Reasonable Accommodation Review of Service Animals Under the Americans With Disabilities Act and Fair Housing Act: The "Fact-Specific Inquiry"

by Kathleen Farro Ryan

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On Aug. 14, 2015, the Court of Appeals for the Sixth Circuit reversed the Southern District of Ohio's grant of summary judgment to the city of Blue Ash, Ohio, in the case of *Ingrid Anderson, et al v. City of Blue Ash* on the plaintiffs' reasonable accommodation claims for a service animal under both the Americans with Disabilities Act (ADA) and the Fair Housing Amendments Act (FHAA).[1] The Sixth Circuit also reversed the lower court's decision that the plaintiffs' claims were barred based on issue and claim preclusion. The plaintiffs in *Anderson* seek to return a miniature horse named "Ellie" to a now 16-year-old disabled girl (C.A.) who resides in a single-family residence in Blue Ash, Ohio, and who has numerous severe disabilities.

Complicating the case and giving rise to the many issues resolved by the Sixth Circuit is the long and convoluted history between the parties that finally led to the filing of the lawsuit in February 2014. In 2010, C.A.'s doctor recommended the use of horses as a form of therapy for C.A. Noting C.A.'s tendency toward exhaustion when driven across town for horse therapy, her doctor supported, "the housing of a miniature horse for in-home therapy support for [C.A.]."[2] Allowing the miniature horse to be at her home, "at her disposal," would allow C.A. to enjoy her backyard more independently and alleviate the mental and physical effects of her disabilities.

In 2012, C.A.'s mother, Ingrid Anderson, faced opposition for harboring one and then two miniature horses at her residence within the city of Blue Ash.[3] At the time, the city's board of zoning appeals and council refused to recognize the horses under the ADA, but allowed her to continue to keep one horse on the property. Anderson did not appeal the council's determination. In late 2012, Anderson then moved to her current residence, and C.A. received her current miniature horse, Ellie. In 2013, the city ordered Ellie to be removed from C.A.'s property after the city passed an ordinance prohibiting "farm animals" on residential property. The city cited C.A.'s mother for harboring a "farm animal" at her home within the city. The Hamilton County Municipal Court found Anderson guilty, but waived her fine. She did not appeal that conviction.

Both the ADA and FHAA protect disabled individuals' rights to utilize service animals under certain circumstances. Title II of the ADA requires that public entities must make reasonable modifications or changes to their policies, practices, or procedures for disabled persons.[4] The FHAA "creates an affirmative duty on [a] municipalit[y] … to afford its disabled citizens reasonable accommodations.…"[5] Central to the "reasonable accommodation" process under both the ADA and FHAA—whereby the needs of the disabled person are balanced against the potential adverse impacts an animal may impose on others—is the "fact-specific inquiry."

In instances where a plaintiff seeks relief under both the ADA and FHAA with regard to a service animal, the scope of the inquiry and relevant facts can vary widely between those two causes of action. This is because the regulations recognizing a service animal under the ADA and FHAA vary, with some outright contradictions. Under the ADA, the legal term for such an animal is a "service animal," while the FHAA does not designate a specific term.[6] The ADA requires that an animal be "individually trained to do work or perform tasks for the benefit of the individual with a disability."[7] There is no training requirement for animals under the FHAA.[8] The ADA requires no special certifications or documentation of the service animal's status or the disabled person's need for the animal,[9] but the FHAA allows public entities and housing providers to require supporting documentation to show that an animal is required to "alleviate the effects of a disability."[10]

The ADA recognized only dogs as service animals under the ADA until March 2011 when the ADA

regulations were amended to add "miniature horse" as an acceptable species under the ADA.[11] There are no species restrictions on animals recognized as assistance animals under the FHAA. Courts have recognized a variety of species of animals as assistance animals under the FHAA.[12]

