IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS—EASTERN DIVISION

JOSEPH KEELING, Plaintiff, v. SHERIFF OF LAKE COUNTY, IL, and LAKE COUNTY, IL, Defendants.	Case No. 23 CV 3442 Judge Steven C. Seeger Magistrate Judge Young B. Kim

MOTION FOR SUMMARY JUDGMENT

Plaintiff Joseph Keeling spent two nights in the Lake County Jail in June 2022. At jail intake a medical provider documented that Plaintiff should receive a lower bunk due to his reported history of high blood pressure. At some later point, a different medical provider documented the opposite. Plaintiff was then assigned to a top bunk by a corrections officer, who the Plaintiff did not depose. Once on the top bunk, Plaintiff had a seizure. Plaintiff did not fall from the top bunk and sustain injury, but was lifted from the bunk by correctional officers and transported to the hospital for treatment.

Plaintiff's operative complaint has been narrowed down to one claim: that the Defendants violated the ADA by failing to provide him a lower bunk, and that that decision caused his seizure. Plaintiff has failed to put forth a genuine issue of material fact for two reasons: (1) Plaintiff fails to establish the intent element required for the ADA claim, and (2) Plaintiff neglected to provide any expert testimony supporting causation for his claimed injury. For those reasons, Defendants are entitled to summary judgment under Fed. R. Civ. P. 56.

I. Facts

Plaintiff Joseph Keeling entered the Lake County Jail in June 2022 with no medical history of seizures. (SOF at ¶ 26.)[1] His medical history did include high blood pressure, with "recurrent hypertensive crisis." (SFO at ¶ 5.) One of Jail's contracted medical staff members noted that history in a form titled "Identification of Special Needs" (SOF at ¶¶ 3–5):

> Hx of recurrent hypertensive crisis, hx frequent fainting/falls during hypertensive crisis

Such a medical intake in the Jail's booking unit is part of the routine practice of admitting inmates into the Jail. (SOF at ¶ 4.) Under the category Treatment/Accommodation/Housing Order, the form contained the following notations:

> ☑ Lower Tier
> ☑ Lower Bunk

For reasons that are unknown from the record adduced in discovery, Wellpath Nurse Gina Almas prepared a second "Identification of Special Needs" form for Plaintiff. (SOF at ¶¶ 6–8.) Because Nurse Almas has since passed away, questioning her about this form is not possible. *Id.* The form bearing her name noted "no restrictions," and accordingly no "Lower Tier" and "Lower Bunk" annotations. *Id.*

Inmates in the Jail are housed in various housing units called "pods." (SOF at ¶ 9.) Where an inmate goes is decided by the Jail's correctional staff in the Classification Office, and Lake County classification officers use information from the Wellpath medical staff to inform their decision as to an inmate's placement. (SOF at

[1] Citations to the Defendant's Rule 56.1 statement of material facts will use the format "SOF at ¶ _" in this brief.

¶¶ 10–11.) Such a housing decision relates not just to the housing unit itself, but also to the cell and even to the bed the inmate will occupy. (SOF at ¶ 11.) When Plaintiff was moved on June 9 from the booking unit to the classification pod, he was assigned to "Cell 08 A," which was a top bunk berth. (SOF at ¶ 12.) Plaintiff entered that cell, and bodycam video show what occurred at around 4:35 PM: he suffered a seizure. (SOF at ¶ 24.)

II. Standard

A court may grant summary judgment where there is no genuine issue as to any material fact. Fed. R. Civ. P. 56(c). Issues are "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-movant. *Packman v. Chicago Tribune Co.*, 267 F.3d 628, 637 (7th Cir. 2001). Facts are "material" only when they might affect the outcome of the suit under the governing law. *Id*. Only disputed material facts as they related to the governing law of a claim "will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

On summary judgment, a non-moving party must do "more than raise some metaphysical doubt as to the material facts; the non-moving party must come forward with specific facts showing that there is a genuine issue for trial." *Keri v. Board of Trustees of Purdue University*, 458 F.3d 620, 628 (7th Cir. 2006). Inferences supported only by speculation or conjecture do not preclude summary judgment. *McDonald v. Winnetka*, 371 F.3d 992, 1001 (7th Cir. 2004). The non-movant must present definite, competent evidence in rebuttal to successfully oppose summary judgment. *Salvadori v. Franklin School Dist.*, 293 F.3d 989, 996 (7th Cir. 2002). The "mere existence of a scintilla of evidence in support of the [non-movant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-movant]."

Anderson, 477 U.S. at 252. As Local Rule 56.1(e)(3) states in part: "To dispute an asserted fact, a party must cite specific evidentiary material that controverts the fact and must concisely explain how the cited material controverts the asserted fact."

III. Plaintiff Cannot Put Forth a Genuine Issue of Material Fact Supporting His ADA Claim

Plaintiff fails to establish all the elements of an ADA claim because he did not show that he was intentionally discriminated against. In fact, Plaintiff has identified no individual actor at all who refused to accommodate his disability. He cannot establish "deliberate indifference" on the part of any Defendant employee, and therefore, his claims for liability and compensatory damages must fail.

