Cart Controversy

Disabilities Act Protects Golfer Casey Martin

By Lynne S. Bassis

On May 29, the U.S. Supreme Court swung the disability pendulum again — this time toward the disability community, or at least toward professional golfers with disabilities. *PGA Tour Inc. v. Martin*, 2001 DJDAR 5217 (U.S. May 29, 2001). The court held that under Title III of the Americans With Disabilities Act, a professional golf tournament is a "place of public accommodation." It also held that competitors are "clients or customers" of the tournament and that use of a golf cart by Casey Martin is a "reasonable modification" that does not "fundamentally alter the nature" of the sport.

What effect will the decision have on the future of professional golf? On access to sports competitions by people with disabilities? Is the court's decision a benevolent act by a mindless majority, as the dissent, written by Justice Antonin Scalia, would have us believe? Or, is it an act mandated by the letter and spirit of Title III, as the majority opinion, delivered by Justice John Paul Stevens, holds?

Noting the historical tendency of society to isolate and segregate people with disabilities, in 1990, Congress enacted the Americans With Disabilities Act. The act was intended to remedy discrimination against individuals with disabilities and to integrate them into mainstream America, both socially and economically. Although changes have taken place since the enactment of the act, it is not uncommon that individuals with disabilities experience exclusion or inability to access what their able-bodied counterparts experience as routine aspects of American life.

Due to its publicized 10-year anniversary in 2000, most Americans now are aware of the existence of act, even though they may lack an understanding of its applications. Title I prohibits discrimination in employment. Title II prohibits discrimination by government entities. Title III prohibits "public accommodations" from discriminating against any "individual" in the "full and equal enjoyment of the goods, facilities, services, privileges, advantages or accommodations." 42 U.S.C. Section 12182(a).

The act defines a "public accommodation" in terms of 12 identified categories of operations affecting commerce. These include places of lodging; restaurants serving food or drink; theaters, stadiums or other places of exhibition or entertainment; places of public gathering, such as auditoriums, convention centers or lecture halls; retail stores; service establishments, such as laundromats, dry cleaners, banks, barber shops, beauty salons, professional offices or health care providers; public-transportation depots or terminals; places of public display or collection, such as museums, libraries or galleries; places of recreation, such as parks, zoos or amusement parks; places of education, such as nursery, elementary, secondary undergraduate or postgraduate private schools; social-service centers, such as day-care and senior-citizen facilities, homeless shelters, food banks or adoption agencies; and places of exercise or recreation, such as gyms, bowling allies or golf courses. 42 U.S.C. Section 12181(7). The legislative history indicates that these categories are not a finite list but are to be construed liberally to achieve the purpose of the act.

The *Martin* case raised important issues regarding the application of Title III to the professional golf tournament. Were competitors in a professional sports event intended beneficiaries of Title III as are "customers" or "clients" of public accommodations, such as restaurants, business offices or even golf courses conducting ordinary business? The majority, focusing on the fact that the tournament was open to any member of the public who paid the $3,000 entry fee and produced two letters of reference, found that the participants were intended beneficiaries of Title III.

The dissent noted that historically, it was those who made a profession of public employment, such as innkeepers, who were prohibited from refusing to serve the public, absent a good reason. Like the professional baseball player, who is both a participant in a sport and a user of the grounds but would not be considered a "customer" of the stadium, so too is the golfer.

The dissent sees the golfer more akin to an independent contractor, who provides the entertainment and recreation for the public but does not "enjoy" it as a "customer." Thus, says the dissent, there should be no Title III protection for the PGA Tour.

Another inquiry of the court was whether the use of a golf cart fundamentally alters the game of golf. Title III providers of "goods, facilities, services, privileges, advantages or accommodations" are obligated to provide "reasonable modifications in policies, practices, or procedures" to enable the person with a disability to access the offerings of the accommodation. Section 12182(b)(2)(A)(ii).

The offset to this obligation is that the modifications cannot "fundamentally alter the nature" of the goods, facility or service being provided. Section 12182(b)(2)(A)(ii). Hence, the issue: Would use of a golf cart distort the essential nature of the PGA Tour?

To determine whether a fundamental alteration of the game was involved, the majority emphasized the act's requirement that the question be analyzed by looking at Martin himself as an individual. This mandated individualized analysis, says the majority, is evident in Title III's protection of an "individual" in the "full and equal enjoyment of the goods, services facilities, privileges, advantages or accommodations." Section 121821(a).

The majority identified two hypothetical ways in which the game of golf might be fundamentally altered by a modification. If an essential aspect of the game, such as the diameter of the hole, were changed, this would constitute a fundamental alteration of the game of golf, even if it affected every player similarly. Alternatively, if a change in a peripheral aspect of the game resulted in a person with a disability having an advantage in the game, rather than merely having gained access to the game, a fundamental alteration would have occurred.

The aspect of the game that was being affected by the use of a golf cart was the "walking rule." The PGA Tour had argued that the walking rule was valid in that it imposed a fatigue factor that might bear upon the outcome of the tournament. The majority relied on the uncontested finding of the District Court that Martin "easily endure[d] greater fatigue even with a cart than his able-bodied competitors [did] by walking." Thus, there was no competitive advantage and no fundamental alteration of the game.

The dissent objected to the majority's arbitrary intrusion into the sphere of the sport of golf (and surely, it opined, into others to follow) by the majority's creation of a two-step test. First, the court must identify a rule as either "essential" or "peripheral." Second, the court must decide whether the waiver of a "peripheral" rule will yield a competitive advantage. The majority, says the dissent, should not be in the business of deciding what is or is not essential to a sport and is paving the way for much litigation as to whether a particular rule modification provides a competitive advantage.

Whether the dissent is correct, and the judiciary will soon be taking over the work of the commissioners of baseball, football and hockey, remains to be seen. For now, though, Martin has an opportunity to pursue his passion and has been triumphant in heralding in a new era in professional sports.

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