

**FILED**

APR 24 2012

DAVID CREWS, CLERK  
BY  Deputy

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

DARLA JONES,

Plaintiff,

vs.

LEFLORE COUNTY, MISSISSIPPI,

Defendant.

CASE NO: 4:12CV029-SAA

**COMPLAINT**

Plaintiff, Darla Jones (“Plaintiff”), through undersigned counsel, hereby files this Complaint and sues the Leflore County, Mississippi, Defendant, for injunctive relief, attorney’s fees and costs pursuant to 42 U.S.C §12101 *et seq.*, (“Americans with Disabilities Act” or “ADA”) and 29 U.S.C. §701. *et seq.* (“Rehabilitation Act”) and alleges:

**JURISDICTION AND PARTIES**

1. This is an action for declaratory and injunctive relief pursuant to Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, (hereinafter referred to as the “ADA”) as well as §504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§701. *et seq.* (“the Rehabilitation Act”). This Court is vested with original jurisdiction under 28 U.S.C. § 1331 and 1343.
2. Venue is proper in this Court, the Greenville Division of the Northern District of Mississippi pursuant to 28 U.S.C. §1391(B) and Local Rules of the United States District Court for the Northern District of Mississippi.
3. Plaintiff, Darla Jones (hereinafter referred to as “Jones”) is a resident of the State of Mississippi and is a qualified individual with a disability under the ADA. Jones

suffers from what constitutes a "qualified disability" under the Americans with Disabilities Act of 1990, ("ADA") and all other applicable Federal statutes and regulations to the extent that she suffers from a spinal cord injury, is unable to walk, and requires a wheelchair for mobility and also has some limitations with her upper extremities. Prior to instituting the instant action, Jones personally availed herself of Defendant's programs and services and visited the Defendant's facilities at issue in this matter, the Greenwood-Leflore County Chamber of Commerce and the Leflore County Civic Center personally and was denied full, safe and equal access to the subject programs, services, facilities and properties of Defendant due to their lack of accessibility and compliance with the ADA. Jones continues to desire to avail herself of the programs and services of Defendant and continues to desire to visit the Defendant's said facilities but continues to be denied full, safe and equal access due to the violations that continue to exist.

4. The Defendant, Leflore County, Mississippi (hereinafter referred to as "Defendant") is a political subdivision of the State of Mississippi and is a public entity as defined by Title II of the ADA and is the operator, owner and/or lessee of the programs and services as well as the facilities, real properties and improvements which are the subjects of this action: the Greenwood-Leflore County Chamber of Commerce located at 402 Highway 82 West in Greenwood, Mississippi and the Leflore County Civic Center located at 200 Highway 7 south in Greenwood, Mississippi (hereinafter referred to as the "County Facilities").

5. The Plaintiff has suffered direct and indirect injury as a result of the Defendant's actions or inactions described herein. The Plaintiff personally visited the County Facilities prior to the filing of this lawsuit and was unable to fully and safely do so due to the Defendant's lack of compliance with the ADA and the Rehabilitation Act. Plaintiff continues

to be discriminated against due to the Defendant's continued lack of compliance and the Plaintiff's specific continued desire to visit and avail herself of the programs, services and facilities of the County Facilities.

6. All events giving rise to this lawsuit occurred in the Northern District of Mississippi.

**COUNT I-VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**

Plaintiff re-alleges and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 6 of this Complaint.

7. On or about July 26, 1990, Congress enacted the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*

8. In Title II of the ADA, Congress provided that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of a public entity, or be subjected to discrimination by any such entity.

9. "Public entity" is defined as "any state or local government" or "any department, agency.....of a state.....or local government." 42 U.S.C. § 12131(1)(A) and (B).

10. Title II of the ADA also requires that a public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others 28 C.F.R. §35.160(a).

11. Discrimination occurs when a person with a disability is "excluded" from participation in or [is] denied the benefits of the services, programs or activities of a public entity..." 42 U.S.C. § 12132.

