

Episode 2 Transcript - C.L. v. Del Amo Hospital – 9th Circuit Ruling on Certification of Service Animals and ADA

Speakers

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Christopher Knauf:

Hi, I'm Christopher Knauf.

Jennifer Mathis:

Hi, I'm Jennifer Mathis.

Celia McGuinness:

Hi, I'm Celia McGuinness.

Barry Whaley:

Hi, everybody. On behalf of the Southeast ADA Center, the Burton Blatt Institute at Syracuse University, and the ADA National Network, I want to welcome you to episode three of our new podcast series, Disability Rights Today. Disability Rights Today provides listeners with new insights on recent court cases that shaped the Americans with Disabilities Act, and impact the Civil Rights for People With Disabilities. Hi everybody, I'm Barry Whaley, I'm director at the Southeast ADA Center. And listening audience, if you have questions about the ADA, you can use the online forum anytime at disabilityrightstoday.org, that's all one word, disabilityrightstoday.org.

Barry Whaley:

In today's episode, we want to focus on the court case C.L. v. Del Amo Hospital, Inc. In this case, the plaintiff, C.L., had been diagnosed with post-traumatic stress disorder and other conditions. She obtained a dog with the intent to train the dog, Aspen, to be service animals. Service animals are defined as dogs individually trained to do work or perform tasks for people with disabilities. For example, guide dogs for people who are blind, alerting people who are deaf. And in the case of C.L., rounding a person with post-traumatic stress disorder during just association or an anxiety attack.

Barry Whaley:

Service animals are working units. They are not pets. The work or task dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support or not service animals and do not have protections under the ADA. Due to the cost of formal certification, C.L. began self-training Aspen. Between 2015 and 2017, she sought inpatient treatment at Del Amo Hospital's National Treatment Center. When she asked the National Treatment Center if she could bring Aspen with her as a service dog, Del Amo denied the dog as an accommodation, the district court enter judgment in favor of Del Amo Hospital on the ground that Aspen did not qualify as a service animal under the ADA.

Barry Whaley:

However, in a ruling filed on March 30th, 2021, the U.S. Court of Appeals for the Ninth Circuit held that the district court erred by effectively imposing certification requirement for C.L.'s dog, to be qualified as a service animal under the ADA. They vacated and remanded for the district court to consider whether Aspen was qualified service dog at the time of trial. Number two, if Aspen is a service dog, whether Del Amo had proved its primitive defense of fundamental alteration.

Barry Whaley:

So we're fortunate today, to have as our guests, three of the counsel for the plaintiff in the case, Christopher Knauf, director of litigation, Disability Rights Legal Center. Jennifer Mathis, deputy legal director and director of

policy and legal advocacy at the Judge David L. Bazelon Center for Mental Health Law, and Celia McGuinness of Derby, McGuinness & Goldsmith. And we're joined today by Dr. Peter Blanck, director of the Burton Blatt Institute at Syracuse University. So we welcome everybody to today's podcast. And Peter, I'll turn it over to you.

Peter Blanck:

Well, thank you Barry, for that great introduction. I'm here with three amazing lawyers who have changed the lives for the better of so many people around the country with disabilities and their supporters and family members. We often forget sometimes as lawyers, myself, that at the end of the day, these cases are about literally life and death to terminations, and quality of life determinations for people with disabilities, who just want to be a part of society and contribute like anybody else.

Peter Blanck:

This case, which you'll hear about today, is really reflective of that concept. A woman who sought to improve the quality of her life in daily life activities, and through the use of a psychiatric service animal, and three lawyers, three amazing lawyers came to her assistance. And eventually prevailed at the Ninth Circuit with additional future questions to come. I thought I'd start with Chris Knauf today. Chris is a very distinguished lawyer, legal director of the Disability Rights Law Center, and was lead counsel in this case. And Chris welcome. Perhaps you can take us through briefly, an overview of the facts and the law and the outcomes in this case.

