

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12386
Non-Argument Calendar

D.C. Docket No. 1:14-cv-21803-KMW

CHEYLLA SILVA, JOHN PAUL JEBIAN,

Plaintiffs - Appellants,

versus

BAPTIST HEALTH SOUTH FLORIDA, INC.,
BAPTIST HOSPITAL OF MIAMI, INC.,
SOUTH MIAMI HOSPITAL, INC.,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(December 3, 2020)

Before JORDAN, ROSENBAUM, and GRANT, Circuit Judges.

PER CURIAM:

Cheylla Silva and John Paul Jebian (collectively, “Plaintiffs”) sued two hospitals, Baptist Hospital of Miami, Inc., and South Miami Hospital, Inc., and their parent organization, Baptist Health South Florida, Inc. (collectively, “Baptist”), for monetary damages and injunctive and declaratory relief under the Rehabilitation Act (“RA”), 29 U.S.C. § 794, and the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12182. Plaintiffs, who are deaf, alleged that Baptist discriminated against them on the basis of disability by failing to provide appropriate auxiliary aids necessary to ensure effective communication with hospital staff. The district court granted summary judgment to Baptist on Plaintiffs’ claims for monetary relief, concluding that they could not prove the necessary element of deliberate indifference. Then, after a bench trial, the court found that Plaintiffs lacked Article III standing to obtain injunctive or declaratory relief because, in light of new policies implemented by Baptist, they could not show a likelihood of future injury at Baptist’s hospitals. After careful review, we affirm the district court’s standing ruling, but we vacate the grant of summary judgment on the claims for monetary relief and remand for further proceedings.

I. BACKGROUND

Plaintiffs Silva and Jebian are deaf and communicate primarily in American Sign Language (“ASL”). In May 2014, they sued Baptist for violating their rights under the RA and ADA by failing to provide appropriate auxiliary aids necessary to

ensure effective communication with hospital staff. They sought monetary damages and declaratory and injunctive relief.

Plaintiffs alleged that they visited Baptist's hospitals on numerous occasions from 2009 to 2014 as patients or as a patient companion. While they requested live on-site ASL interpreters for most visits, the hospital relied primarily on an alternative communication method called Video Remote Interpreting ("VRI"). With this internet-connected machine, a live ASL interpreter is located remotely and communicates with the doctor and patient through a portable screen located in the hospital. Plaintiffs alleged that the VRI machines routinely did not work, and hospital staff would instead rely on family-member companions for interpretive assistance or exchange hand-written notes. Sometimes, after a VRI breakdown, an ASL interpreter would be called to assist with communication in person.

The district court granted summary judgment to Baptist. The court found that Plaintiffs lacked Article III standing for injunctive relief and that they had not shown a genuine dispute as to any material fact regarding a violation of the RA and ADA. The court concluded that the denial of the requested auxiliary aids did not result in any adverse medical consequences or inhibit their communication of the "chief medical complaint" or "instructions under the treatment plan."

Plaintiffs appealed, and we vacated and remanded for further proceedings. *Silva v. Baptist Health S. Fla., Inc.*, 856 F.3d 824, 831 (11th Cir. 2017). First, we

held that the court “erroneously denied prospective injunctive relief on the basis of Article III standing, concluding in error that Plaintiffs did not show they were likely enough to return to the hospitals in the future or otherwise to suffer discrimination again at those facilities.” *Id.* “[G]iven Plaintiffs’ numerous visits to Defendants’ facilities and the wealth of evidence showing repeated VRI malfunctions,” we reasoned that there was “good reason to believe” that the VRI malfunctions “will continue to happen at Defendants’ facilities when Plaintiffs do return,” which was enough to establish standing for injunctive relief. *Id.* at 832–33.

Second, we found that the district court applied an incorrect standard for Plaintiffs’ effective-communication claims. *Id.* at 833–35. We explained that Plaintiffs did not need to establish an adverse consequence resulting from an inability to communicate effectively. *Id.* Rather, the focus is on “the equal opportunity to *participate* in obtaining and utilizing services.” *Id.* at 834 (emphasis in original). Therefore, the proper inquiry is “whether the hospital provided the kind of auxiliary aid necessary to ensure that a deaf patient was not impaired in exchanging medically relevant information with hospital staff.” *Id.* at 835. Ineffective communication occurs, we stated, “if the patient experiences a real hindrance, because of her disability, which affects her ability to exchange material medical information with her health care providers.” *Id.*

We noted, however, that this standard “does not mean that deaf patients are entitled to an on-site interpreter every time they ask for it.” *Id.* “If effective communication under the circumstances is achievable with something less than an on-site interpreter, then the hospital is well within its ADA and RA obligations to rely on other alternatives.” *Id.* at 836. We stated that this inquiry is “inherently fact-intensive” and, as a result, “an effective-communication claim often presents questions of fact precluding summary judgment.” *Id.*

Applying the proper standard, we concluded that a reasonable jury could find that Baptist’s failure to offer appropriate auxiliary aids impaired Plaintiffs’ ability to exchange medically relevant information with hospital staff. *Id.* at 836–40. But we did not go further and address whether Plaintiffs had proved Baptist’s deliberate indifference, which was necessary to win monetary relief, because the district court had not addressed that issue. *Id.* at 841.

On remand, the parties filed supplemental summary-judgment briefing regarding the issue of deliberate indifference. After holding a hearing, the district court entered an order granting summary judgment on that issue to Baptist. The court found no evidence that Baptist was “actually aware of any instance in which [hospital staff] communicated ineffectively with Plaintiffs.” The court noted that hospital staff attempted to provide alternative aids when they did not obtain a live interpreter or working VRI machine, that there was no evidence that Plaintiffs “ever

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