12. The U.S. Department of Justice ("DOJ") has promulgated federal regulations to implement the ADA. In addition, the ADA Accessibility Guidelines ("ADAAG") establishes

the standards to which public entities must conform in order to comply with the ADA. The ADAAG (ADA Standards for Accessible Design, 28 C.F.R. Part 36, Appendix A) applies to the Defendant's facilities at issue in this matter, regardless of whether they are of new or old construction, since removal of these barriers described herein are readily achievable and not unduly burdensome within the meaning of the ADA. 42 U.S.C. §§ 12134(c) and 12204.

13. Title II of the ADA and 28 C.F.R. Section 35.105 required Defendant to have completed a Self-Evaluation by January 26, 1993 of its current services, policies, and practices, and the effects thereof, that do not comply with the ADA. Defendant was required to proceed to make the necessary modifications at the County Facilities. Defendant has not completed an adequate Self-Evaluation.

14. Title II of the ADA and 28 C.F.R. Section 35.105 required Defendant to develop a Transition Plan for their facilities by July 26, 1993 where structural changes in their existing facilities needed to be undertaken to achieve program accessibility for all persons with disabilities, including Plaintiff. Defendant failed to adequately develop a Transition Plan for the subject facilities.

15. Defendant's failure to adequately complete a Self-Evaluation for the Coliseum and failure to adequately develop a Transition Plan that fully meets the requirements of the ADA has denied, and continues to deny Plaintiff her rightful opportunity for equal access.

16. Defendant was required to have completed structural changes in its facilities over ten years ago, and, in any event, no later than January 26, 1995. Defendant has failed to complete the required structural changes to achieve equal program, service or activity access to the County Facilities.

17. As a public entity charged with ensuring compliance with federal law, Defendant has known for at least eight years of their authority, duties and obligations under Title II of the ADA. Despite this knowledge, Defendant has arbitrarily and intentionally refused to adequately comply with the ADA's Self-Evaluation and Transition Plan requirements.

18. Defendant has known for at least eight years of its duties and obligations under Title II of the ADA to complete the necessary and required structural changes. Defendant has arbitrarily and intentionally refused to complete the necessary and required structural changes to the subject facilities by the January 26, 1995 date as mandated by federal law.

19. Defendant's failure to adequately meet all of its obligations including, *inter alia*, to complete a Self-Evaluation, to develop a Transition Plan for modification of existing facilities, and to have fully implemented all structural modifications, has denied, and continues to deny, Plaintiff full, safe and equal access to Defendant's programs, services and activities that are otherwise available to persons without disabilities at the subject facilities.

20. Defendant has engaged in conduct and acts of omission that subject Plaintiff to discrimination solely on the basis of her disability. Defendant directly participated in or acquiesced in the conduct or acts of omission described in this Complaint. Defendant's discrimination against Plaintiff solely on the basis of her disability has been, and continues to be, arbitrary, knowing and intentional.

21. Under Title II of the ADA, the programs and activities of public entities must be accessible to people with disabilities unless that would cause a "fundamental alteration" to the program or activity or constitute an "undue financial and administrative burden" to the entity. 28 C.F.R. §35.149-150. It is the burden of the entity to prove that compliance would result in

such fundamental alteration or financial burden. Further, any decision that compliance would result in alteration or burden must be made after “considering all resources available for use in the funding of operation of service, program, or entity, and must be accompanied by a written statement of the reasons for reaching that conclusion” 28 C.F.R. §35.150(a)(3). Defendant cannot meet this burden.

22. Plaintiff was subjected to discrimination when she attempted to access the facilities and avail herself to the programs and services offered there by Defendant. Plaintiff continues to desire to return and therefore continues to suffer discrimination by Defendant in the future as the violations and lack of equal and safe access to the programs, services and facilities at the subject facilities continue to exist.

23. Defendant has discriminated against Plaintiff by denying her full and equal enjoyment of benefits of a service, program or activity conducted by a public entity as prohibited by 42 U.S.C. §12101 *et seq.*, and by failing to remove architectural barriers pursuant to 28 CFR §§35.150 and 35.151.