Christopher Knauf:

Absolutely. Thank you so much, Peter, for the very kind introduction. And thanks very much to the Southeast ADA Center for inviting us to join you today. So while I'm director of litigation at DRLC in Los Angeles today, when I first met C.L., I was running my own small firm in Los Angeles. C.L. lives in Orange County. And can't remember how she was referred to me, but this started out as, one of those plain little service dog cases that a lot of us practitioners get from time to time. And this case very straightforward in my view was a denial of a legitimate service dog for a person with a

disability in a hospital setting. And I was really excited to take on the case. It's been a pleasure litigating it. And look what we have, as Peter mentioned, that we just have an amazing, effectively a nationwide published decision from the Ninth Circuit that really beautifully lays out the law on service dogs in general, certification of service dogs, and specifically, service dogs for folks with psychiatric disabilities.

Christopher Knauf:

So, it's an amazing result and it's still going. We're back in the district court, which we'll talk about in a little bit. But just to give a little background on C.L., truly, truly impressed with her from the moment I met her. And to Aspen, her service dog. Aspen's a little bichon poodle mix. A little adorable white, fluffy dog that doesn't wear a vest, doesn't have the other accoutrement that one might obviously see as a service dog. And of course, that doesn't matter. Aspen was still serving C.L.'s needs, even when meeting with me. And C.L. is a PhD speech language pathologist, a researcher, super articulate and has devastating psychiatric disabilities based on a truly traumatic childhood. Which I'm not going to go into, but the facts are horrific and she is dealt with suicidal ideation for her entire life.

Christopher Knauf:

To her credit, the C.L.'s probably a little over 50 today. And when she was in her 20s, she started receiving therapy. And later in life, she was fairly at her wit's end as to what to do about her situation. She was essentially incapacitated, very, very difficult to go out in public at all, and discovered the idea of a service dog. And she, with her research abilities and intellect, looked for compatible breeds. Those that could be trained. Those that were deemed to be very good potential for service dogs. You never know. You have to train the dog and then, hopefully it works out to be a match with the handler. She certainly researched expensive it was to get a pre-trained service dog, to the tune of about \$15,000, at least at one outlet. And so she really had no choice. She was low income, it was difficult for her to work.

Christopher Knauf:

And so she obtained her own dog from a breeder. And she set about training Aspen. First with standard obedience. And then, she picked up a book by a woman named Katie Gonzalez, who runs a service dog training center in San Diego County. And the book was called How to Train Your Own Psychiatric Service Dog. Available on Amazon for purchase. And C.L. set about training Aspen on her own, and then even went to Katie Gonzales's agency, Little Angels Service Dogs, to do a one day training. And so she successfully trained Aspen to do a number of different tasks related to her disability. Alert, grounding for dissociative disorder and for anxiety and panic, waking her from nightmares is actually the first task that Aspen started doing and then she reinforced with proper training methods. So she had a stable of tasks that Aspen was performing.

Christopher Knauf:

And nevertheless, during this time, C.L. still needed to get medical care. There were times and triggers that caused her to be suicidal, and she needed professional help. And so her go-to place for this was Del Amo Hospital in Torrance, California, which they worked inpatient with folks in her situation and she found that to be effective. She had been there a couple of times before having Aspen, and it was the only place locally that she could afford to go. And so, when she got Aspen, she knew her rights and she requested to bring Aspen with her and Del Amo refused. No real reason given, no analysis of the dog, other than asking for vaccination records which C.L. provided, there was no other inquiry. So I'll just summarize it as, after a couple of different attempts, the hospital continued to refuse for no reason whatsoever. And so C.L. then sought out my assistance.

