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Briefly: Left without standing

By: Eric J. Magnuson May 18, 2021

Normally, appellate courts decide the issues that are brought to them. They only rarely take the initiative to go outside of the trial court record and the briefs of the parties to come up with their own issues. But there is a notable exception when jurisdiction is involved.

The 8th U.S. Circuit Court of Appeals recently made this point with a large exclamation mark. Rather than simply affirming the dismissal of an Americans with Disabilities Act claim on the merits, the court went out of its way to address the issue of whether the plaintiff/appellant had standing to bring his claim. Concluding he did not, the court vacated the merits decision favorable to defendant, and remanded to the District Court with instructions to dismiss the case without prejudice. In doing so, the court made it clear that it had no authority, much less a desire, to decide cases that are not actually “cases” under Article III.

Smith v. Golden China of Red Wing, Inc., (No. 19-3518, 8th Cir. filed Feb. 17, 2021) was, in some respects, already far from a run-of-the-mill case. It involved the efforts of discredited lawyer Peter Hansmeier (<https://www.startribune.com/judge-throws-the-book-at-minneapolis-lawyer-who-ran-a-porn-trolling-scheme/511302022/>) to bring ADA claims against businesses that his clients did not patronize, but which had technical ADA violations. In this particular case, Hansmeier’s client, Scott Smith, was confined to a wheelchair. Hansmeier drove Smith from Smith’s home in Burnsville, Minnesota, to Red Wing and Winona, Minnesota, so that they could “test” various businesses to determine whether they were ADA compliant. As a result of the trip, Smith filed approximately 13 lawsuits, including a claim in federal court against Golden China. Smith admitted that he had never patronized

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would be prohibitive. The District Court agreed, and dismissed the case because it concluded Smith had failed to meet his burden of proof.

Smith appealed the decision. During oral argument on the appeal, the court asked the parties about the impact of its recent decision in another ADA case brought by Smith arising out of the same road trip, *Smith v. Bradley Pizza, Inc.*, 821 F. App'x 656 (8th Cir. 2020) (*per curiam*). The court noted that Smith had given the same deposition testimony in both cases in support of his claim, and that the 8th Circuit had determined he lacked standing in *Bradley Pizza*. The court ordered supplemental briefing on the standing issue, which the defendant/appellee had never raised. Having received the briefs of the parties, the court ultimately dismissed the appeal, concluding that Smith had no standing to bring the case.

The court began its analysis by stating the rule that under Article III of the federal Constitution, federal courts may only adjudicate actual cases and controversies. "The core component of the requirement that a litigant have standing to invoke the authority of a federal court is an essential and unchanging part of the case-or-controversy requirement of Article III." *Pucket v. Hot Springs Sch. Dist. No. 23-2*, 526 F.3d 1151, 1157 (8th Cir. 2008) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006)). Although not raised by the parties, because standing is a jurisdictional prerequisite, and threshold issue, the court concluded that it was obligated to examine the issue, even if it did so on its own initiative.

Having raised the issue, the court reached what was probably a foregone conclusion – Smith had no standing to bring the claim. He "unequivocally acknowledged" in his deposition that his intent in visiting Red Wing was not to patronize Golden China, but rather to "test" various establishments for ADA violations. In fact, he conceded that he had never been to Golden China other than to drive through its parking lot. This, according to the 8th Circuit, was insufficient to establish an injury in fact.

The court rejected Smith's post-deposition declaration refuting his testimony, citing the "black letter summary judgment law" that a conclusory, self-serving affidavit will not defeat an otherwise meritorious summary judgment motion. Having concluded Smith lacked standing, the court concluded that it lacked jurisdiction to adjudicate the case. It vacated the District Court's judgment in its entirety, and remanded with instructions to dismiss.

So what does all of this have to do with appeals? After all, that is the focus of this column.

The case makes a significant point in clear, unequivocal terms: Appellate courts take matters of jurisdiction seriously; in fact one might say extremely seriously. Particularly in federal court, judicial jurisdiction has clear limits, which the court may not exceed even in the interests of efficiency. It certainly would have been a simple task for the 8th Circuit to have

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Federal courts are not alone in fiercely protecting the limits on their jurisdiction. At about the time the 8th Circuit was dismissing the case against Golden China, the Minnesota Court of Appeals refused to accept jurisdiction over a pretrial appeal by the State of Minnesota in the prosecution of Derek Chauvin and the other officers charged in the death of George Floyd. *State v. Chauvin* (No. A21-0133, 21-0135, filed Feb. 12, 2021). In rejecting the state's request that the court should exercise inherent authority to accept an otherwise improper appeal, the court didn't mince any words. "First, the state has not cited, and we are not aware of, any Minnesota authority holding that the Court of Appeals has inherent authority to accept jurisdiction over an appeal when doing so would be contrary to the supreme court's express rules governing prosecution pretrial appeals." And the court went even further, noting that the invocation of inherent authority by the Minnesota Supreme Court to accept improper appeals generally has required "exceptional legal issues that required the supreme court's immediate attention", citing, among other authorities, *In re Welfare of J.R., Jr.*, 655 N.W.2d 1, 4 (Minn. 2003) (explaining that, "[w]hen the [supreme] court has deviated from the rules or statutes and instead relied on [its] inherent authority to allow an untimely appeal to go forward, it has been on the basis of peculiar facts, such as recent changes in the law or interpretation issues.")

Appellate courts are, of necessity, courts of limited jurisdiction. They are not designed to give litigants a do-over, or a full second bite of the apple. The issues that can be brought to an appellate court are constrained by the nature of the appeal taken, rules concerning error preservation, and strict standards of review. But before any of those issues can be presented to the appellate court, the aggrieved party has to establish that the court has the power to entertain the appeal. And without standing, that effort will almost surely fail.

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