

Episode 6 Transcript: Karantsalis v. City of Miami Springs, Florida

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Speakers

Host: Peter Blanck, JD, Ph.D. – Chairman of the Burton Blatt Institute and University Professor at Syracuse University

Guest: Matthew W. Dietz, Esq. Litigation Director – Disability Independence Group, and Theodore D. Karantsalis Miami Springs resident, activist, retired librarian, local journalist, and advocate for people with disabilities

[Music – 4 Wheel City]

Barry Whaley:

Good afternoon, 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 6 of Disability Rights Today. Disability Rights Today provides listeners with new insights on recent court cases that shape the Americans with Disabilities Act and have an impact on the civil rights people with disabilities. I'm Barry Whaley, I'm the Director of the Southeast ADA Center. And as a reminder to listening audience, if you have questions about the ADA, you can use our online form anytime @disabilityrightstoday.org.

Barry Whaley:

In 2008, Theodore Karantsalis sued the City of Miami Springs, Florida, alleging the city violated Title II of the Americans with Disabilities Act and the Rehabilitation Act of 1973, because its facilities and infrastructure were inaccessible to him due to his disability. He later withdrew the lawsuit believing he lacked constitutional standing because his multiple sclerosis at the time had not progressed to a loss of mobility. In 2019, when Mr. Karantsalis MS had progressed, he required a wheelchair for mobility. He chose to re-file his suit, but the District Court dismissed the case, believing

that he was barred by the four year Statute of Limitations, triggered by the 2008 filing.

Barry Whaley:

The 11th Circuit Court of Appeals reversed the Lower Court ruling, saying that Mr. Karantsalis need not file until his disability substantially limited his mobility. Today, to talk about Karantsalis versus the City of Miami Springs, I want to welcome the plaintiff, Mr. Theodore D. Karantsalis, his attorney, Matthew Dietz, founding member and current Litigation Director at Disability Independence Group in Miami, Florida, and as always, our host, Dr. Peter Blanck. So welcome everybody, it's a privilege to have you here and, Peter, I will turn it over to you.

Peter Blanck:

Welcome Theo and Matt. It's a pleasure to be with you both. Your important work is greatly improving the civil rights of people with disabilities, not only in Florida, but across the country. I thought I'd start first with Matt. Theo, we're going to have plenty of time with you, but I think it's important for our listeners to know, Matt Dietz is among the prime leader litigators in disability civil rights in the United States, and has brought some of the most leading edge cases that have changed the law for the better for persons with disabilities. He is the Litigation Director of the Disability Independence Group, affectionately known as DIG in Miami. And I thought, Matt, maybe you'd start by saying a few words, grounding us in your experience and what you do at DIG. And then I was going to turn to Theo and talk about how he came to use your services.

Matthew Dietz:

Sure. Well, Disability Independence Group was founded in 2004 to really enhance the opportunities for persons with disabilities in Florida and across the country. What we do is we handle both litigation and we represent folks from ADA to fair housing, to any type of disability related action. And we also have a non-profit where we have programs and services for persons with disabilities. For example, what we do is we train persons who have autism as well as police on how to interact, to improve safe coordination

with each other. Also, we do a lot of issues involving effective communication set and [the deaf 00:04:23], and other issues involving employment and programs and services for persons with disabilities across Florida and across the country.

Peter Blanck:

And of course, DIG is headquartered in Miami, but, Matt, say a word or two about some of the seminal cases that DIG has been with. Just a few of them to give people a sense of the impact and the nature of the issues.

Matthew Dietz:

Sure. For example, now DIG is handling cases ensuring that schools have the right to protect children with disabilities by ensuring a mass mandate or quarantining of people with COVID. We've done a lot of work ensuring effective communication, defining what effective communication is for the deaf across the country. We've also done work with regards to ensuring that person can receive damages for discriminatory acts under the Rehabilitation Act, which is very similar to the ADA. In addition, we've done a lot of work to secure person's rights in having assistance animals, both in their home for psychiatric reasons or for psychological reasons, and also at their workplace as well. So one of the big issues that we do is we assist people with service animals.

Peter Blanck:

Thank you, Matt. Theo, if I can turn to you now, tell us first a little bit about yourself, your experience as a person with a disability, and then we'll lead up to how you got involved in this case, and then approached Matt.

Theodore Karantsalis:

Sure. Thank you. My name is Theo Karantsalis. I'm from San Francisco, California. I've lived here for about 25 years and I'm sorry, my thought process...

Peter Blanck:

No, that's great. So you moved to Florida, and what were you doing? What was your employment at the time?