Christopher Knauf:

We wrote a demand letter, it went unanswered, or I don't recall at this point. It didn't go anywhere. And we filed suit and we sought damages and injunctive relief in order that would allow C.L. to bring Aspen whenever she needed to check herself into the hospital. And the defense brought a motion to dismiss. And our judge, the now famous David O. Carter in Santa Ana issued a very nice decision, denying the motion to dismiss and allowing

the litigation to proceed. And at that point, I knew I had my hands full. And as a small firm, I knew that I needed to get a team together. I need to get reputable folks to be on the pleadings and litigate the case with me. And I am thankful to Jennifer Mathis and the Bazelon Center for joining at that point. So Peter, I'll pause there. We have a motion for summary judgment we can discuss, but I'll pause there to let you ask the next one.

Peter Blanck:

Okay. Well, that's a great overview and started the discussion. Chris, thank you so much. Let me turn to Celia McGuinness next. If there is a legal council in the United States that has litigated impact psychiatric service dog cases, that would be Celia McGuinness. She actually had a precedential case before this, which maybe she can talk about. But Celia, thank you so much for participating. And perhaps you can take us through more of this journey and where we're at, and then I'll turn to Jennifer after you.

Celia McGuinness:

Terrific. Thank you, Peter. I came into this case in the third act. I came into this case shortly before trial, after Jennifer had come in and she and Chris had ably guided the case through summary judgment when they were getting ready for trial. And it became clear that the case was not going to settle. And Chris called me up and invited me to participate in the trial, was very excited to do that because as you said, I had had a number of service dog cases. And one of them was the case you referred to, which was Tamara v. El Camino Hospital, which was the first case in the country where a judge ruled that a service dog could not be excluded from a locked psychiatric ward.

Celia McGuinness:

And it was the first case to talk about psychiatric service dogs in the context of psychiatric hospitals, and talk about a slightly different but related issue, which was the concept of whether the presence of a service dog on a psychiatric ward would present a direct threat to the service dog owner or to other people on the ward. And the judge in that case ruled that no, in fact, the presence of the service dog, there was no evidence it would have

presented a direct threat and that the hospital had discriminated against the service dog user by excluding the dog.

Celia McGuinness:

And Chris and I had met around that case and around some other issues. And when he invited me to participate in this case, I was always very excited to talk about these issues. So I came into the case, I think only about six weeks before the trial. But we got up to speed very quickly. And when I started to delve into the facts and all the work that Chris and Jennifer had done, it became very obvious to me that the judge was really concerned about the dog in the case, and that we were going to have to do a lot of education on the issue of whether the dog was a service dog or not.

Celia McGuinness:

We were really worried about the amount of work we had to do and the amount of education we needed to do. And we were worried about whether the presence of a jury would be a distraction. And so we had to make a hard decision early in the pretrial process about whether or not we would continue to seek a jury trial, which we had done from the outset. Or whether we would just try the case straight to the judge. We were a little worried that because of some of the emotional issues involved in the case that a jury might be distracted by bias against some of the psychiatric issues, bias against service dog cases that have been in the news, and we decided it would be simpler if we just had an audience of one to focus on.

Celia McGuinness:

So we spoke with C.L. and we said to C.L., "In order to just focus this issue on what's really important, getting admission for your service dog into the hospital, we would like to waive a jury and just try this case to the bench, to the judge, in order to do that, we have to give up any damages demands. We have any demands for compensation for the discrimination that you've experienced."

Celia McGuinness:

For me personally, and I think for Chris and Jennifer too, it was a difficult decision because we strongly believe the disability discrimination should be

compensated. Just the same as a person who is victimized by sexual harassment or racial discrimination should be compensated by the person that has discriminated against. People who have experienced disability discrimination deserve to be made whole. But C.L.'s focus has always been on ensuring her right to bring her service dog to the hospital. That was always her main goal. And so she followed our judgment and we agreed to drop all our claims for damages and to just focus on trying the case to the judge. Which, once we made that decision, it really simplified matters and allowed us to focus on and narrow and hone the issues for trial.