24. Defendant has discriminated, and continues to discriminate against the Plaintiff, and others who are similarly situated, by denying access to, and full and equal enjoyment of goods, services, facilities, privileges, advantages and/or accommodations at the subject facilities in derogation of Title II of the ADA, 42 U.S.C. § 12101 *et seq.*

25. Defendant is in violation of 42 U.S.C. § 12101 *et seq.* and 28 C.F.R. § 36.302 *et seq.* and is discriminating against the Plaintiff due to the following violations, *inter alia*:

**Greenwood-Leflore County Chamber of Commerce**

- (i) Accessible parking is not provided at the Chamber of Commerce;
- (ii) The handrails at the ramp do not extend onto the level landing;

- (iii) There is an abrupt change in level at the bottom of the ramp transitioning onto the asphalt which is not beveled as necessary for a wheelchair user;
- (iv) There is an abrupt change in level at the entrance to the Chamber of Commerce which is not beveled as necessary for a wheelchair user;
- (v) The drinking fountain is too high for a wheelchair user;
- (vi) The men's and women's toilet rooms lack accessible signage;
- (vii) The toilet room entry doors are too narrow for a wheelchair user to enter;
- (viii) The toilet room entry doors contain knob hardware that require tight grasping, pinching and twisting of the wrist to operate;
- (ix) The stalls in the toilet rooms are too small for a wheelchair user;
- (x) Grab bars are not provided in the toilet rooms;
- (xi) The toilet seats are too low for a wheelchair user;
- (xii) Pipes beneath the lavatories in the toilet rooms are not insulated to prevent burning;
- (xiii) The lavatories contain faucet hardware that require tight grasping, pinching and twisting of the wrist to operate;
- (xiv) The mirror in the toilet rooms is too high for a wheelchair user;
- (xv) The alternate toilet room in the back of the Commerce Center lacks accessible signage;
- (xvi) The alternate toilet room in the back of the Commerce Center contains knob hardware on the entry door that requires tight grasping, pinching and twisting of the wrist to operate;
- (xvii) The lavatory in the alternate toilet room in the back of the Commerce Center lacks knee clearance due to the presence of cabinetry;
- (xviii) The lavatory in the alternate toilet room in the back of the Commerce Center contains faucet controls that require tight grasping, pinching and twisting of the wrist to operate;
- (xix) The alternate toilet room in the back of the Commerce Center lacks grab bars in the water closet area;

- (xx) Sufficient maneuvering clearance for a wheelchair user is not provided within the alternate toilet room in the back of the Commerce Center;

**Leflore County Civic Center**

- (xxi) Many of the parking spaces designated as accessible lack signage;
- (xxii) There is no designated van accessible parking provided;
- (xxiii) There is an insufficient amount of accessible parking provided;
- (xxiv) The ramp to the sidewalk lacks handrails on both sides of the ramp;
- (xxv) Exterior and interior ticket windows are too high for a wheelchair user;
- (xxvi) Accessible parking is not located on the shortest accessible route to the exterior ticket window;
- (xxvii) Fire alarm pulls within the Civic Center are too high for wheelchair users;
- (xxviii) Sufficient maneuvering clearance is not provided to enter the newly altered toilet rooms;
- (xxix) The toilet rooms within the arena lack sufficient maneuvering clearance on the pull side of the entry door for a wheelchair user when exiting or entering the toilet room;
- (xxx) Accessible signage is not provided at the most of the toilet rooms;
- (xxxi) A standard wheelchair accessible toilet stall is not provided in any of the four (4) toilet rooms provided in the arena;
- (xxxii) Coat hooks in the toilet rooms are too high for a wheelchair user;
- (xxxiii) Soap and paper towel dispensers provided in the toilet rooms are too high for a wheelchair user;
- (xxxiv) Accessible seating is not provided at the floor level or at any elevated area and is not sufficiently dispersed.

26. There are other current violations of the ADA at the subject facilities which were not specifically identified herein as the Plaintiff is not required to engage in a futile gesture pursuant to 28 C.F.R. Part 36, §36.501 and, as such, only once a full inspection is performed by Plaintiff or Plaintiff's representatives can all said violations be identified.



27. The Plaintiff has been obligated to retain the undersigned counsel for the filing and prosecution of this action. Plaintiff is entitled to have its reasonable attorney's fees, costs and expenses paid by Defendant pursuant to 42 U.S.C. § 12205.