Theodore Karantsalis:

Yes, at the time I worked for the United States Immigration and Naturalization Service and I met my wife at the Federal Law Enforcement Training Center. And at the time I had a challenge learning Spanish and my teacher pulled me aside and he said, it's probably best for a person like you just to move to a place where they speak a lot of Spanish. So that's how I ended up in Miami, Florida.

Peter Blanck:

Oh, interesting. Now tell us about, if you don't mind, the nature of your disability, how that progressed and then led to the circumstances of the case we're going to talk about.

Theodore Karantsalis:

Yes. I've had multiple sclerosis since 1999. Starting around 2016, I've developed another illness called psoriatic arthritis, and I also have schizophrenia, which I've had since childhood. And about three years ago, everything converged at a high rate of speed.

Peter Blanck:

You were still working at the time at the same place three years ago?

Theodore Karantsalis:

I was the Assistant Library Director at Miami Dade College, and I was there since on 2004 and my career ended around that time.

Peter Blanck:

And then how did this litigation evolve? What was going on that made you first attempt to resolve this or prior client?

Theodore Karantsalis:

I found that I had to use the walker and my neurologist also prescribed a wheelchair. And as I tried to get about town, I noticed there were some issues. For example, the sidewalk in front of my home, I live on a corner, it doesn't have a curb path. So if I need to go across the street, I need to go

out the driveway into the busy street by the high [inaudible 00:08:27] and issues like that.

Peter Blanck:

It's very dangerous.

Theodore Karantsalis:

Very dangerous. When I tried to use the recreational facilities in our city, one side doesn't have a sidewalk. I shouldn't mention too the City of Miami Springs is going on 100 years old. It's only three square miles population, 14,000. And at one time it was referred to as Mayberry, because it's like a Southern field. But one thing it has problems with, is accessibility, which I learned-

Peter Blanck:

The hard way.

Theodore Karantsalis:

... the hard way.

Peter Blanck:

So what happened? You experienced these barriers and what did you do?

Theodore Karantsalis:

I approached the City Manager and I also approached the City Council and they told me to be patient. In 2008, they told me the same thing, to be patient, that we'll take care of it over time. But my first case was filed in 2008, and now we are in about 2019, and I still have the same issue.

Peter Blanck:

So you filed this case. Let me turn to Matt for a second, if I could. So Matt, we're talking about accessibility barriers, maybe other barriers, please explain why the ADA and one of its Titles, Title II, is involved with this.

Matthew Dietz:

Sure. Well, one of the important issues in this case is, Theo acted pro se. He was a self advocate. He was able to identify his barriers to the community.

And he knew enough about the ADA to say, I'm entitled to be able to park. I'm entitled to be able to go anywhere anybody else goes. And that's what the ADA essentially does with regards to programs and services of public entities [crosstalk 00:10:27].

Peter Blanck:

And where is that in the ADA?

Matthew Dietz:

It's Title II of the ADA.

Peter Blanck:

So there's a specific Title that just applies to these public services and, Theo, you were aware of that?

Theodore Karantsalis:

Yes.

Peter Blanck:

So you filed this complaint under this law, ADA Title II?

Theodore Karantsalis:

Yes.

Peter Blanck:

And when was that?

Theodore Karantsalis:

2019.

Peter Blanck:

2019. And what happened?

Theodore Karantsalis:

I lost with this particular case.

Peter Blanck:

So the first time you file filed it, you lost?

Theodore Karantsalis:

The first time I filed it in 2008-

Peter Blanck:

They said, be patient.

Theodore Karantsalis:

Yes. I recall meeting with County attorneys because I named the County as a defendant, and I believe I named the State Florida Department of Transportation. And I think Florida East Coast Royal was even involved, I believe. But anyway, we all sat down at a big table and on a handshake, they said, listen, [inaudible 00:11:28]. What make this right?

Peter Blanck:

That was 2008. So, Matt, what was he doing essentially, for listeners? Is there some form or something, or what was he doing pro se?

Matthew Dietz:

Well, in 2008, he was essentially saying, you need to fix the whole city, you need to make it accessible. And at the time Theo was a biker, and he was doing this for bike paths and things like that, that involved him at that time. But also, like many advocates, he said, I want everything accessible.

Peter Blanck:

But how did he do that? Did he file a paper or...[crosstalk 00:12:09]

Matthew Dietz:

He filed a paper in court. He named the parties. He looked at other people's complaints and what they did-

Peter Blanck:

And this is federal court?

