

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

Brad Glass,)	
)	
Plaintiff,)	
)	
v.)	No. 6:14-cv-3059
)	
Sharon Trowbridge, Howell County Recorder)	
of Deeds, in her official capacity;)	
)	
Defendant.)	

COMPLAINT

Introduction

1. This is a civil rights action filed by Brad Glass. In this action, Plaintiff seeks declaratory and injunctive relief as well as damages pursuant to 42 U.S.C. § 1983. Plaintiff asserts that Defendant, the Recorder of Deeds for Howell County, has adopted and is enforcing policies or practices that infringe upon his fundamental right to marry, in violation of rights guaranteed by the United States Constitution and Title II of the American with Disabilities Act, by preventing him from marrying. Plaintiff seeks a determination that Mo. Rev. Stat. § 451.040.2, which requires that marriage license applications be signed “in the presence of the recorder of deeds or their [*sic*] deputy[,]” is unconstitutional as applied and violates Title II of the ADA in instances where an applicant is unable because of a disability to appear before the Recorder of Deeds.

Jurisdiction and Venue

2. This action arises under the Constitution of the United States, Title II of the Americans with Disabilities Act, and the provisions of 42 U.S.C. § 1983. The jurisdiction of this court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1)-(2) because Defendant resides in Howell County and a substantial part of the events or omissions giving rise to the claims occurred in Howell County.

4. Venue is proper in the Southern Division pursuant to L.R. 3.1 (a)(3)(a) and L.R. 3.1 (b)(1).

Parties

5. Plaintiff, Brad Glass, is a resident of Mountain View, Missouri.

6. Defendant Sharon Trowbridge is the Howell County Recorder of Deeds. She is sued in her official capacity only.

7. Defendant has acted, and continues to act, under color of state law at all times relevant to this Complaint.

Facts

8. Plaintiff is an unmarried man over the age of eighteen.

9. He is engaged to marry an unmarried woman over the age of eighteen to whom he is not related.

10. Plaintiff and his fiancée have been engaged to be married since December 2012.

11. Plaintiff and his fiancée would now be married; however, they have not married because they have not obtained a marriage license.

12. Plaintiff has a disability within the meaning of 42 U.S.C. § 12102(2) and 28 C.F.R. § 35.104.

13. As a result of his disability, Plaintiff is unable to appear in person at Defendant's office, which is located in West Plains.

14. West Plains is approximately twenty-five miles from Mountain View, and travel between West Plains and Mountain View is approximately thirty minutes in each direction.

15. Defendant operates the Office of the Recorder of Deeds for Howell County.

16. Defendant's office is the sole authority that can issue a marriage license in Howell County.

17. Missouri law criminalizes the solemnization of any marriage unless a marriage license has been issued. Mo. Rev. Stat. § 451.120.

18. Marriages allegedly solemnized without a marriage license are not recognized in Missouri. Mo. Rev. Stat. § 451.040.

19. Missouri law requires both applicants for a marriage license to sign the application "in the presence of the recorder of deeds or their deputy." Mo. Rev. Stat. § 451.040.2.

20. Defendant contends that § 451.040.2 requires both applicants for a marriage license to appear in person in the office of the Recorder of Deeds, with no exceptions.

21. Both Plaintiff and his counsel have contacted Defendant's office and requested an accommodation of his disability, but Defendant's office advised both that accommodations are impossible and that it is impossible to obtain a marriage license in Howell County without each applicant appearing in person at the office of the Recorder of Deeds.

22. But for the policies and practices instituted and implemented by Defendant, Plaintiff would have been married during 2013 and would now be married to his fiancée.

23. As a proximate result of Defendant's policies and practices, Plaintiff has suffered significant harm, including the loss of the benefits of marriage and other damages.

COUNT I

Violation of Civil Rights - 42 U.S.C. §1983 Right to Marry – Due Process Clause

24. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.

25. The conduct, policies, and practices of Defendant described above constitute unreasonable and unconstitutional interference with and infringement upon Plaintiff's exercise of the fundamental right to marry guaranteed by the United States Constitution.

26. Defendant's policies and customs prevent Plaintiff from marrying his fiancée.

27. The right to marry is a fundamental right protected by the United States Constitution that cannot be denied because one partner to the marriage is unable because of his disability to appear in person at Defendant's office.

COUNT II

Violation of Title II of the American with Disabilities Act

28. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.

29. Subtitle A of Title II of the Americans with Disabilities Act prohibits public entities from discriminating against persons with disabilities in their programs, services, and activities. 42 U.S.C. §§ 12131-13134. Regulations implementing subtitle A are codified at 235 C.F.R. part 35.

30. Title II's definition of "public entity" includes any state or local government or "any department, agency ... or other instrumentality" of a state or local government. 42 U.S.C. § 12131(1)(A), (B).

31. Defendant is responsible for the operation of a public entity for the purposes of Title II.

32. Plaintiff is a “qualified individual with a disability” within the meaning for 42 U.S.C. § 12131(2) and 28 C.F.R. § 35.104 because he meets all the eligibility requirements for a marriage license other than the requirement that he appear in person at the office of the Recorder of Deeds.

33. The office of the Recorder of Deeds for Howell County and the State of Missouri are each a “public entity” within the meaning of 42 U.S.C. § 12131(1)(A) and 28 C.F.R. § 35.104.

34. Defendant subjects Plaintiff to discrimination by excluding him from marriage and the issuance of a marriage license.

35. The exclusion and discrimination violate 42 U.S.C. § 12132.

36. By failing to accommodate Plaintiff’s disability, Defendant denies Plaintiff the opportunity to participate in or benefit from Defendant’s services, programs, and activities, including the issuance of a marriage license.

37. To the extent that Mo. Rev. Stat. § 451.040.2 prohibits Defendant from accommodating Plaintiff’s disability, it deprives him of the opportunity to participate in or benefit from the services, programs, and activities of the State of Missouri, including marriage.

38. Defendant limits Plaintiff, on the basis of his disability, from enjoyment of the right to marry and the benefits of marriage.

39. To the extent that Mo. Rev. Stat. § 451.040.2 prohibits Defendant from accommodating Plaintiff’s disability, it limits Plaintiff, on the basis of his disability, from enjoyment of the right to marry and the benefits of marriage.

WHEREFORE, Plaintiff requests relief as follows:

- A. Enter a declaration that Defendant's policies, customs, and practices violate the Constitution, as applied to Plaintiff, and violate Title II of the Americans with Disabilities Act;
- B. Enter a declaration that the in-the-presence requirement of Mo. Rev. Stat. § 451.040.2 violates the Constitution and Title II of the Americans with Disabilities Act as applied to Plaintiff;
- C. Award Plaintiff compensatory damages for the violation of his constitutional rights under the color of state law and Title II of the ADA;
- D. Enter a permanent injunction requiring Defendant and her officers, agents, servants, and employees, to make such accommodations as necessary to facilitate the issuance of a marriage license to Plaintiff without his physical appearance at Defendant's office;
- E. Award Plaintiff's costs, including reasonable attorneys' fees, under 42 U.S.C. §§ 1988, 12133, 12205; 29 U.S.C. § 794; and any other relevant provisions of law; and
- F. Allow such other and further relief for Plaintiff as the Court deems just and equitable.

Respectfully submitted,

/s/ Anthony E. Rothert

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