

STATE OF MICHIGAN  
COURT OF APPEALS

---

GREGORY HAYNES,

Plaintiff-Appellee,

v

MICHAEL J. NESHEWAT, ROBERT J.  
MURRAY, and BRIAN PELTZ,

Defendants,

and

OAKWOOD HEALTHCARE, INC. and  
OAKWOOD HOSPITAL – SEAWAY CENTER,

Defendants-Appellants.

---

UNPUBLISHED

June 23, 2005

No. 249848

Wayne Circuit Court

LC No. 01-137330-NO

Before: Talbot, P.J., and Griffin and Wilder, JJ.

GRIFFIN, J. (*dissenting*).

I respectfully dissent. I would affirm<sup>1</sup> and hold that the denial of a physician's full and equal enjoyment of hospital staff privileges because of racial discrimination is prohibited by the Elliott-Larsen Civil Rights Act (CRA). MCL 37.2302(a).

I

Michigan's CRA, *supra*, is a broad, remedial statute. *Miller v C A Muer Corp*, 420 Mich 355, 362-363; 362 NW2d 650 (1984); *Reed v Michigan Metro Girl Scout Council*, 201 Mich

---

<sup>1</sup> I would specify that our decision is without prejudice to defendants' ability to bring a motion for summary disposition based on MCR 2.116(C)(10) (there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law).

App 10, 15; 506 NW2d 231 (1993); MCL 37.2102(1).<sup>2</sup> This statute implements the equal protection and anti-discrimination guarantee of our Michigan Constitution:

No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation. [Const 1963, art 1, § 2.]

In construing our statutes, we are guided by the following well-established rules of statutory construction:

The fundamental task of statutory construction is to discover and give effect to the intent of the Legislature. The task of discerning our Legislature's intent begins by examining the language of the statute itself. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996). Where the language of the statute is unambiguous, the plain meaning reflects the Legislature's intent and this Court applies the statute as written. Judicial construction under such circumstances is not permitted. *Id.* Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to determine legislative intent. *Luttrell v Dep't of Corrections*, 421 Mich 93; 365 NW2d 74 (1984). When construing a statute, the court must presume that every word has some meaning and should avoid any construction that would render any part of the statute surplusage or nugatory. *Altman v Meridian Twp*, 439 Mich 623, 635; 487 NW2d 155 (1992). If possible, effect should be given to each provision. *Gebhardt v O'Rourke*, 444 Mich 535, 542; 510 NW2d 900 (1994). [*People v Borchard-Ruhland*, 460 Mich 278, 284-285; 597 NW2d 1 (1999).]

Further, this Court reviews questions of statutory construction de novo. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002).

## II

At the outset, there should be no dispute that defendants' Oakwood Hospital is a "place of public accommodation," and, thus, defendants are subject to the prohibited discrimination

---

<sup>2</sup> MCL 37.2102(1) provides:

The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right.

practices of MCL 37.2302(a). See *Whitman v Mercy-Memorial Hosp*, 128 Mich App 155; 339 NW2d 730 (1983).

### III

On appeal, the first issue is whether hospital staff privileges constitute “goods, services, facilities, *privileges, advantages, or accommodations*” under the plain meaning of the words. (Emphasis added.) Where a statute does not define its terms, it is appropriate to look to the dictionary for a definition. *People v Lee*, 447 Mich 552, 558; 526 NW2d 882 (1994). In this regard, *Random House Webster’s College Dictionary, 2d Ed*, defines “privilege” as: “a right, immunity, or benefit enjoyed by a particular person or a restricted group of persons.” The same dictionary defines “advantage” as: “any circumstance, opportunity, or means specially favorable to success or a desired end.” Based on the dictionary definitions of the plain words,<sup>3</sup> I would hold that clinical staff privileges are “privileges” and “advantages.”

### IV

The pivotal question is whether § 2302(a) of our Civil Rights Act prohibits places of public accommodation from unlawfully discriminating against individuals or only members of the public. Defendants argue that the language of § 2302(a) does not reveal any legislative intent to include within the scope of conduct prohibited by a place of public accommodation limitations or restrictions governing private relationships not generally available to the general public. Thus, defendants conclude whether a § 2302(a) claim is established requires consideration of whether a plaintiff has alleged that he was deprived of access to goods, services, facilities, privileges, advantages, or accommodations that were made available to the public.