A. Standard governing Title II ADA claims.

Suits against governmental entities fall under Title II of the Americans with Disabilities Act. *A.H. by Holzmueller v. Ill. High School Ass'n*, 881 F.3d 587, 592 (7th Cir. 2018). The threshold requirements under the ADA are that a plaintiff "[1] is a qualified individual with a disability, [2] that he was denied the benefits of the services, programs, or activities of a public entity or otherwise subjected to discrimination by such an entity, and that [3] the denial or discrimination was by reason of his disability." *Hildreth v. Butler*, 960 F.3d 420, 430 (7th Cir. 2020); *Lacy v. Cook County*, 897 F.3d 847, 853 (7th Cir. 2018).

Related to ADA elements two and three, a plaintiff must show one or more of the following: "(1) the defendant **intentionally acted** on the basis of the disability, (2) the defendant **refused to provide** a reasonable modification, or (3) the defendant's rule **disproportionally impacts** disabled people." *A.H. by Holzmueller*, 881 F.3d at 593. Importantly, "the statutory language in both the Rehabilitation Act and the ADA

requires proof of causation." *Id.*[2] This is because both enactments "prohibit discrimination against individuals 'by reason of' the disability, or 'on the basis of' the disability." *Id.* Finally, to receive compensatory damages, a plaintiff "must show deliberate indifference, which occurs when defendants '*knew* that harm to a federally protected right was substantially likely and . . . *failed* to act on that likelihood.'" *Hildreth*, 960 F.3d at 431 (citing *Lacy v. Cook County*, 897 F.3d 847, 862 (7th Cir. 2018) and quoting *Liese v. Indian River Cty. Hosp. Dist.*, 701 F.3d 334, 344 (11th Cir. 2012)). As these standards indicate, "negligence alone" cannot support a Title II ADA claim. *Morris v. Kingston*, 368 Fed. Appx. 686, 690 (7th Cir. 2010). ("Prison officials' initial failure to accommodate Morris's disability might at worst constitute negligence, but negligence alone cannot support a Title II claim.").

B. Plaintiff Cannot Establish the Intent Element of an ADA Claim.

The ADA's first element is not disputed here: Plaintiff is a qualified individual with a disability. The disability identified at the time Plaintiff entered the Jail was a "history of recurrent hypertensive crisis." (SOF at ¶ 5.)

Plaintiff's ADA claim stops there: he is unable to show any genuine issues of material fact as to ADA elements two or three. This is because there is no record of him having been denied benefits, nor is there a record of a person discriminating against him, much less that any of that was "by reason of his disability."

On the contrary, the record—SOF ¶ 5—shows that Plaintiff *was* accommodated: in his intake screening, a Wellpath nurse at the Jail indicated that he should be assigned

[2] Regarding the ADA and the Rehabilitation Act more generally: "The relevant provisions and implementing regulations of the Rehabilitation Act and the ADA are 'materially identical.'" *A.H. by Holzmueller*, 881 F.3d at 592.

a "lower tier" and a "lower bunk." (Many pods in the jail have two levels or "tiers," with stairs that lead to the second tier.) These assignment recommendations—accommodations, in the words of the ADA—were clearly by reason of his disability. Plaintiff was not "denied the benefits of the services, programs, or activities" the Jail.

But what of his assignment to a top bunk despite the initial *Identification of Special Needs* form? Bed assignments by the Lake County Classification officers are made based upon the recommendation of Wellpath nurses. (SOF ¶ 11.) The officer in Classification uses the information from the medical staff in making his or her housing determinations. *Id.* We have learned in discovery that there were **two** *Identification of Special Needs* forms in Plaintiff's records; we do not know—the Plaintiff never took any discovery on the issue—whether the classification officer based his decision on the first form or the second form. Only, from the placement the officer made, it would appear he based it on the *second* form, which indicated that Plaintiff required no accommodation. In addition to the Plaintiff adducing no information on the bed-assignment decision, he also never named a Wellpath medical provider as a defendant in this case, and the Second Amended Complaint contains *no* individual defendants.

What defendant "intentionally acted"? What defendant "refused to provide a reasonable modification"? And also, were those unknown person's actions "by reason of disability"? Nobody knows, but it is the Plaintiff's burden to establish these things. At most, the record supports the proposition that an erroneous *Identification of Special Needs* form created by a Wellpath nurse was relied upon—namely, the second one at SOF ¶¶ 6–8—and Plaintiff was temporarily misassigned a top bunk. This does not seem to have bothered Plaintiff, however, because he appears to have promptly gone into Cell

08 where a chair was available for him to sit on, and he *climbed into the top bunk*. (SOF ¶¶ 24–25.) There, he suffered the first seizure of his life. (SOF ¶¶ 26–27.)