Matthew Dietz:

This is in federal court, and he sued them and he said, I'm a person with a disability, I want to see this fixed.

Peter Blanck:

So what happened to that 2008 [crosstalk 00:12:32].

Matthew Dietz:

It was dismissed. He dismissed it.

Peter Blanck:

You dismissed it yourself?

Theodore Karantsalis:

I dismissed it voluntarily. I also volunteered at the law library. And to answer your question, I think I just went and pulled it down, pleading template, worked it a little bit and filed it.

Peter Blanck:

Why did you voluntarily dismiss it?

Theodore Karantsalis:

Because it was my understanding that the parties that I named were going to rectify-

Peter Blanck:

So they assured you be patient, we'll take care of it.

Theodore Karantsalis:

Yes.

Peter Blanck:

And then what happened?

Theodore Karantsalis:

I waited.

Peter Blanck:

10 years?

Theodore Karantsalis:

Yes.

Matthew Dietz:

Also, Theo, didn't they tell you that you didn't have the right to bring it for some things?

Theodore Karantsalis:

Thank you, Matthew.

Matthew Dietz:

And what did they tell you with that?

Theodore Karantsalis:

That I did not have standing, that I shouldn't be there because at the time I was very fit. When I went to the 111 building at the time where we had the conference, I would take my bicycle. I had a bill. I was very strong.

Peter Blanck:

For our listeners, you were standing, but what does this mean, he didn't have standing, Matt, at that time?

Matthew Dietz:

Well, in order to have standing-

Peter Blanck:

Legal standing.

Matthew Dietz:

In order to have legal standing, not being able to stand, but being able to bring a case in court, you have to have a personal stake. You have to have something that you need when you bring that. For example, Theo as a person who goes in on a bicycle and who walks in carrying his bicycle, is not going to need a handicapped spot because he doesn't use a wheelchair. He doesn't have a mobility impairment at the time. At the time it was a vision impairment, right.

Peter Blanck:

Was that related to the MS-

Theodore Karantsalis:

Yes.

Peter Blanck:

... vision impairment?

Matthew Dietz:

Double vision.

Peter Blanck:

Right.

Matthew Dietz:

And you've always been an activist, right?

Theodore Karantsalis:

Yes.

Matthew Dietz:

And you wanted to make change.

Peter Blanck:

And to do it in a way that you could safely use the city services. So did 10 years go by, or however period of time, and you just waited? What happened over that period of time?

Theodore Karantsalis:

I was fit, I was strong. Five years ago I placed third in our city's Turkey trial. I was fast. I didn't have the need that I do now.

Peter Blanck:

So in other words, your condition progressed to the point where, Matt, he would then have "standing"? Or that was the issue in the case, I guess.

Matthew Dietz:

That was the issue. The issue in the case is, when does standing start?

Peter Blanck:

Okay. So did you then file another complaint-

Theodore Karantsalis:

Yes.

Peter Blanck:

... in 2019?

Theodore Karantsalis:

Yes.

Peter Blanck:

Again, by yourself pro se?

Theodore Karantsalis:

Yes.

Peter Blanck:

And was it basically the same complaint that you initially filed or a little more involved?

Theodore Karantsalis:

I believe so. I believe it was basically the same. I'm hopeful that I tailored it a little bit.

Peter Blanck:

So that was filed. It went to the federal court again, and the federal court said that... What?

Matthew Dietz:

Federal court first said, pro se plaintiff, you don't state a claim. You have to state your claim clearly.

Peter Blanck:

So what does that mean? What didn't he do?

Matthew Dietz:

Well, he needed to be more definite as to the exact areas that he had an issue with. And then Theo came to me and he says, you know, I'm at my wits end?

Peter Blanck:

Well, he was at the level of his legal knowledge.

Matthew Dietz:

Yeah.

Peter Blanck:

So, Theo, you came to Matt after this complaint was dismissed, or while you were... What did they ask? Did the court ask him for a more definite statement or something, or what happened? What led you to Matt? All roads lead to Matt, but in this case, what led you to Matt? What did the court do?

Theodore Karantsalis:

The court dismissed my case and what led me to Matt was complete desperation. I recalled the day I came here in my walker, I was covered head to toe and warts and I could barely live. And I just asked Matt to take a look at this particular case. And he said he would.

Peter Blanck:

How did you find out about Matt?

Theodore Karantsalis:

Well, Matt, for about 20 years, I worked at a law firm in Coral Gables many years ago, and I used to go to the coffee shop on the corner. And that's where Matt works.