Peter Blanck:

Thank you, Celia, we'll come back to you more in a, in a little bit. You and Chris. Jennifer Mathis, one of the unsung, low-key yet incredibly impactful individuals who every day is making a difference in the lives of people with disabilities for the better, particularly psychiatric illness and disabilities. Is a leader at the Bazelon Center, which is the nation's premier mental health advocacy organization out of Washington D.C. And perhaps Jennifer, you can tell us a little bit about what Bazelon does. But Jennifer, why this case? Why is it so important? And what are the implications it may have for a broader national policy?

Jennifer Mathis:

Thanks, Peter. I'll just say the Bazelon Center, as background, began in 1972 with the Mental Health Law Project, and we're a national non-profit. We work through litigation and policy advocacy, education and training to advance the rights and dignity of people with mental disabilities, primarily people with psychiatric disabilities, really in all aspects of life, including healthcare, community living, employment, housing, professional licensing, voting, parental and family rights. You name it. We had started out as the Mental Health Law Project, which was really a spin off of the ACLU. But my interest in this case, which is I think a little bit of an unusual case for the Bazelon Center because we tend to do big class actions or big systemic actions around mental health service systems. But we also do individual cases, particularly when they are a good vehicle to advance a certain principle.

Jennifer Mathis:

And here, I think there were a number of reasons why this case seemed important for the rights of people with psychiatric disabilities. And one aspect of this case is really that, this is a nonclinical intervention that is really important and often is the only intervention that consistently works for a lot of folks with psychiatric disabilities. Many people take medications, sometimes the medications work great. Sometimes they don't. Sometimes they work for a while and then they don't. Sometimes people struggle for years to get the right combinations and the right dosages. And there are unpleasant side effects that many people experience. And so, I think it is always been, in my mind, very important that there are other interventions that are available to people when they work besides just meds and beds. And increasingly recent years, we are seeing more focus on non-clinical interventions like peer support services, employment services, housing supports, which are every bit as important, if not, sometimes more important than clinical interventions in people's lives.

Jennifer Mathis:

And so, I've seen people increasingly who are clients of ours use psychiatric service animals. Really, really important role that those animals play in their lives. Sometimes people who use medication, but need something else in addition, because the medication isn't always enough, doesn't always work or only addresses certain things and not others. And other times people don't respond to medications. And so, this is a very important thing. I have seen people in the past be denied admission to psychiatric hospitals, or actually have their animals denied. And so not be able to take in with them a psychiatric service animal when they were at that crisis point when they needed to go into the hospital. And that is, I think, often the point when it is most important that people have their supports available to them and hospitalization can be an incredibly traumatic experience.

Jennifer Mathis:

And so, when Chris came to me about this case, I was very excited. I thought it was very important for principle reasons and it was a good opportunity I think, to develop the law. And I think it's important not just,

really in terms of developing the law in terms of the rights to use psychiatric service animals as an intervention and to get accommodations for that, but also, to get clinical, traditional mental health settings and professionals to recognize that, I mean, this is a situation where you've got a psychiatric hospital saying, "That doesn't matter. We give you everything you need." And I think that was also an aspect of this, that to me, made it very important more so even than say ,talking about psychiatric service animals in a hotel or another setting, but really to kind of get the traditional mental health world to start understanding and recognizing these kinds of interventions as important and worthy of people's rights. [crosstalk 00:24:09].

Christopher Knauf:

Peter, if I may jump in on that point. I want to close the loop on C.L. because what Jenifer said is so true for so many folks. And for C.L., I mean, in her trial testimony, she talked about prior to having Aspen, she would run into the supermarket, grab one box of cereal, pay for it, and then run out. And that's all she could do because of how she was feeling and the effect of her disability. After Aspen, she's been able to work more, go to market just like anybody else can, and really reintegrate into society. So as Jennifer points out and in C.L.'s case, Aspen was life-changing. "Aspen saved her life," is what she has said. And just for folks out there listening, the service dog option is just so tremendous, changed C.L.'s life. And I really, truly hope and believe, it will change other people's lives as well.