The crux of the Sixth Circuit's reversal on the issues of claim and issue preclusion and reasonable accommodation under both the ADA and FHAA in *Anderson* was the ability of the plaintiffs to receive thorough "reasonable accommodation" reviews that preserved the integrity of the "fact-specific inquiry" central to such reviews under both the ADA and FHAA. Observing that prior review under the ADA concerned an "appeal to the council [that] dealt with two different miniature horses at a different location," the court refused to recognize such review as either a legitimate reasonable accommodation review for the current horse or a basis for issue or claim preclusion.[13] As to the prior municipal court case concerning the same horse and same location, the court stated:

> Anderson's ADA and FHAA claims require fact-intensive inquiries that are greatly affected by the differences in the municipal criminal court's fact-finding procedures, particularly the lack of civil discovery. Thus Anderson's ability to pursue her claims [in municipal court as a criminal defendant] was "qualitatively different" than it is here.[14]

The court likewise found that the city was not entitled to summary judgment as to the plaintiffs' FHAA claim, stating that "[f]actual disputes pervade the question of the accommodation's reasonableness and the 'highly fact-specific' balancing of the city's interests against the plaintiffs' that it requires precluding summary judgment for the city."[15]

The parties in the *Anderson* case settled in August 2016. The pertinent terms of the settlement agreement are that the city agrees to recognize Ellie as a reasonable accommodation for C.A. under the Fair Housing Act, that Anderson agrees to hire an animal waste pick-up service to pick up animal waste three days per week, Anderson must pick up animal waste another two days per week, and the city has the right to inspect the backyard at any time between 9 a.m. and 9 p.m. without probable cause.

The evolving circumstances and complexity of the issues in this case are a reminder that when it comes to the review of service or assistance animals, reasonable accommodation reviews must be done with great thoroughness and care. Reviewing entities should be mindful of each request and the specific federal law under which the review is requested. A request regarding a service animal made under the FHAA is insufficient to cover one made regarding the same animal under the ADA, and vice versa. Additionally, where pertinent facts change, a new reasonable accommodation review is likely warranted. ⊙

Endnotes

[1]*Anderson v. City of Blue Ash*, 798 F.3d 338 (6th Cir. 2015).
[2]*Anderson*, 798 F.3d at 347.
[3]*Anderson*, 798 F.3d at 348.
[4]42 U.S.C. § 121802(b)(2)(A)(ii).
[5]*Howard v. City of Beavercreek*, 276 F.3d 802, 806 (6th Cir. 2002); 42 U.S.C. § 3604(f).
[6]An assistance animal under the FHAA may be referred to by a number of terms, such as: "service animal," "assistance animal," "support animal," "emotional support animal," or "therapy animal."
[7]28 C.F.R. § 35.136(i)(1).
[8]*See e.g., Fair Hous. of the Dakotas Inc. v. Goldmark Prop. Mgmt. Inc.*, 778 F. Supp. 2d 1028, 1036 (D.N.D. 2011).
[9]"A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal." 28 C.F.R. 35.136(f).
[10]*Bhogaita v. Altamonte Heights Condo. Ass'n*, 765 F.3d 1277, 1288-89 (11th Cir. 2014).
[11]Miniature horse "assessment factors" are found in 28 CFR § 35.136(i)(2).
[12]*See, e.g., Velzen v. Grand Valley State Univ.*, 902 F. Supp. 2d 1038 (W.D. Mich. 2012) (FHAA case regarding a guinea pig); *Peklun v. Tierra Del Mar Condo. Ass'n*, Case No. 15-80801-CIV (S.D. Fla. Aug. 3, 2015) (Re: sheep—The plaintiff "may proceed with her claims that the county's established variance process discriminates against her and that the county must provide her reasonable accommodations from the usual procedure.").
[13]*Anderson*, 798 F.3d at 351.
[14]*Anderson*, 798 F.3d at 353.
[15]*Anderson*, 798 F.3d at 363.

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could face criticism and questions whether foreign payments to Trump-owned businesses constitute forbidden payments under the Emoluments Clause of the Constitution, which prohibits all federal officials from taking any an "emolument" of "any kind whatever" from a king, prince, or foreign state. How well Donald J. Trump insulates himself from appearances of conflicts of interest will remain an ambitious goal throughout his presidency. ⊙