Peter Blanck:

So you knew of Matt. Okay. So the court dismissed your lawsuit in 2019, but how were you able to then reinvigorate it, Matt? You filed again, presumably. Explain to them how that could happen, Matt.

Matthew Dietz:

Well, one, it's, because the court likes to limit the number of cases, the court has stricter requirements when you have, say a claim, especially when it comes to ADA issues, because there's been so many ADA cases filed in South Florida. So they really wanted it to be specific both as to Theo's disability and as the barriers he faces. So I amended it once to make it clear exactly what we were asking for and how Theo had been damaged. Since it was a really relatively simple suit, basically what he asked for is accessible parking spaces in the city, he asked for accessible path of travel in the gym, and he asked for accessible sidewalks by his house, leading to the athletic facility.

Peter Blanck:

Let me stop you there, Matt, just for our listeners, which is an important issue. We're going to get back to your case. So, had you filed any ADA cases before these two?

Theodore Karantsalis:

Yes.

Peter Blanck:

And were there a number of them or just a few?

Theodore Karantsalis:

I believe it was just one at the time, it was against the TSA.

Peter Blanck:

Okay. So you weren't... This is what I'm going to ask Matt. In Florida and elsewhere, there's this sense that people are filing these multiple frivolous cases, and I wanted, Matt, to just give us a little context. You're not a serial ADA claim bringer?

Theodore Karantsalis:

No, sir.

Peter Blanck:

But why what are the courts dealing with in that regard, Matt? Why is there this suspicion or caution about ADA claims? Have there been a lot of serial filings in Florida which has given the courts a bad taste in their mouth?

Matthew Dietz:

Yes. There's been a lot of serial filings. Many times, they are legitimate claims. But even though you have over 25% of the population of Miami Dade that are persons with disabilities and encounter these barriers, you only have a handful of people that bring these claims.

Peter Blanck:

And Theo was not one of them?

Matthew Dietz:

Theo was not one of them.

Peter Blanck:

Okay.

Matthew Dietz:

Theo has always been an arctic. Theo is a writer for newspapers. He does articles. He is an incredible advocate and he knows how to use the courts. But he hasn't been one of these people that file all these claims. And the problem is, many of those claims get relief, but don't get sufficient relief and don't make sure that, that's done. So even though there may have been other claims, the fixes may not have been done. So what Theo needed was something simple. He needed a sidewalk that he could use. He needed a parking spot that he could park in so he doesn't have to walk 300, 400 feet to get to where he needs to go.

Peter Blanck:

And so he wasn't sending out hundreds of demand letters to the shops and everything else like that?

Matthew Dietz:

No.

Peter Blanck:

I want to take a brief break now to thank our listeners and to remind you that if you have questions about this topic, or any other disability rights in today's topics, you can submit your questions online at disabilityrightstoday.org, all one word, or call the Southeast ADA Center at 1-404-541-9001.

Voice Over:

Disability Rights Today is your go-to source for in-depth discussion about recent court cases that shape the Americans with Disabilities Act. Guests include plaintiffs, plaintiff counsel, and others relevant to the highlighted case. Facts of the case, issues of the case, arguments of the case and discussions of implications for policy and practice moving forward, will be our focus. Hosted by Dr. Peter Blank, an American academic psychologist and lawyer who holds the titles of University Professor and Chairman of the Burton Blatt Institute at Syracuse University, Disability Rights Today will appeal to disability rights advocates, attorneys, and others wanting to keep current on the latest legal developments involving the ADA. Tune in at disabilityrightstoday.org.

Peter Blanck:

Welcome back. We're continuing to talk with our great guests, Theo and Matt, the plaintiff and the attorney respectively in an important case against the City of Miami Springs, Florida, ADA Title II case. And we were just getting to the point where Theo had filed his complaint in 2019, and Matt had come on board. And, Matt, I guess you said you amended the complaint to make it more definite. Then what happens in this litigation?

Matthew Dietz:

Then it was dismissed again.

Peter Blanck:

Doesn't the State or the City have to respond?

Matthew Dietz:

Yeah. They filed a motion to dismiss and the court dismissed it again because the court wanted for me to focus on why Theo filed the case in 2008, on how Theo could bring the case now, if he had already filed a case against the City of Miami Springs in 2008.

Peter Blanck:

So let me stop you there for our listeners. So the court issues this order that gets rid of the case, the so-called motion to dismiss. You have to respond to that and explain why it should be?

Matthew Dietz:

In a new complaint.

Peter Blanck:

So the court allowed you the opportunity to file a new complaint?

