

Will Contest: Court Looks To Nurse To Testify On Mental Capacity.

While a resident in a nursing home, an elderly lady revoked her will signed nineteen years earlier and signed a new will leaving most of her property to her grandson.

When she passed away her other grandchildren filed court papers objecting to the new will and asked the court to reinstate the earlier will.

The grandson had been helping her manage her affairs and was acting as her *de facto* legal guardian. The court believed a confidential relationship existed between her and the grandson. That created strong suspicion the grandson could have exerted undue influence upon her getting her to revoke one will and sign a new one which substantially favored him.

The nurse who was on duty at the nursing home on the afternoon she signed her will testified, based on the nursing notes, that the resident's pain level was only "1" and she was alert and oriented during the visit.

COURT OF APPEALS OF MISSISSIPPI
January 25, 2005

The Court of Appeals of Mississippi pointed to the testimony of the nurse on duty at the nursing home when the grandson, the lawyers and the notary visited. The nurse had nothing to gain or lose.

The nurse's notes showed the lady was alert and oriented that afternoon. The court reasoned she understood what she was doing, was not under duress and fully intended for her grandson to get her property. ***Sims v. Sims*, __ So. 2d __, 2005 WL 147716 (Miss. App., January 25, 2005).**

Lifting Restriction: Court Says Nurse Not Disabled As Defined By The ADA.

The first element that any plaintiff must establish to succeed on a disability discrimination claim is that the individual in fact lives with a "disability" as that term is defined by the Americans With Disabilities Act (ADA).

That is, there must be a physical or mental impairment that substantially limits one or more of the major life activities.

This element is of threshold importance; if a plaintiff cannot establish this element, the disability discrimination claim is without merit and must be dismissed by the court.

Lifting has been seen as a major life activity. However, the weight of legal authority is that a general lifting restriction is not a disability.

Weight lifting limitations do not tend to restrict a person's ability to perform a broad class of jobs in various classes as compared to the average person with comparable skill.

Rather, weight lifting restrictions tend only to prevent people from performing a narrow class of jobs

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
January 26, 2005

The US Circuit Court of Appeals for the Eighth Circuit, in an opinion that will not be published in the Federal Reporter, ruled that a staff nurse with lifting restriction imposed by her physician due to degenerative disc disease in her neck is not a disabled individual as contemplated by the Americans With Disabilities Act (ADA) and has no right to sue her former employer for disability discrimination.

Temporary Accommodation

The hospital temporarily accommodated the nurse's lifting restriction by assigning her to a shift coordinator position. However, when her doctor imposed further restrictions against activities that required bending and twisting, she was placed on unpaid medical leave. Her rights were not violated, the court said.

Arbitration Order to Return to Work

An arbitrator upheld the nurse's grievance to the extent she was ordered returned to work if she could perform the essential functions of her staff nursing job.

The arbitrator's ruling meant the hospital had to bring in outside professionals to create a formal functional job description for a registered nurse and to evaluate the details of the restrictions imposed by the nurse's physician.

After careful analysis it was found the nurse could not meet the essential physical demands of her job and could be terminated without violating the arbitrator's order.

Nurse Not Disabled

The court took the tack that by law a person with lifting restrictions is not considered a disabled person within the meaning of the ADA.

That means to avoid violating the ADA it is not necessary for the employer to determine whether or not the person is a qualified individual with a disability, as the person does not have a disability and does not come under the ADA. ***Lundquist v. Rice Memorial Hosp.*, 2005 WL 156640 (8th Cir., January 26, 2005).**