Peter Blanck:

Chris, thank you for that. You actually set up my next question because you and I have spoken, Aspen not only changed C.L.'s life, but I understand from you, that being a self advocate and fighting for her rights, testifying in court was a life-changing event for C.L. as well, and a very positive outcome for her on that level.

Christopher Knauf:

Absolutely. Understandably, given her personal history, trust is something that's very difficult for her to come by. And it's a credit to the whole team

that worked with her. And on that point, I really want to give a shout out to my associate Alexander Robertson, who together, us working together with CLL, through the discovery process, representing her at deposition, allowing her to tell her story and fight for rights that she knew were right. She knew what the law was. She knew it before she ever met us. And the ability to see the justice system in action has been extremely powerful for her.

Peter Blanck:

Now, I just want to give a note to our listeners, to them and to say, if you have questions about this topic or any other disability rights topics for our show, Disability Rights Today, please submit your questions online disabilityrightstoday.org, that's all one word disabilityrightstoday.org, or call the Southeast ADA Center at 1-404-541-9001. Chris, let me ask you, as we've gone through this conversation, what happens next? Where are we now with the case? What are you guys preparing for?

Christopher Knauf:

Well, Peter, the case continues, the case has been remanded by the Ninth Circuit for further proceedings in the trial court. The issue on the first appeal was really simply whether Aspen was a service dog and even more specifically, was a certification required for a finding that Aspen was a service dog at the time of trial. And interestingly, the way the district court worded its initial order, like we've talked about, it also wanted guidance from the Ninth Circuit on this. I mean, we felt the regulations were very clear, but the court wanted that question resolved first as a preliminary matter. So thankfully it's been resolved very squarely with what the law already provides, but [inaudible 00:28:23] tremendous background and explanation of why the law says what it does, but the statute and the regulations, why DOJ issued the regulations that it did, and allowed importantly, people with disabilities to train their own service dogs.

Christopher Knauf:

There's lots of very important reasons why that was the holding of the court. And so, we now go back and we are in the process of briefing the trial court on, first we have to have the court confirmed that Aspen is a

service dog. We are hopeful that the court will do that given the Ninth Circuit gets guidance. And then we're going to brief what we thought was going to be the primary issue in the case. And that is, would Aspen's presence with C.L. at the hospital have fundamentally altered the treatment that C.L. was receiving? And so the burden is on the defense to show that their trial evidence met the burden of proving that there would have been a fundamental, a complete change, or inability to implement their treatment program for C.L. because of Aspen's presence.

Christopher Knauf:

We feel very strongly that the evidence is to the contrary. That not only would Aspen not have interfered, but C.L. absolutely, fervently believes that Aspen would have increased the benefits, that Aspen would have allowed her to focus on the things that they wanted her to focus on during her therapy by grounding her, by addressing her hypervigilance, allowing her to take in more of what the treatment sought to provide. So, we are hopeful that the trial court will agree with us in that regard. And then we fully expect the matter to go back up to the Ninth Circuit on that question as well. And we will have a C.L. v. Del Amo to decision at some point.

Celia McGuinness:

If I may jump in on that, I think this question of fundamental alteration really focuses in circles back to what Jennifer said at the very beginning of this episode, which is, focusing on who gets to decide how a person treats or handles or manages the symptoms of her medical condition or her mental illness. The legal question of fundamental alteration has nothing to do with how well C.L. would receive therapy or whether the dog would be a distraction to her receipt of therapy. So whether the dog would be good for her or bad for her matters not, because a legal question is, would the dog's presence change something in the essential nature of the program that Del Amo Hospital provides? And the answer that all the evidence shows that it would not change anything, Del Amo would still be a psychiatric hospital, it would still provide group therapy, individualized therapy, heart therapy, room and board, the program would go on.

