

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 22a0187p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

RACHEL POST,

Plaintiff-Appellant,

v.

TRINITY HEALTH-MICHIGAN, dba Saint Joseph Mercy
Oakland,

Defendant-Appellee.

No. 21-2844

Appeal from the United States District Court for the Eastern District of Michigan at Detroit.
No. 2:18-cv-13773—Mark A. Goldsmith, District Judge.

Argued: May 16, 2022

Decided and Filed: August 12, 2022

Before: SILER, BUSH, and MURPHY, Circuit Judges.

COUNSEL

ARGUED: Sam G. Morgan, GASIOREK MORGAN, Farmington Hills, Michigan, for Appellant. David M. Cessante, CLARK HILL PLC, Detroit, Michigan, for Appellee.
ON BRIEF: Sam G. Morgan, Barbara D. Urlaub, GASIOREK MORGAN, Farmington Hills, Michigan, for Appellant. David M. Cessante, Brian D. Shekell, CLARK HILL PLC, Detroit, Michigan, for Appellee.

OPINION

MURPHY, Circuit Judge. A physician group fired Rachel Post, a nurse, months after she suffered an accident. The group's subsequent bankruptcy impeded Post's efforts to hold it liable for employment discrimination under the Americans with Disabilities Act of 1990 (ADA).

She instead sued the hospital at which she worked. Even though this hospital did not employ her, Post argues on appeal that two statutes give her the ability to enforce the ADA's employment protections against non-employers. Her claim raises both a novel legal question and a settled one.

Starting with the novel question, an ADA catchall provision (which we will call the "interference" provision) makes it "unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of" an ADA-protected right. 42 U.S.C. § 12203(b). Congress wrote this text in the passive voice without identifying the subject of its prohibition (that is, the party who cannot engage in the unlawful interference). When ADA employment rights are at stake, then, does this provision allow plaintiffs with disabilities to sue *any* entity (even entities that are not their employers)? Our answer: No, a nearby subsection makes clear that the provision incorporates remedies that permit suits only against (as relevant here) employers. *Id.* § 12203(c).

Turning to the settled question, the civil-conspiracy provision in the Civil Rights Act of 1871 authorizes a damages suit when two or more parties "conspire" to "depriv[e]" "any person or class of persons" of "the equal protection of the laws" or the "equal privileges and immunities under the laws[.]" *Id.* § 1985(3). Does this provision permit a plaintiff to assert a conspiracy claim against an entity that is not the plaintiff's employer for the deprivation of an ADA-protected employment right? Our answer: No, our precedent holds that disability discrimination does not fall within § 1985(3). See *Bartell v. Lohiser*, 215 F.3d 550, 559 (6th Cir. 2000). These conclusions require us to affirm the district court's grant of summary judgment to the hospital.

I

Trinity Health-Michigan operates St. Joseph Mercy Oakland, a hospital located outside Detroit in Pontiac, Michigan. St. Joseph hired Post in 1980 to work as a nurse in its emergency room. Over the next two decades, Post served in various roles at the hospital. In 2004, she became a certified registered nurse anesthetist. An anesthetist coordinates with anesthesiologists to provide the appropriate anesthesia for surgical procedures and remains with patients in the

operating room while the procedures occur. After becoming an anesthetist, Post transitioned to St. Joseph's anesthesiology department.

In 2013, St. Joseph outsourced its anesthesiology services to the Wayne State University Physician Group. Post's decades-long employment with St. Joseph came to an end. She continued to work as an anesthetist in St. Joseph's anesthesiology department, but she now was employed by the University Physician Group.

Post diligently performed her duties over the next three years until an accident derailed her career. On October 28, 2016, she was setting up for a procedure in the small, outdated endoscopy room in which she had worked about once a week over the past decade. The room included a video monitor attached to a wall by an extension arm, which allowed the monitor to move off the wall when a doctor needed to use it. Hospital personnel were supposed to restation the monitor flat against the wall after each procedure. On this day, however, somebody had failed to push it back against the wall. As Post prepped a patient, she did not notice the protruding monitor and slammed her head against it. Everything went "fuzzy" for Post. Post Dep., R.67-20, PageID 1240. The impact lacerated her right temple and caused a severe concussion. Given Post's slurred speech and difficulty walking, a colleague took her to the emergency room.

Post suffered from post-concussion syndrome after the accident. For months, she weathered through debilitating headaches and severe fatigue; she also had problems concentrating for extended periods and trouble speaking. The accident forced her to take a leave of absence from work and undergo significant rehabilitation. She received workers' compensation benefits from the University Physician Group's insurer. Two nurse case managers for this insurer assisted her in her recovery.