Matthew Dietz:

Correct. But I had to focus on the differences between Theo in 2008 and Theo in 2019.

Peter Blanck:

Okay. So this is a continuation of this lawsuit-

Matthew Dietz:

Correct.

Peter Blanck:

... and did the court rule on that?

Matthew Dietz:

Well, yes. And the court found... Well, there was a motion to dismiss-

Peter Blanck:

A second one?

Matthew Dietz:

A third one-

Peter Blanck:

A third one?

Matthew Dietz:

... and the court then found that Theo had to bring the case within four years of him beginning the disability. So it wasn't even 2008, he would have to bring the case within four years of 1999.

Peter Blanck:

And what was the logic behind that? It was ultimately reversed, but what was the court's logic and fundamental error, I guess that the Eleventh Circuit found?

Matthew Dietz:

The fundamental error, and the argument from the city, was, it doesn't matter how your disability progresses, disabilities would always progress. So it just matters when he got the disability. So in 1999, he should have known, or had reason to know, that he was going to have MS, that he was going to have a mobility impairment sometime in the future, and he would have four years to bring the case.

Peter Blanck:

What was your argument to the court why that was wrong, at the district court level?

Matthew Dietz:

It was the same argument at the Appellate Court level, but there were two different arguments.

Peter Blanck:

At the Appellate Court level?

Matthew Dietz:

Both, in the District Court level and the Appellate-

Peter Blanck:

So tell us about that.

Matthew Dietz:

On the first argument, which some circuits have done, is, the the timeline starts again every time a person with a disability faces a barrier. So that any time that you go out and you have a step, the timeline would start again, the four years would start at that point.

Peter Blanck:

So let me just stop you there. Is there a name for that theory of the case, every time you hit a barrier?

Matthew Dietz:

That's called the repeated violation theory.

Peter Blanck:

Okay. And did the Eleventh Circuit courts have that?

Matthew Dietz:

No.

Peter Blanck:

So what other circuits courts have that?

Matthew Dietz:

The Tenth Circuit have that.

Peter Blanck:

Because you always hear about these disputes between the circuits and whether this then could go to the United States Supreme Court.

Matthew Dietz:

And I believe that was Colorado, is Tenth Circuit.

Peter Blanck:

So there's a disagreement between these circuits which contain these district courts, and whether they're 11 or 12-

Matthew Dietz:

11-

Peter Blanck:

They're 11--

Matthew Dietz:

And DC.

Peter Blanck:

Appellate circuits in the federal system in which are embedded all these district courts?

Matthew Dietz:

Correct.

Peter Blanck:

So we're in the 11 circuits which includes Florida?

Matthew Dietz:

Florida, Alabama and Georgia.

Peter Blanck:

And what was the theory of the case as opposed to... What did you call it in the 10th circuit?

Matthew Dietz:

The repeated violation?

Peter Blanck:

What was the Eleventh Circuit theory of this?

Matthew Dietz:

Well, the Eleventh Circuit didn't have a set theory for this type of issue. And I said that the issue that it was, was another theory called the continuing violation theory, which means that once it affects him, the time does not begin. So first you would have to be injured. You would have to have an injury, and then from the point of the injury, that he has four years from that point.

Peter Blanck:

The injury being the barrier-

Matthew Dietz:

When he first [crosstalk 00:27:48].

Peter Blanck:

[inaudible 00:27:49] physical injury?

Matthew Dietz:

Well, when his disability progressed enough, that the barrier would force him to suffer discrimination. So until he got that handicapped placard that said he could park in an accessible space, the fact that the City did not have sufficient parking, he did not get any injury yet from that violation. He did not suffer discrimination from that violation.

Peter Blanck:

Would he have one earlier in the Tenth Circuit on these same facts?

Matthew Dietz:

Yes. He would've won... The Eleventh Circuit did not go as far as the Tenth Circuit did in using the repeated violation theory, because it didn't have to.

Peter Blanck:

So let me go to the Theo for a second. We'll come back to the Eleventh Circuit decision. So what was going on for you when you had these three dismissals? What was Matt saying to you? What was your mindset? Obviously you want to dig in, that's a [con 00:28:50] 00:28:50], I guess, you wanted to dig in and proceed. I'm sure I'm not the first person, Matt, to use that.

Matthew Dietz:

No, but I like it.

Peter Blanck:

What was going on for you at this time? They dismissed it a third time. What were you thinking? You want to fight this through, right?

Theodore Karantsalis:

I was thinking that, that was the end of the line. I felt despair. I felt lost really.