In my view, defendants’ analysis runs contrary to the plain language of § 2302(a). The statute does not limit its protection to members of the *public*; rather, by its own terms, it protects the rights of the *individual*:

Except where permitted by law, a person shall not:

(a) Deny an *individual* the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of religion, race, color, national origin, age, sex, or marital status. [MCL 37.2302(a); emphasis added.]

In construing the substantially similar language of Title III of the Americans With Disabilities Act (ADA), the United States Court of Appeals for the Third Circuit in *Menkowitz v Pottstown Memorial Medical Center*, 154 F3d 113, 121 (CA 3, 1998), stated:

[W]e must conclude that the appellant has properly stated a cause of action as an “individual” discriminated against in the “full and equal enjoyment of the

---

<sup>3</sup> The other major English language dictionaries define these words in a similar fashion.

goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.” At the outset, we cannot accept the district court’s blanket interpretation that Congress intended Title III to apply only to members of the “public,” which the district court defined as those guests, clients, or customers who seek the services, facilities, or privileges offered by a place of public accommodation. The operative rule announced in Title III speaks not in terms of “guests,” “patrons,” “clients,” “customers,” or “members of the public,” but instead broadly uses the word “individuals.”

In rejecting the argument advanced by defendants, the Third Circuit held:

We therefore hold that a medical doctor with staff privileges – one who is not an employee for purposes of Title I – may assert a cause of action under Title III of the ADA as an “individual” who is denied the “full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.

I find the analysis of the United States Court of Appeals for the Third Circuit regarding the similar language of Title III of the ADA to be persuasive and hereby adopt it. Defendants’ public policy arguments to the contrary are the province of the Legislature, not this Court. *Doe v Dep’t of Corrections*, 240 Mich App 199, 201; 611 NW2d 1 (2000).

Furthermore, it is noteworthy that, in prior decisions, our Court has assumed that hospital staffing decisions were subject to the anti-discrimination prohibitions of § 2302(a). In particular, in *Feyz v Mercy Memorial Hosp*, 264 Mich App 699; 692 NW2d 416 (2005), we recently stated:

We are asked in this case to determine whether the doctrine that staffing decisions of private hospitals are not subject to judicial review precludes all such review, including claims brought under statutes such as the Civil Rights Act. We hold that the doctrine does not preclude such claims and reverse in part the trial court’s grant of summary disposition dismissing all of the plaintiff’s various claims against defendant.

Finally, I conclude that defendants’ reliance on *Kassab v Michigan Basic Prop Ins Ass’n*, 441 Mich 433; 491 NW2d 545 (1992) is misplaced. In *Kassab*, our Supreme Court, in a four to three decision, held that the public accommodations section of our Civil Rights Act did not afford the plaintiff a remedy for unfair insurance claims processing allegedly motivated by discrimination based upon national origin. Justice Levin, who signed the four-Justice majority opinion, also filed a separate opinion, wherein he stated that the Court’s decision was based on the interplay between the Civil Rights Act and the Uniform Trade Practices Act:

*Reading the Civil Rights Act and the Uniform Trade Practices Act together, I am persuaded that the Legislature did not intend to provide a civil rights action for mental distress and anguish with respect to unfair claims processing, alleged to have been based on national origin, and for the payment of attorney fees in addition to the twelve percent interest for delay in payment provided in the UTPA. [Kassab, supra, opinion by Levin, J. at 447; emphasis added.]*

While the *Kassab* per curiam opinion contains broad language suggesting that private contracts are not subject to § 2302(a) of the Civil Rights Act, I view such statements as obiter dictum for the reason that the holding of *Kassab* is limited to whether § 2302(a) applies to alleged unfair and unlawful discriminatory processing of insurance claims. Unlike *Kassab*, the present case does not involve an interplay between conflicting and competing statutes in the comprehensively regulated area of insurance. See *Burnside v State Farm Fire & Casualty Co*, 208 Mich App 422, 431; 528 NW2d 749 (1995) and *Crossley v Allstate Ins Co*, 155 Mich App 694, 697; 400 NW2d 625 (1986).

For these reasons, I would affirm the well-reasoned opinion of the trial court denying in part defendants' motion for summary disposition.

/s/ Richard Allen Griffin