Tellingly, Plaintiff previously named the Lake County correctional officer who records identified as the POD officer at the time the Plaintiff entered his second housing location. (See Amended Complaint at Dkt # 18.) The officer, Superior Tyler, did not have an independent recollection of Plaintiff or having said anything to him about a bunk assignment. She made clear, however, that she would have assigned Plaintiff based upon the intake form she had—consistent with the procedures describe in SOF ¶¶ 11–12 and ¶¶ 18–19. Following Tyler's testimony, Plaintiff voluntarily dismissed her as a defendant. (See SOF at Exh. 1, Answer to the Second Amended Complaint.)

At most, this case establishes a claim of negligence under the ADA (although it still fails to identify even who the negligent actor was). Negligence does not establish a Title II ADA violation,[3] and there is no genuine issue of material fact at play. As such, under the governing Rule 56 standard, the Defendants are entitled to judgment as a matter of law.

IV. Plaintiff Cannot Establish Causation

The sole injury Plaintiff claims as a result of the alleged ADA violation is the seizure. (SOF ¶ 24; see also SOF Exh. 1, Answer at ¶ 11). He has not presented any admissible evidence to connect the seizure with any action by the Sheriff or his employees.

Plaintiff did not learn that he had a seizure until after an extended period of hallucinations that occurred later at the McHenry County Jail. (SOF ¶ 28, citing Keeling

[3] *Morris v. Kingston*, 368 Fed. Appx. 686, 690 (7th Cir. 2010).

Dep. at 45:15–47:8.) He learned his medical conditions from medical records. (SOF ¶ 28, citing Keeling Dep. at 49:2–6.) He had never had a seizure before the reported incident in the Lake County Jail. (SOF ¶ 26, citing Keeling Dep. at 92:8–10.) Plaintiff complains of short-term memory loss and twitching on the left side of his face, which began "to the best of [his knowledge] because I was in psychosis, 45 to 50 days after the seizure." (SOF ¶ 29, citing Keeling Dep. at 44:19–45:1). When asked his understanding of what caused the seizure Plaintiff opined "My thought would be the hypertension getting on the top bunk . . . ." (SOF ¶ 30, citing Keeling Dep. at 91:20–23). Yet Plaintiff admits that he has no medical training upon which to found that opinion. (SOF ¶ 31, citing Keeling Dep. at 92:1–4). Plaintiff did not disclose any treating physicians. And Plaintiff admitted that none of his treaters opined about the cause of his seizure:

17	**Q. Has any doctor ever told you what**
18	**caused the seizure in the Lake County Jail?**
19	A. I don't believe so, no.

(SOF ¶ 32, citing Keeling Dep. 91:17-19)

Seizures can be caused by a wide variety of conditions, according to the Mayo Clinic website, including high fevers, Covid-19, lack of sleep, head trauma, use of narcotics, alcohol withdrawal,[4] and hypertension can also be a cause.[5] As to causation, "[n]o expert testimony is required to assist jurors in determining the cause of injuries that are within their common experiences or observations." *Hendrickson v. Cooper*, 589 F.3d 887, 892 (7th Cir. 2009) (stating in an excessive force case that expert testimony was not necessary to show causation where "the cause of [the plaintiff's] pain was

[4] https://www.mayoclinic.org/diseases-conditions/seizure/symptoms-causes/syc-20365711.
[5] https://medlineplus.gov/ency/article/003200.htm.

perfectly clear: [the defendant] beat him"). However, if the case presents a more complicated question of medical causation, then a plaintiff is required "to support his theory of causation with some objective medical evidence." *Id.*

Certainly if Plaintiff had fainted and fallen from the higher bunk, sustaining injury, lay testimony as to the cause of the injury (gravity) might be sufficient. But whether or not a high bunk assignment could cause a seizure is not within the realm of most jurors' common experiences or observations. Where, as here, an injury would not be obvious to a layperson, expert testimony is required to establish causation. *Myers* v. *Ill. Cen. R.R. Co.*, 629 F.3d 639, 643 (7th Cir. 2010); *see also Henderson* v. *Sheahan*, 196 F.3d 839, 848 (7th Cir. 1999) ("Ordinarily, to obtain an award of compensatory monetary damages under § 1983, a plaintiff must demonstrate both that he has suffered an 'actual' present injury and that there is a causal connection between that injury and the deprivation of a constitutionally protected right caused by a defendant."). Plaintiff was provided by the Court with an extended opportunity to disclose experts (*See* Dkt. # 35, granting a 90-day extension); he declined to do so (*See* Dkt. # 38, noting "The parties do not intend to offer experts."). Plaintiff cannot obtain monetary damages for an injury based solely upon his own client's unfounded supposition that it was causally related to the alleged violation. *See Anderson v. Sheriff of Cook County*, 2016 WL 3612061, *3–4 (N.D. Ill. July 16, 2016) (granting summary judgment where plaintiff failed to proffer any expert testimony that delay in treating high blood pressure caused or exacerbated inmate's stroke.). Therefore, summary judgment should issue.

V. Conclusion

Joseph Keeling suffered a seizure; the Lake County Jail was not deliberately indifferent to Plaintiff's medical needs. These circumstances do not give rise to a claim under the Americans with Disabilities Act. With no genuine issues of material fact, the Court should enter judgment as a matter of law as to the Sheriff of Lake County and the County of Lake.

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