



Sunday v. Belleair Village, LTD.

2020 | Cited 0 times | M.D. Florida | March 31, 2020

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION KELLY SUNDAY, Plaintiff, v. Case No. 8:20-cv-00078-T-02AAS BELLEAIR VILLAGE, LTD, a Florida Limited Partnership and Unknown Defendant #1; and Unknown Defendant #2 Defendants. _____/

ORDER GRANTING DEFENDANT S MOTIONS TO DISMISS

This matter comes to the Court on Defendant Belleair Village LTD to Dismiss, Dkt. 8, Plaintiff Kelly Sunday 1. Plaintiff filed a

response. Dkt. 9 Motion to Dismiss.

Legal Standard matter jurisdiction and are therefore considered pursuant to Federal Rules of Civil

Procedure, Rule 12(b)(1). Doe v. Pryor, 344 F.3d 1282, 1284 (11th Cir. 2003). A either facial or factual grounds. McElmurray v. Consol. Go - Richmond Cty., 501 F.3d 1244, 1251 (11th Cir. 2007). Because Defendant presents matters outside the pleadings, Defendant seeks a factual attack on jurisdiction. Carmichael v. Kellogg, Brown & Root Servs., Inc., 572 F.3d 1271, 1279 (11th Cir. 2009) (citation omitted). For a factual attack, the district court may consider extrinsic evidence such as deposition testimony and affidavits. Id.

Discussion Plaintiff is a disabled individual who requires the use of various aids to walk. Dkt. 1 ¶ 4. She brings this suit under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. Belleair Village operates a motel that Plaintiff claims discriminates against her and others by failing to remove architectural barriers to access in violation of the ADA. Plaintiff's Complaint lists fifteen alleged violations of the ADA. Dkt. 1 at 6 8. Defendant contends that it has voluntarily undertaken measures to remedy these alleged ADA violations, and that Plaintiff's claims are now moot. Dkt. 8 at 3 6. Defendant Belleair Village also argues that Plaintiff lacks standing.

Defendant Belleair Village argues that Plaintiff lacks standing to sue. Defendant Belleair Village contends that Plaintiff has not suffered an injury-in-fact required for Article III standing. This Court agrees.

To establish standing, Plaintiff must show: (1) she -in- -in-fact and the challenged action of the



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Defendant Shotz v. Cates, 256 F.3d 1077, 1081 (11th Cir. 2001) (citations Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1548 (2016) (citation omitted).

First, whether Plaintiff is an visiting, her are irrelevant.

Houston v. Marod Supermarkets, Inc., 733 F.3d 1323, 1334 (11th Cir. 2013). plaintiff can establish injury-in-fact by showing a loss of opportunity to participate

in or benefit from the goods, services, facilities, privileges, advantages or Houston v. 7-Eleven, Inc., No. 8:13-cv-1845-T- 17AEP, 2014 WL 5488805, at *7 (M.D. Fla. Oct. 30, 2014). Whatever her

disabled individual for the purposes of the ADA and alleges she encountered barriers to access. This is enough to plead an injury-in-fact.

That said, -in- [of the ADA] Houston v. Marod

Supermarkets, Inc., 733 F.3d at 1328. Since Plaintiff is seeking injunctive relief under the Kennedy v. Solano 653, 655 (11th Cir. 2018). This threat of future injury Houston v. Marod

Supermarkets, Inc., 733 F.3d at 1329. Factors that are looked at to determine whether Id. at 1337

n.6. These factors are not exclusive, nor is one factor dispositive. Id.

Most of these factors cut against Plaintiff. While normally the proximity factor looks to defendant closeness to Defendant shows the unlikelihood of future injury. Plaintiff

es n the Tampa Bay notes that she resides in Pinellas County. Id. motel is in Largo, Florida part of Pinellas County. To travel from one end of

Pinellas County to the other would be around an hour drive. 1

Despite her frequent travel within the Tampa Bay area, Plaintiff has presented no argument about why she would frequent a hotel within an hour of her residence. See, e.g., Am. Patriots Advocating for Disabled Rights, Inc. v. Budget Suites of Am. LLC, NV-704, No. 2:09-CV-01528-KJD, 2011 WL 1197531, at *2 (D. Nev. Mar. 29, 2011) The Court . . . finds that it is more likely than not that Plaintiffs do not intend to vacation further at [a hotel] in the same city in which they reside. . Nor has Plaintiff . See, e.g., Longhini v. Gateway Retail Center, LLC, Case No. 3:17 cv 899 J 32JBT, business did not establish that plaintiff was a frequent visitor).

turn. Courts generally - unspecified point in the near future. See Lujan v. Defenders of Wildlife, 504



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2020 | Cited 0 times | M.D. Florida | March 31, 2020

U.S.

555, 563 64 (1992). Here, Plaintiff service of the Complaint, Plaintiff will revisit the Motel to ensure compliance with

1 The Court estimated this distance through a Google Maps query between the northernmost point of Pinellas County and the southernmost point, see Google Maps, www.maps.google.com (last visited Mar. 31, 2020), and takes judicial notice of that fact. See *Munson S.S. Lines v. Newman*, 24 F.2d 416, 417 (5th Cir. 1928) (taking judicial notice of distance between cities); *United States v. Williams* judicial notice of the driving distance between two points located in the record using mapping

Dkt. 1 ¶ 24. While vague, this is a slightly more definite plan to return -

In sum, Plaintiff has expressed, at best, a mere allegation of an intent to This is not enough to show that threat rather than Plaintiff has failed to adequately show an injury-in-fact and lacks

standing to sue. Procedure 12(b)(1) must be granted.

Conclusion The Court grants Defendant s Motion to Dismiss, Dkt. 8, without prejudice. Should Plaintiffs not re-plead a second amended complaint within 14 days, the matter will be closed.

DONE AND ORDERED at Tampa, Florida, on March 31, 2020.

/s/ William F. Jung WILLIAM F. JUNG UNITED STATES DISTRICT JUDGE COPIES FURNISHED
TO: Counsel of Record