Peter Blanck:

And then your knight rides in on his horse, and you're before the Eleventh Circuit, walks in... Was this a virtual argument matter or in person argument?

Matthew Dietz:

A virtual argument.

Peter Blanck:

Did you watch the argument?

Theodore Karantsalis:

I watched it with my entire family and I've watched it since at least 20 times.

Peter Blanck:

I'd like to see it. It probably got higher ratings than the super bowl. I'm thinking Matt was litigating here.

Theodore Karantsalis:

Yes, he did, hit a grand slam, it was remarkable.

Peter Blanck:

So, Matt, tell people what happens. You show up, usually you go to the court, but there's three judges, right, so-called panel. Take us through that oral argument. What were they saying to you? Who went first? You went first.

Matthew Dietz:

I went first, the appellant always goes first, and then the appellee goes after that. And we brief the case before that, because both parties have to put in their arguments in writings.

Peter Blanck:

So they are written papers? Yeah.

Matthew Dietz:

So, there have to be written papers. And then the oral argument is the opportunity for the court to ask us questions.

Peter Blanck:

Was it... You don't have to name the judges. Was it a receptive panel of judges that were interested in...

Matthew Dietz:

It was a very receptive panel of judges. I've handled over 20 oral arguments in front of the Eleventh Circuit, and they're always extremely well-prepared. They know the case well, they have questions ready for you, and they keep you on your feet.

Peter Blanck:

Where were they drilling into in oral argument? What was the main issue they were grappling with?

Matthew Dietz:

The decision by the trial court really didn't pass the common sense test.

Peter Blanck:

So what does that mean?

Matthew Dietz:

Which means that, for a person like Theo that's lived in the city of Miami Springs for years, how do you live with discrimination without progressing it? Does that mean that once four years pass, they have a free pass, discriminate whenever they want, to their existing citizens?

Peter Blanck:

We get that. What was the legal issue, whether this repeated violation or continuing violation, whether that would be the touchstone in the Eleventh circuit or what was the legal framework they were establishing?

Matthew Dietz:

Well, they didn't have to go that far, and I think that they heard argument both on the continuing violation and the repeated violation theory. And when a case accrues, which means when a person has the right to bring the cause of action, and when that time stops, there's been a lot of cases in the Eleventh circuit about when a person has standing to bring a case.

Peter Blanck:

A legal right.

Matthew Dietz:

The legal right. And most of the cases in the Eleventh Circuit involve when a person has standing, and many times the court finds that the person does not have legal standing to bring a case.

Peter Blanck:

Why is it that more of these cases have that basic issue? Is it because they're not set up properly or because they don't have mandates as the lawyer, or why?

Matthew Dietz:

Because many people, it's difficult to allege standing, allege when you have a cause of action, allege when you have been injured. And because there's been so many cases in the Southern district of Florida and in Florida courts, it's a way a court can dismiss a case-

Peter Blanck:

Kind of gate-keep.

Matthew Dietz:

... without getting to the merits.

Peter Blanck:

I see. Let me ask you about the oral argument. Any takeaways from that? Did you think you were looking good or is it hard to predict or-

Matthew Dietz:

I thought after the oral argument, that we were looking really good because essentially, the court said that there's no basis for this opinion. If you can't bring a cause of action because you don't have standard, because his injury was not [crosstalk 00:33:43], his disability was not severe or enough, how could you be barred from bringing the case once you do have standard?

Peter Blanck:

Because it's almost like it's a different case.

Matthew Dietz:

Right.

Peter Blanck:

It's a new-

Matthew Dietz:

It's a new injury.

Peter Blanck:

Yes.

Matthew Dietz:

So once you're injured, that's when the time begins.

Peter Blanck:

Why would the district court possibly think otherwise? As you said, kind of common sense.

Matthew Dietz:

And-

Peter Blanck:

It happens.

Matthew Dietz:

If I knew this, then I would be out of business and the fact is, sometimes courts make incorrect decisions and that's why you have the Appeals Court.

And it's difficult, it's time consuming, it's expensive, and many people don't go that far.

Peter Blanck:

And they see a lot of cases in the district court-

Matthew Dietz:

Right.

Peter Blanck:

... as you said. So, tell us in a nutshell then, what did the ruling say that obviously benefited Theo, but also that was important to the disability community?

Matthew Dietz:

Well, the bottom line takeaway is that if you have a progressive disability, you don't have to bring all of your litigation for the rest of your life within four year of getting the condition.

Peter Blanck:

Because the injury changes, like you said.