28. Pursuant to 42 U.S.C. § 12188, this Court is vested with the authority to grant Plaintiff's injunctive relief, including an Order to alter the subject programs, services and facilities to make them readily accessible to, and useable by, individuals with disabilities to the extent required by the ADA, and closing the subject programs, services and facilities until the requisite modifications are completed.

WHEREFORE, the Plaintiff demands judgment against Defendant and requests the following injunctive and declaratory relief:

- A. That the Court declare that the programs, services and facilities owned, operated and administered by Defendant, are violative of the ADA;
- B. That the Court enter an Order directing Defendant to alter its programs, services and facilities to make them accessible to and useable by individuals with disabilities to the full extent required by Title II of the ADA;
- C. That the Court enter an Order directing Defendant to evaluate and neutralize its policies and procedures towards persons with disabilities for such reasonable time so as to allow Defendant to undertake and complete corrective procedures;
- D. That the Court award reasonable attorney's fees, costs (including expert fees) and other expenses of suit, to the Plaintiff; and
- E. That the Court award such other and further relief as it deems necessary, just and proper.

## **COUNT II - VIOLATION OF THE REHABILITATION ACT**

Plaintiff re-alleges and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 6 of this Complaint.

29. As more fully described above, Plaintiff is an individual with a disability.

30. Furthermore, the Plaintiff is a resident of the State of Mississippi who does and would like to continue to frequent the County Facilities that are currently inaccessible as described above and herein, and is otherwise qualified to use and enjoy the programs, services and benefits provided at the County Facilities.

31. Defendant's acts and omissions that result in unequal access to the programs, services, and activities provided by Defendant as alleged herein are in violation of 29 U.S.C. Section 794 *et seq.*, and the regulations promulgated thereunder, 34 C.F.R. pt. 104 *et seq.* Defendant is the direct recipient of federal funds sufficient to invoke the coverage of Section 504, and is unlawfully discriminating against Plaintiff on the sole basis of Plaintiff's disability.

32. Solely by reason of her disability, Plaintiff has been, and continues to be, excluded from participation in, denied the benefit of, and subjected to discrimination in her attempts to receive full, safe and equal access to the services offered by Defendant.

33. Defendant is in violation of Section 504 of the Rehabilitation Act, as amended, 29 U.S.C. §§701 *et seq.* and is discriminating against the Plaintiff due to the violations listed in Paragraph 25 above.

34. Upon information and belief, there are other current violations of the Rehabilitation Act at the facilities operated by Defendant, and only once a full inspection is performed by Plaintiff or Plaintiff's representatives can all said violations be identified.

WHEREFORE, the Plaintiff demands judgment against Defendant and requests the following injunctive and declaratory relief:

A. That the Court declare that the County Facilities, owned and administered by Defendant, are violative of the Rehabilitation Act;

B. That the Court enter an Order directing Defendant to alter the facilities of the County Facilities to make them accessible to and useable

by individuals with disabilities to the full extent required by the Rehabilitation Act;

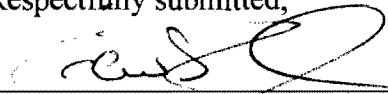
C. That the Court enter an Order directing Defendant to evaluate and neutralize Defendant's policies and procedures towards persons with disabilities for such reasonable time so as to allow Defendant to undertake and complete corrective procedures;


D. That the Court award reasonable attorney's fees, costs (including expert fees) and other expenses of suit, to the Plaintiff; and

E. That the Court award such other and further relief as it deems necessary, just and proper.

Dated this the 24<sup>th</sup> day of April 2012.

Respectfully submitted,

  
Edward I. Zwillling, Esq.  
Ala. Bar No. ~~ASB-564~~ L54E  
Schwartz Roller & Zwillling, LLP  
600 Vestavia Parkway, Suite 251  
Birmingham, Alabama 35216  
Telephone: (205) 822-2701  
Facsimile: (205) 822-2702  
Email: [ezwillling@szalaw.com](mailto:ezwillling@szalaw.com)

  
David L. Calder, Esq.  
Mississippi Bar No. 7686  
Law Office of David Calder, PLLC  
P. O. Box 1790  
Oxford, Mississippi 38655  
Telephone: (662) 832-1354  
Facsimile: (866) 474-0923  
Email: [davidcalder23@gmail.com](mailto:davidcalder23@gmail.com)