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Another Win for Dogs: Court Allows Emotional Support Dog Violating Association Pet Policy

On March 23, the New Jersey Appellate Division decided the case of *Players Place II Condominium Association, Inc. v. K.P. and B.F.*, (A-1304-20) (App. Div. March 23, 2023). Despite a finding that the proposed emotional support dog was too large for the condominium association's pet policy and a failure by the unit owner to even establish the need for an emotional support animal of that size, the Appellate Division affirmed the trial judge's equitable remedy to permit the unit owner to have the oversized dog at the condominium.

This decision appeals the Chancery Division determination that K.P. and B.F. (collectively, the "Defendants") could keep a 70-pound dog in their unit under equitable principles even though the dog violated the Players Place II Condominium Association Inc.'s (the Association) policy prohibiting larger dogs. In May 2018, K.P. purchased a condominium unit subject to the Association's master deed and agreed to be bound by its rules and regulations—including the pet policy, which restricted pets to small dogs under 30 pounds—and to register the pet within two weeks of acquisition, among other requirements. Notably, the pet policy permitted some larger pets to be grandfathered in, and it exempted "dogs used for the blind" from the weight restriction. After the purchase, K.P.'s then-girlfriend, now fiancée, B.F. moved in and adopted a 70-pound dog named Luna to live in the unit as an emotional support animal. Although B.F. had a history of diagnosed psychological disorders, it was clear from the record that B.F. was never prescribed an emotional support animal or, more particularly, a dog of that size.

The Association, after the Defendants failed to respond to an offer for alternative dispute resolution and to submit a completed pet registration form, filed a complaint against the Defendants alleging violations of the Association's governing documents. The Defendants counterclaimed, alleging that Luna was not a "pet" as defined by the governing documents but was a support animal recognized by the Division of Civil Rights that was obtained at the direction of several of B.F.'s medical providers. The Chancery Division entered an order on December 7, 2020, permitting the Defendants to keep Luna, subject to the submission of the pet registration form within 14 days. As none of B.F.'s medical providers recommended a support animal to B.F. prior to her deciding on her own that the animal might help, the trial judge determined that Luna was a pet subject to registration requirements. The trial judge also found that B.F. failed to prove that she was handicapped or disabled under the Fair Housing Act, 42 U.S.C. §§3601-3631 (FHA) or the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -50 (NJLAD), and therefore she was not entitled to classify Luna as an emotional support animal. In reaching the decision, the trial judge found that although B.F. suffered from mental illness, there was not sufficient proof that the mental illness rose to the level of a disability or a handicap under the FHA or the NJLAD.

The Appellate Division upheld the trial judge's equitable remedy, noting that such a decision would only be overturned on appeal for abuse of discretion. The Appellate Division found that the plain language of NJLAD addresses a broader range of disabilities than does the federal counterpart (the Americans with Disabilities Act), and it is meant to be liberally construed in order to advance its beneficial purposes. The Appellate Division recognized a number of psychiatric disorders that qualify as

a handicap under NJLAD, including attention deficit disorder and depression, and noted that a plaintiff claiming mental disability has the burden of proving the disability and showing the extent of the mental disability if the extent is relevant to the accommodations requested or offered.

Here, B.F.'s medical history clearly demonstrated that she was a protected person under NJLAD, but there was insufficient evidence presented that connected the size of the dog to the alleviation of the symptoms. Therefore, the Association was not required under NJLAD to provide the requested reasonable accommodation of the pet policy.

However, the Appellate Division also concluded that Luna had positive effects on B.F.'s mental health and that the rationale for the Association's pet policy (i.e., noise complaints and property damage associated with larger pets) did not outweigh the potential impact of enforcing the pet policy against these particular unit owners. Further, the fact that the Association had made exceptions for other pets weighing more than 30 pounds and had granted two other requests for emotional support animals supported the trial judge's decision. The unrefuted medical evidence established that B.F. suffered from various psychological disorders, and Luna helped allay those symptoms; the Association presented no evidence that Luna caused any problems, and thus the trial judge's equitable remedy did no harm to the Association.

Despite there being several opportunities to reverse the trial court and prevent Luna from being at the condominium, the Appellate Division concluded that the trial court's equitable remedy should be sustained. Luna, the oversized dog, can remain at the condominium.

Authors

Katharine A. Coffey

Partner

Parsippany, NJ | (973) 966-8323

kcoffey@daypitney.com

C. John DeSimone III

Partner

Parsippany, NJ | (973) 966-8299

cjdesimone@daypitney.com

Nicole M. Magdziak

Partner

Parsippany, NJ | (973) 966-8027

nmagdziak@daypitney.com

Peter J. Wolfson

Partner

Parsippany, NJ | (973) 966-8298

pwolfson@daypitney.com

Thomas J. Malman

Partner

Parsippany, NJ | (973) 966-8179

tmalman@daypitney.com

Luke S. Pontier

Senior Associate

Parsippany, NJ | (973) 966-8714

lpontier@daypitney.com

Craig M. Gianetti

Partner

Parsippany, NJ | (973) 966-8053

cgianetti@daypitney.com

Erin Hodgson

Senior Associate

Parsippany, NJ | (973) 966-8157

ehodgson@daypitney.com