

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 97-20310

---

KELVIN WASHINGTON,

Plaintiff-Appellee,

versus

HCA HEALTH SERVICES OF TEXAS, INC.,  
doing business as HCA Spring Branch Medical Center,

Defendant-Appellant.

---

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

---

December 22, 1999

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before POLITZ, GARWOOD and BARKSDALE, Circuit Judges.

PER CURIAM:

This Americans with Disabilities Act (ADA) case, in which plaintiff-appellee Kelvin Washington claims that defendant-appellant, HCA Health Services of Texas, Inc. (the Hospital), terminated his employment because of his disability, is now before us again on remand from the United States Supreme Court.

The Hospital filed a motion for summary judgment contending that Washington did not have a disability as defined in the ADA, 42 U.S.C. § 12102(2), because his condition, Adult Stills Disease, was effectively controlled by medication. The district court denied the motion, ruling that for purposes of determining whether

Washington met the definition of disability in section 12102(2)(A)-section 12102(2)(B) and (C) being deemed not to be in issue-his condition should be evaluated in its unmedicated, rather than medicated, state, and that in his unmedicated state he was disabled within the meaning of section 12102(2)(A) or at the least presented an issue of fact in that respect. The district court certified its order for appeal under 28 U.S.C. § 1292(b) on the ground that it involved a controlling question of law as to which there was a substantial ground for difference of opinion, namely whether for purposes of section 12102(2)(A) Washington's condition should be evaluated in its unmedicated or medicated state. We granted the Hospital's petition for leave to appeal the district court's order, and we subsequently affirmed the district court's denial of the Hospital's motion for summary judgment, agreeing with the district court that Washington's condition should be evaluated in its unmedicated state for purposes of section 12102(2)(A). *Washington v. HCA Health Services of Texas, Inc.*, 152 F.3d 464 (5th Cir. 1998).

The Supreme Court granted the Hospital's petition for writ of certiorari, vacated the judgment of this Court and remanded the case to this Court "for further consideration in light of *Sutton v. United Air Lines, Inc.*, 527 U.S. \_\_\_\_, 119 S.Ct. 1752, \_\_ L.Ed.2d \_\_\_\_ (1999), and *Murphy v. United Parcel Service, Inc.*, 527 U.S. \_\_\_\_, 119 S.Ct. 2133, \_\_ L.Ed.2d \_\_\_\_ (1999)." *HCA Health Services of Texas, Inc. v. Washington*, 119 S.Ct. 2388, 2389 (1999).

We therefore now vacate our prior ruling and judgment, and we

vacate the referenced order of the district court denying the Hospital's motion for summary judgment, and we remand the case to the district court for further consideration and proceedings in light of and consistent with *Sutton* and *Murphy*.

VACATED AND REMANDED