Matthew Dietz:

And as you get older, your injury changes, the effect that a barrier has on you change. So, if your disability worsens over time, you are not precluded from bringing a case just because you need another accommodation. And it doesn't matter whether it is a public accommodation, like a business, it doesn't matter whether it's a governmental entity, it doesn't matter if it's a job. Disability is a fluid issue. And as your disability progresses, you change. As anybody gets older, they change. So you're really not limited as you get older.

Peter Blanck:

It is common sense. You just take it at the time you experience an injury.

Matthew Dietz:

Unfortunately, the law is not always common sense.

Peter Blanck:

All right. So, you got the decision. Theo, your first reaction when you... Did Matt call you? Well, you heard your argument so you were encouraged. He got the written decision and sent it to you? What was your reaction?

Matthew Dietz:

I started crying. I was very grateful, very personal-

Peter Blanck:

Thing. Now, in some sense, the work now has just begun. This was a threshold issue, whether you could be in the court. What does the Eleventh Circuit do then with that ruling? For our listeners, it would go back to the district court with some instructions or what happens? What does the Eleventh Circuit do that now the district court must do?

Matthew Dietz:

Well, the Eleventh Circuit remanded it, it's called remand, reversed the decision of the district court and remanded it back to hold that Theo has the right to bring a case, that he now has the right to bring a case for any issue because of his mobility impairment, against the city of Miami Springs.

Peter Blanck:

But does that mean then that the 2019 claim was good?

Matthew Dietz:

The 2019 claim was good. We just have to prove it now.

Peter Blanck:

You have to go to trial?

Matthew Dietz:

We have to find out how to fix it, what to do to fix it, and then we go to trial, and we have to show the court how it can be done.

Peter Blanck:

But what if the city, we talked about this a little bit early, says, they said patience in 2008 or whatever, what if they fixed it? What does that mean?

Matthew Dietz:

Well, if they fixed said, it depends on whether or not it's a permanent fix, and whether or not they can choose to change it in the future. When you talk about things that, for example, you're changing a step to a ramp, that may be a permanent fix. But when you're talking about things like painting a sidewalk or painting a street, those things have to be done every three years. So it's hard for them to be permanent.

Peter Blanck:

But let me ask you this, we're lawyers. So they fix something in 2022. Does that mean that, even though he had a barrier in 2019, you are out of luck?

Matthew Dietz:

No. It means that if they fix it in 2022, it still has to be fixed for 2025, 2028, 2030, and he doesn't have to bring a case every time the paint fades.

Peter Blanck:

But does that mean he loses his 2019?

Matthew Dietz:

No. It means that... What the court does in any ADA case, the main relief is, you ask the court for injunctive relief, which means that you ask the court for an order that requires the defendant, and here the city of Miami Springs, to ensure that, that element will be accessible at all times in the future for Theo. And that way, you don't have to bring a case again in 2023, in 2025, in 2028. They have the duty to always maintain it as accessible.

Peter Blanck:

So you hear this idea of the case being moot. So they fix it in 2022 and say it's fixed forever. Does that mean that his 2019 injury is no longer fixable by the court?

Matthew Dietz:

Unless he has a claim for damages.

Peter Blanck:

So you could have injunctive relief, which is the court ordering them to fix it, and then what's the damages? Just explain that.

Matthew Dietz:

Well, under Title II, which deals with public entities or entities that receive federal financial assistance like grants or any other type of federal aid, if they violate a person's rights, then there is a claim for damages. Now, in order to prove damages-

Peter Blanck:

Damages or money?

Matthew Dietz:

Money, yeah, money for the inconvenience, for the mental anguish, for whatever discrimination damages that a person suffers because of that. But in order to get damages, you need to establish that the failure to comply with the law, the discrimination was intentional. That the public actor knew that it was discriminating when it failed to fix the streets.

Peter Blanck:

You mean they did it deliberately?

Matthew Dietz:

They either did it deliberately, or they were entirely indifferent. They really didn't care.

Peter Blanck:

They were clueless to a point where they should have known better.

Matthew Dietz:

Correct. And with Theo, the question is, if they knew about the problems since 2008 and said, yeah, we'll take care of it eventually. And 2018 comes across and it's still not done and he goes, how come it's not done yet? Then the issue is, why didn't they do it?

Peter Blanck:

So they're blowing him off.

Matthew Dietz:

Correct. Is blowing off deliberate and difference? And the question is, yes, it could be deliberate and difference if they just blow somebody off.

