with or without *reasonable modifications* to rules, policies, or practices . . . meets 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) (2006) (emphasis added). State prisons are considered public entities. *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210, 118 S. Ct. 1952, 1954-55 (1998). The parties do not dispute that appellant was disabled within the meaning of 42 U.S.C. § 12131(2). The parties do not dispute that

CIP is a public-entity-provided benefit. The parties do dispute whether appellant is a qualified individual with a disability.

I. The physical component of CIP is an essential eligibility requirement.

"[W]hether a particular requirement is 'essential' will, of course, depend on the facts of the particular case." 28 C.F.R. app. § 25.130(b)(6) (2007) (outlining the department of justice's interpretive guidance regarding Title II of the ADA).

Under a plain reading of Minn. Stat. § 244.171, CIP's physical component is an essential element of the program. By its use of the word "shall" the legislature mandated that one of CIP's components must be a "rigorous physical program." Minn. Stat. § 244.171, subd. 2(b) (2006); Minn. Stat. § 645.44, subd. 16 (2006) (stating that the use of the word "shall" indicates the act to be performed is mandatory). This reading is supported by the role that rigorous physical activity plays in CIP. The legislature further mandated that, in regards to CIP, the DOC is required to "administer an intensive, structured, and disciplined program with a high level of offender accountability and control." Minn. Stat. § 244.171, subd. 1 (2006). CIP's physical component is integral to achieving this goal because it provides inmates with an intensive, structured, and disciplined environment.

Appellant tries to circumvent the plain meaning of Minn. Stat. § 244.171 by citing a litany of cases that deal with programs in settings unrelated to CIP. These cases are not persuasive. Moreover, we decline to look past the plain meaning of the statute, which states that rigorous physical activity is an essential component of CIP. *See State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996) (holding that if a statute,

construed according to ordinary rules of grammar, is unambiguous, a court may engage in no further statutory construction and must apply its plain meaning). As a result, in order to be considered a qualified individual with a disability, appellant must establish that he is able to engage in the rigorous physical activity component of CIP with or without reasonable modifications.

II. Appellant could not meet the physical component of CIP with reasonable modifications.

Under 42 U.S.C. § 12131(2) a person may be a "qualified individual with a disability" if they can "with . . . *reasonable modifications* to rules, policies, or practices . . . . meet[] the essential eligibility requirements for receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2) (emphasis added). Modifications are reasonable unless they "would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7) (2007).

In a well-reasoned opinion, the district court correctly held that "any accommodation which would have permitted [appellant] to remain in CIP would have not been reasonable." As support for this conclusion, it noted that it "would be unreasonable to require [respondents] to incur substantial medical risk of harm to [appellant] if he was allowed to continue in the program." It pointed to the "uncontroverted medical opinions that indicate that [appellant] was unable to participate effectively in the physical component of CIP." In particular, it noted that "[t]he treating physician recommended termination in part because of concern over [appellant] suffering a 'sudden death event'

as a result of his participation in even the very restricted physical component of the program that remained after his activity restrictions had been imposed."

We agree with the district court's analysis of this issue. The only material in the record before this court that contradicts the treating physician's medical opinion consists of appellant's statements that he did not agree with the doctor's conclusion. Under the standard of review for summary judgment, when there is a contrary finding of a medical doctor, the uncorroborated and self-serving opinion of someone without formal medical training is not sufficient to create a genuine issue of material fact as to whether appellant's continued participation in CIP posed an unreasonable health risk to him. *See Banbury v. Omnitrition Int'l, Inc.*, 533 N.W.2d 876, 881 (Minn. App. 1995) (holding that "[a] self-serving affidavit that contradicts earlier damaging deposition testimony is not sufficient to create a genuine issue of material fact"). Appellant simply did not provide the district court with sufficient evidence in opposing the motion for summary judgment to permit reasonable persons to draw different conclusions on the issue of whether he could safely continue to participate in CIP. *See DLH*, 566 N.W.2d at 71 ("[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions.").

The record indicates that, prior to his removal from CIP, appellant had trouble even walking. Given appellant's litany of health ailments and physical restrictions, it is hard to conceive how respondents could have implemented a rigorous-physical-activity

component that appellant could safely participate in. To require respondents to adopt a completely subjective test as to what qualifies as rigorous physical activity would "fundamentally alter the nature" of CIP. Because we conclude that the district court did not err, we affirm.

Affirmed.