

U.S. Supreme Court Declines to Consider Appeal of Ninth Circuit Ruling that Sober Living Homes Do Not Have to Prove Each Resident Is Disabled to Survive Summary Judgment in Challenge to Allegedly Discriminatory Zoning Laws

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Near the end of 2023, the United States Supreme Court declined to consider the City of Costa Mesa's appeal of a January Ninth Circuit ruling in *SoCal Recovery, LLC v. City of Costa Mesa* (2023) 56 F.4th 802. The decision held that sober living home operators can prove "actual disability" – as required by the federal Americans with Disabilities Act (ADA), the Fair Housing Act (FHA), and California's Fair Employment and Housing Act (FEHA) – without an individualized assessment of each resident. Instead, the Ninth Circuit held that admissions criteria, house rules, and testimony are sufficient to show on a collective basis that a sober living home serves or intends to serve individuals with actual disabilities.

The *Costa Mesa* decision was the result of a challenge from two sober living home operators that were no longer permitted to operate in Costa Mesa due to new zoning ordinances' permitting and distance requirements. The plaintiffs claimed the ordinances were discriminatory against individuals with disabilities, which is prohibited by the ADA, FHA, and FEHA. The Supreme Court's denial of Costa Mesa's petition for writ of certiorari lets stand the Ninth Circuit's decision, resulting in the reversal of the District Court's grant of summary judgment for Costa Mesa. As the case continues at the District Court, Costa Mesa's ordinances remain on the books.

Background and Procedural History

Costa Mesa passed two ordinances in 2014 and 2015 aimed at regulating sober living homes differently from other residences, apparently in response to the proliferation of sober living homes in the city. The ordinances require all sober living homes – both existing and future – to obtain conditional use permits and be located more than 650 feet away from another sober living home or state-licensed drug and alcohol treatment center. The ordinances also create a process to request a reasonable accommodation from permit requirements, including the 650-foot separation requirement.

SoCal Recovery, LLC (SoCal) and RAW Recovery, LLC (RAW) each operated three sober living homes in Costa Mesa that violated the 650-foot separation requirement. Upon enactment of the ordinances, both operators applied for permits and reasonable accommodations from the separation

requirement for each property. Both SoCal and RAW were unsuccessful, with Costa Mesa's Development Director, Zoning Administrator, and Planning Commission denying a permit for most properties in turn, and City Council ultimately denying a permit for all six properties.

In each case, the permit application was denied because the sober living home violated the 650-foot separation requirement. The City Council decision denying the permit application for one of SoCal's sober living homes illustrates Costa Mesa's reasoning for the denial of a reasonable accommodation: waiver of the separation requirement was "not necessary to allow one or more individuals who are recovering from drug and alcohol abuse to enjoy the use of a dwelling" in Costa Mesa, even if it would allow such individuals "to enjoy the use of *these* dwellings." In fact, at the time the Ninth Circuit decided the case, Costa Mesa had received 52 reasonable accommodation requests and granted only three.

After Costa Mesa issued notices of violation to the three SoCal homes violating the ordinances – requiring them to cease operations within 60 days – SoCal sued Costa Mesa, alleging the separation requirement was discriminatory. RAW separately sued Costa Mesa, similarly alleging the ordinances were discriminatory on their face and as applied to RAW. In both suits, Costa Mesa sought individualized evidence from the operators as to the disability status of each resident of each home.

The District Court decisions in both cases were similar: the Court awarded Costa Mesa summary judgment on SoCal and RAW's ADA, FHA, and FEHA claims because the plaintiffs had failed to create a genuine dispute of material fact as to whether residents of their sober living homes had a disability under the statutory definition. This failure, according to the District Court, was because the operators needed to provide individualized evidence that each of their residents had a disability, which SoCal and RAW had refused to do. Instead, the plaintiffs provided testimony about the admissions policies, house rules, and operations of their sober living homes.

Court of Appeals Decision

On appeal, SoCal and RAW argued that neither ADA, FHA, nor FEHA require individualized evidence of the disabilities of their sober living home residents. The Ninth Circuit Court of Appeals agreed, reversing the District Court's grants of summary judgment to Costa Mesa.

Like the District Court, the Ninth Circuit found that the ADA, FHA, and FEHA all prohibit discrimination based on disability in land use practices. Next, the Ninth Circuit agreed that each statute defines "disability" in part as an "actual disability"—a convenient shorthand for a physical or mental impairment that substantially limits an affected person's ability to engage in one or more major life activities. The statutes further define alcoholism and drug addiction as "impairment."

The Ninth Circuit diverged from the District Court in its determination of the applicability of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* (2002) 534 U.S. 184 (*Toyota*). In *Toyota*, the Supreme Court held that the ADA requires an individual to prove a disability by providing evidence that "the extent of the limitation caused by their impairment in terms of their own experience is substantial." The District Court interpreted *Toyota's* requirement of a case-by-case determination as mandating an individualized assessment of each resident's disability status.

The Ninth Circuit found *Toyota* inapplicable. Instead, the Ninth Circuit determined that plaintiffs can satisfy the "actual disability" requirement of the ADA, FHA, and FEHA "on a collective basis" by demonstrating that they serve or intend to serve individuals with actual disabilities. Plaintiffs can demonstrate this by proffering evidence of policies and procedures ensuring the sober living home

serves or will serve people with actual disabilities (as well as evidence of adherence to these policies and procedures), such as admissions criteria and house rules. Courts may also consider testimony by employees, current residents, and former residents in determining whether a plaintiff has satisfied the “actual disability” requirement.

SoCal and RAW provided all of these “collective” forms of evidence. The District Court’s refusal to consider all but individualized evidence, which SoCal and RAW refused to provide on privacy grounds, led the District Court to improperly grant summary judgment for Costa Mesa. Accordingly, the Ninth Circuit reversed the grant of summary judgment and remanded to the District Court to properly evaluate all relevant evidence.

Implication of Supreme Court’s Denial of Review

Costa Mesa subsequently petitioned the Supreme Court for review of the Ninth Circuit’s decision. In its petition, Costa Mesa emphasized the factual distinction between *Toyota* (an individual as plaintiff) and *Costa Mesa* (entities as plaintiffs), arguing that the Supreme Court has not yet addressed the standard for entities bringing claims of discrimination under the ADA. Costa Mesa also alleged a Circuit split. According to Costa Mesa, the Supreme Court should hear *Costa Mesa* to rectify these issues.

In November, the Supreme Court denied Costa Mesa’s petition for writ of certiorari, letting the Ninth Circuit’s decision stand. For Costa Mesa, this will result in the District Court accepting SoCal and RAW’s evidence that their sober living homes serve those with actual disabilities. While it is unclear what the ultimate result of the challenges to Costa Mesa’s ordinances will be, it is likely that SoCal and RAW will survive summary judgment on this narrow issue.

An ultimate victory for SoCal and RAW would not benefit the sober living homes at issue in *Costa Mesa*; both plaintiffs have ceased operations in Costa Mesa. But what about the impact on other existing and future sober living home operators in Costa Mesa? And what should other communities with similar ordinances – or considering such ordinances – do?

Unfortunately, *Costa Mesa* does not answer these questions. As a rather narrow victory for SoCal and RAW, *Costa Mesa* provides evidentiary and statutory clarity in the Ninth Circuit. However, the case does not address whether zoning ordinances of the type enacted by Costa Mesa are discriminatory against people with disabilities pursuant to the ADA, FHA, and FEHA. We will continue to monitor the case and update this blog with takeaways and practical implications as the case proceeds through the District Court and beyond.

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