Peter Blanck:

So you have to go back and do all this legal process again. Theo, where are you at now, psychologically? And how do you feel? Vindicated? Well, actually the court hasn't really decided the issue yet. You're vindicated because you've helped create some clearer law about who can go into the courtroom. What are you thinking at this time in your life?

Theodore Karantalis:

Psychologically, I have one foot on the ground, because I'm dealing with several progressive disabilities at once, which require a lot of medication, and it just makes the thought process a lot slower. I'm thrilled. I do feel vindicated. And I'm just wondering what's ahead now with this particular case, because I don't understand all the terminology or the legalese. I thought since we went on the appeal, that was the end of it.

Peter Blanck:

Well, let's ask Matt. Matt, what's ahead, and obviously they could always settle the case. You could settle the case, but if there's no settlement, are we still looking at years down the road, another potential appeal?

Matthew Dietz:

There's always that potential, but this is an older case now since it's been up on appeal, and we're asking the court to expedite it. So hopefully, if we do go to trial on this, it'll be by the summer.

Peter Blanck:

And you would think, you correct me if I'm wrong, they're getting more and more willfully deliberate if they're not trying to fix it now, because everybody's aware of this situation. Right?

Matthew Dietz:

Well, and the question is, if they don't fix it, then it's something that's relatively easy to prove, either they have a parking spot or they don't have a parking spot. Either they have accessible pathways or they don't have accessible pathways. And the more difficult thing is, if they try to fix it, and then to prove intentionality. But again, the fact that they went all the way up to the Appeals Court to fight Theo's ability to even have the right to bring the case, says volumes.

Peter Blanck:

Let me ask you a technical question for the lawyers that are listing in. So under the ADA Title II, if you win, the other side pays your legal fees and costs or whatever they are. Are you considered a winner now, at least for purposes of this first part, or do you have to wait to get paid, Matt, if you win for a final order on this whole deal, we're talking about?

Matthew Dietz:

Well, that's a really interesting question. What determines whether or not a person... Well, number one, you don't get paid until the end. So, until there's a final judgment, you don't get paid. But that's a really interesting question, Peter, because the issue is, you're deemed to be a prevailing party when there's a legal change to the legal relationships of the parties. So, the question is, now that Theo has the right to bring a suit, have there been a change to the legal relationships of the parties? And that's a question that courts really haven't resolved yet, but it's a really important question, because before filing this appeal, Theo Karantsalis had no right to bring another ADA claim against the city of Miami Springs for his entire life, notwithstanding how his disability progressed.

Matthew Dietz:

In my opinion, that's a change in the legal relationship with the parties. So we have won before we even get to the merits of the case. But again, the whole issue about changing the legal relationships of the parties is an evolving area of the law that really hasn't been hammered out yet. In my opinion, it's something in the law that should change. And there has been changes over time in the law. And it's something that also I proposed to my

representative, Charlie Crist, where we're saying that, if somebody brings a case and they changed their behavior in the middle of bringing a case, persons like Theo should be the prevailing party, because, because of that case, they changed their behaviors.

Matthew Dietz:

They did the right thing, and the law should also conform to that without determining at the end, how has the legal relationship of the parties changed? Has it changed? The bottom line is, can Theo walk down the block? Can Theo park in a parking spot? If because of his suit, he could walk down the block, he could park in a parking spot, he should be the prevailing party.

Peter Blanck:

Well, this has been an important and fascinating discussion. Theo, you're really a pioneer and a leader of self advocate in this area. You happen to have one of the best attorneys in the country working with you. You've made great progress. We're all very proud to have spoken with you and worked with you, and I wish you the best of luck. And we are very delighted that the Southeast ADA Center shared with our listeners, your important stories. So, thank you both very much. And I hope that we will continue to have these conversations in the future, once you prevail on this next phase of this case. Thank you both.

Matthew Dietz:

Thank you so much, Peter.

Theodore Karantsalis:

Thank you.

Peter Blanck:

And I'd like to, as always, thank the amazing Southeast ADA team, Barry and your team, for making this possible, and I turn it back to you now, Barry.

Barry Whaley:

All right. Thank you, Peter. Listeners, our guest for this episode of Disability Rights Today has been Theo Karantsalis and Matt Deitz, along with our host, Dr. Peter Blanck. To access Disability Rights Today episodes, visit our website @disabilityrightstoday.org. All episodes are archived with streamed audio, accessible transcripts and resources. You can listen to Disability Rights Today on SoundCloud. You can listen to Disability Rights Today on SoundCloud. You can download Disability Rights Today to your mobile device by searching a podcast app for ADALive.

Barry Whaley:

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