

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
v.)
)
ABC NURSERY, INC. 2255 Prairie)
Avenue, Beloit, WI,)
)
Defendant.)
)

COMPLAINT

NOW COMES the plaintiff, United States of America, by and through its attorneys, Peggy A. Lautenschlager, United States Attorney for the Western District of Wisconsin, and David E. Jones, Assistant United States Attorney for that District, and respectfully states as follows:

1. This action is brought by the United States pursuant to title III of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12188 (b)(1)(B), against defendant ABC NURSERY.

2. This Court has jurisdiction by virtue of 28 U.S.C. §§ 1331 & 1345 and 42 U.S.C. § 12188(b).

3. Venue is proper in this judicial district. The acts of discrimination by Defendant alleged herein occurred in or around Beloit, Wisconsin, which lies within this judicial district. Accordingly, this Court has venue over this matter by virtue of 28 U.S.C. § 1391(b).

4. Defendant ABC Nursery is a public accommodation that affects commerce by providing daycare or nursery services for young children in and around Beloit, Wisconsin. Defendant is thus subject to title III of the ADA. 42 U.S.C. §§ 12181(7)(J) & (K) and 12182; 28 C.F.R. § 36.104.

5. L.W., born on December 27, 1992, is an individual who tested positive for the Human Immunodeficiency Virus (HIV), the virus believed to be the causative agent of the Acquired Immune Deficiency Syndrome ("AIDS"). L.W., therefore, is an individual with a disability within the meaning of the ADA, 42 U.S.C. § 12102(2); 28 C.F.R. § 36.104.

6. Rosetta McNuckle is L.W.'s aunt and legal guardian. At all times relevant to this complaint, L.W. has lived with Ms. McNuckle and has relied upon her for material and emotional support. Her relationship with L.W. constitutes an "association" as that term is used in 42 U.S.C. § 12182(b)(1)(E).

7. In March 1996, Ms. McNuckle called ABC Nursery and was told that there were openings for children L.W.'s age. Ms. McNuckle delivered an application form to ABC Nursery and advised an assistant there that L.W. was HIV positive. Ms. McNuckle understood that L.W. would be accepted, and an assistant provided Ms. McNuckle with a list of supplies that L.W. would need at ABC Nursery.

8. Upon returning home, Ms. McNuckle received a call from someone she believed to be the manager of ABC Nursery. This person advised Ms. McNuckle that L.W. would not be accepted at ABC Nursery.

9. On information and belief, ABC Nursery's refusal to accept L.W. was due to L.W.'s HIV-positive status.

10. Defendant's actions caused L.W. and Ms. McNuckle to suffer extreme humiliation, emotional distress, frustration, and anxiety. As a

result of Defendant's actions, Ms. McNuckle was required to pay for sitters to watch L.W. rather than receiving public assistance for placing him in a daycare or nursery facility.

COUNT I

11. Plaintiff realleges all of the allegations of this complaint as though fully set forth herein.

12. By denying L.W. placement in a daycare or nursery facility because of his HIV-positive status, Defendant has unlawfully discriminated against L.W. and has thereby violated title III of the ADA in the following ways:

A. On information and belief, defendant has denied L.W., and perhaps other individuals who have tested positive for HIV, the opportunity to benefit from the services of a place of public accommodation, in violation of 42 U.S.C. § 12182(b)(1)(A)(I) and 28 C.F.R. § 36.202(a);

B. On information and belief, defendant has imposed eligibility criteria, for the privilege or advantage of receiving day care or nursery services, that screen out the class of individuals who have tested positive for HIV, in violation of 42 U.S.C. § 12182(b)(2)(A)(I) and 28 C.F.R. § 36.301(a); and

C. On information and belief, defendant has failed to make Reasonable modifications in policies, practices, or procedures where such modifications are necessary to afford equal advantages or privileges to the class of persons who have tested positive for HIV, in violation of 42 U.S.C. § 12182(b)(2)(A)(ii) and 28 C.F.R. § 36.302(a).

13. Defendant's practices as described herein constitute discrimination that raises an issue of general public importance within the meaning of 42 U.S.C. § 12188(b)(1)(B)(ii) and 28 C.F.R. § 36.503(b).

COUNT 2

14. Plaintiff realleges all of the allegations of this complaint as though fully set forth herein.

15. On information and belief, Defendant has denied L.W. placement in a daycare or nursery facility because of his HIV-positive status and has thereby unlawfully discriminated against Ms. McNuckle through her association with L.W. by denying Ms. McNuckle the opportunity to benefit from the services of a place of public accommodation in violation of 42 U.S.C. § 12182(b)(1)(E) and 28 C.F.R. § 36.205.

16. Defendant's practices as described herein constitute discrimination that raises an issue of general public importance within the meaning of 42 U.S.C. § 12188(b)(1)(B)(ii) and 28 C.F.R. § 36.503(b).

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court:

A. Declare that the practices of the Defendant, as set forth above, discriminated against persons who have tested positive for HIV, in violation of title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181-12189, and the implementing regulation at 28 C.F.R. part 36;

B. Enjoin the Defendant, its agents and employees, and all other persons in active concert or participation with it, from refusing to provide services to persons who have tested positive for HIV;

C. Award monetary damages to L.W. and Ms. McNuckle to compensate them for injuries resulting from such discrimination;

D. Assess a civil penalty against the Defendant to vindicate the public interest; and

E. Order such other appropriate relief as the interests of justice may require.

Dated this day of , 1997.

Respectfully Submitted,

UNITED STATES OF AMERICA
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