By March 2017, Post's condition had improved enough that her doctor authorized her to gradually begin working again under certain restrictions. After three additional months came and went, though, Post had still not made it back to helping patients at St. Joseph. She began to suspect that both the University Physician Group and St. Joseph were putting up roadblocks to her return.

Post had two primary concerns—one about her return-to-work preparation and the other about her credentials to work at St. Joseph. To begin with, her doctor recommended that she practice administering anesthesia in a “simulation room” before treating real patients again. Letter, R.67-8, PageID 1210. As Post explained things, “there’s no way I’m going to go take somebody’s life in my hands without having hands-on little bit of practice.” Post Dep., R.67-20, PageID 1247. One of her case managers thus sought to have Post use St. Joseph’s simulation lab. But the case manager faced resistance from the University Physician Group’s chair. This doctor found it “absolutely inappropriate” for Post to use St. Joseph’s lab because the hospital did not have the equipment or personnel to support the proposed practice sessions. Ellis Dep., R.67-21, PageID 1310–11.

In addition, Post needed to renew her credentials at St. Joseph every two years. During her leave, hospital staff informed her that her credentials would expire in September 2017. To be recredentialed, St. Joseph required Post to submit a form signed by the chair of St. Joseph’s anesthesiology department, who was also a University Physician Group employee. This doctor refused to sign the form because of Post’s leave of absence from the group. Until he cleared her return, St. Joseph indicated that it could not process her application.

That clearance never came. In October 2017, the University Physician Group terminated Post for “budgetary” reasons before she returned to work. Letter, R.67-18, PageID 1227. The group later filed for bankruptcy. Post asserted a claim in its bankruptcy case seeking damages for her termination, alleging that the group had engaged in age and disability discrimination. The University Physician Group responded that Post’s requested damages would not exceed an amount covered by its insurance policy and thus that she could not obtain anything from its estate. The bankruptcy court disallowed her claim.

Unable to recover from her employer’s estate, Post turned to St. Joseph. She sued the hospital for, among other things, interfering with her right to a reasonable accommodation under the ADA (in violation of 42 U.S.C. § 12203(b)) and conspiring with the University Physician Group to deprive her of her ADA employment rights (in violation of 42 U.S.C. § 1985(3)). The district court granted summary judgment to St. Joseph. *See Post v. Trinity Health-Mich.*, 2021 WL 3269058, at *1 (E.D. Mich. July 30, 2021). The court first concluded that our precedent

foreclosed Post’s conspiracy claim under § 1985(3). *Id.* at *3. Turning to Post’s interference claim, the court next read § 12203(b) to permit some claims against third parties (like St. Joseph) who are not a plaintiff’s employer. *See id.* at *4–6. Yet the court adopted a legal test under § 12203(b) that required a third party to harbor discriminatory animus against a plaintiff or to act with an intent to interfere with the plaintiff’s ADA rights. *Id.* at *6. Because Post lacked sufficient evidence to create a fact question on this element, the court granted summary judgment to St. Joseph on her interference claim. *Id.* at *6–7. We review its decision de novo. *See Davis v. Echo Valley Condo. Ass’n*, 945 F.3d 483, 489 (6th Cir. 2019).

II

Both sides agree that St. Joseph was not Post’s employer. Rather, the University Physician Group employed (and terminated) Post. So Post has not asserted claims against St. Joseph under the laws that regulate an *employer’s* actions, including, for example, the ADA’s employment provisions. *See* 42 U.S.C. §§ 12111–12117. Post instead sues St. Joseph under two statutes that she claims are broad enough to regulate the conduct of third parties to the employment relationship: the interference provision in the ADA (42 U.S.C. § 12203(b)) and the civil-conspiracy provision in the Civil Rights Act of 1871 (42 U.S.C. § 1985(3)). But Post cannot avoid the remedial limits in the ADA’s employment subchapter by invoking these other causes of action.

A. 42 U.S.C. § 12203(b)

The ADA’s interference provision makes it illegal to “interfere with” an individual’s “exercise or enjoyment” of ADA-protected rights:

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

42 U.S.C. § 12203(b). This language does not identify the party barred from engaging in the “unlawful” interference. *Id.* So Post has a fair point that the provision does not expressly limit its reach to employers. Does its passive-voice construction mean that a disabled individual may

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.