Celia McGuinness:

And furthermore, all the witnesses from the hospital testified, they did nothing to investigate what impact, if any, the dog, Aspen, would have on the program. They didn't even allow the dog in for a test run. They didn't do any research on service dogs in psychiatric hospitals. They didn't even look at the dog or they didn't look at the medical research on psychiatric drugs. They did absolutely nothing to investigate because they were all focused on their ability to control C.L.'s receipt of information and the outcomes for C.L.

Celia McGuinness:

And their desire to control and be in charge of how she received information, how she received therapy, we can talk about that as a separate issue, but that was just legally wrong. And so, what we need the court to focus on in this next phase, is focusing on whether the evidence proves the legal standard and not get sidetracked by questions of whether doctors are right or doctors are wrong. Because the statute and the regulations of already answered that, baked into the statute is the presumption of people with disabilities are independent people who get to manage their disabilities in their own way.

Celia McGuinness:

And the only exception to that, is if somehow the dog causes a direct harm to people by its presence, which Del Amo has admitted candidly, the dog would not, or it causes a fundamental alteration to the program, which Del Amo has not proved, or even attempted to prove. All the other issues that the hospital is raising, these are issues of ableism, of medical control, and we have to rebut them because they're baked into our culture and we need to respond to them in some ways, but we always have to keep bringing it back to, can they prove their case? And they can't.

Peter Blanck:

Well, there, you have an oral argument to a court by one of the best attorneys in the country on that issue. We'll see what the court decides. Last question to Celia. You started this ball rolling Celia. You have a lot of individuals with disabilities and service providers and employers listening to

this call. What's the message going forward? Where do you think this case law is going? Obviously now you've worked on two cases in this area, both were in California. Do you see action and other areas? And where do you see this case law going?

Celia McGuinness:

Abby Tamara, who was the plaintiff in Tamara vs El Camino Hospital, She started this ball rolling. Abby and C.L. are the mothers of this development of the law. The ball starts rolling when people with disabilities stand up and advocate for themselves and their communities to be the independent people that they're entitled to be. We as lawyers, work to support them and our goal with this issue of psychiatric service animals, what we're really doing is filling in the gaps because the statute is there, the regulations are there. And then, the questions that are being answered by these cases are filling in the details where the largest hasn't been fleshed out.

Celia McGuinness:

And I think, when you mentioned employers, I think it's really true that one of the reasons we went to the Ninth Circuit and back is that Del Amo Hospital wanted answers to these questions too. It benefits public accommodations and government agencies when they know what the parameters are as well. So the way that we proceed with these cases is intentionally, incrementally, and carefully. We want to pick cases that we think will expand step-wise. And so, if there are attorneys out there who have these kinds of cases that are similar, I'm always happy to work with folks, give advice at the very least. We have a nationwide network of attorneys who always have their ears out and we have the Disability Rights Bar Association, for instance, who hears about these cases and are willing to work on a nationwide basis collectively to make sure that the cases that we bring are going to have a positive rather than a negative impact. Because sometimes it's better to let a case go than to appeal it if you think it's going to work to the detriment of the movement overall.

Celia McGuinness:

The Ninth Circuit is often looked to as a leader in appellate law. And so I think having this decision in the Ninth Circuit is going to prompt other courts of appeal when they received these issues to look to the Ninth Circuit and see what its thinking was. I am not aware of any other cases that are pending appeal in other circuits on the specific issue, but I have no doubt that this will be looked at for the next decade as the first word and as a signpost for where other courts go from here.

Peter Blanck:

Well, thank you, Celia. And I want to thank Christopher, Jennifer and Celia today. I would urge our listeners, they can be found on the web very easily, the Disability Rights Law Center, Celia's law firm in San Francisco. And of course, the Bazelon Center, all leaders in this area. I'm really grateful. And we are really grateful at the Southeast ADA for you sharing your time and valuable insights on this important case. And again, I want to thank you all for an incredibly interesting and important discussion, and look forward to hearing more about this in the future. Thanks again.

Barry Whaley:

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Barry Whaley:

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