

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

GEORGE LANE, BEVERLY JONES, ANN)
MARIE ZAPPOLA, DENNIS CANTREL,)
RALPH E. RAMSEY, Sr., and)
A. RUSSELL LARSON,)

Plaintiffs,)

v.)

STATE OF TENNESSEE and its political)
subdivisions, POLK COUNTY, BLEDSOE)
COUNTY, CANNON COUNTY, CHESTER)
COUNTY, CLAIBORNE COUNTY, CLAY)
COUNTY, COCKE COUNTY, DECATUR)
COUNTY, FAYETTE COUNTY, GRAINGER)
COUNTY, HANCOCK COUNTY, HAWKINS)
COUNTY, HICKMAN COUNTY, HOUSTON)
COUNTY, JACKSON COUNTY, JEFFERSON)
COUNTY, JOHNSON COUNTY, LAKE)
COUNTY, LEWIS COUNTY, MEIGS)
COUNTY, MOORE COUNTY, PERRY)
COUNTY, PICKETT COUNTY, TROUSDALE)
COUNTY, and VAN BUREN COUNTY,)

Defendants.)

No. 3:98 CV 0731
Judge Campbell
Magistrate Judge Griffin
JURY DEMAND

SETTLEMENT AGREEMENT – DECATUR COUNTY

This Settlement Agreement (hereinafter “Agreement”) is entered into this 23 day of February, 2005, by and between Plaintiffs George Lane, Beverly Jones, Ann Marie Zappola, Dennis Cantrel, Ralph E. Ramsey, Sr., and A. Russell Larson (hereinafter “Plaintiffs”) and Defendant Decatur County (hereinafter “Defendant County”).

This Agreement resolves all of Plaintiffs’ claims for injunctive relief against Defendant County. It does not resolve Plaintiffs’ claims for damages or attorneys’ fees and costs.

PARTIES TO THIS AGREEMENT

1. Plaintiffs have alleged they are qualified individuals with disabilities as that term is defined by 42 U.S.C. §12131(2).

2. Defendant County is a Public Entity as that term is defined in 42 U.S.C. §12131(1). Defendant County is subject to Title II of the ADA, 42 U.S.C. §12132, and its implementing regulations, 28 C.F.R. Part 35.

ADDITIONAL DESIGNATIONS

3. As used herein, the State of Tennessee shall refer collectively to the defendant designated as the State of Tennessee in this litigation, all Tennessee Courts exercising jurisdiction under Tennessee law in the courthouse and any other owned or operated facility of the Defendant County, and the AOC (“Administrative Office of the Courts”).

DEFINITIONS

4. Unless otherwise specified in these Definitions, the definitions of terms used in this Agreement shall be the same definitions as are contained in 42 U.S.C. §12131 et seq. and 28 C.F.R. Part 35 and 36 and any accompanying explanations as may be contained in the statutes, appendices or regulations associated with those statutes and regulations.

a. “ALTERATION” refers to any modification, improvement, remodeling, renovation or repair to ANY buildings or structures at the SUBJECT FACILITIES.

b. “DEFENDANT COUNTY” as used herein refers to Defendant County and includes any official agency of Defendant County.

c. “EFFECTIVE DATE” means the last date upon which this Agreement was executed by a party.

d. “SUBJECT FACILITIES” refers to any courthouse and/or other buildings owned and/or operated by Defendant County in which judicial programs and services and/or county commission meetings are held.

FACTUAL BACKGROUND

5. Pursuant to the Constitution of the State of Tennessee and state statutes, the State of Tennessee conducts its judicial program in the county courthouses and other facilities of the State. Defendant County is responsible for providing the facilities in which the State’s judicial program is conducted in the Defendant County.

OBLIGATIONS ASSUMED BY THE DEFENDANT COUNTY

6. Defendant County will make the Alterations as enumerated in Appendix A, attached hereto. Defendant County will cooperate with the State of Tennessee to implement the State of Tennessee’s policies and procedures to ensure that the State’s judicial program is in compliance with Title II of the ADA and its implementing regulations.

7. Defendant County has represented that it is not possible to make all the Alterations delineated in Appendix A immediately. Defendant County agrees to make good faith progress toward the completion of the Alterations delineated in Appendix A. Defendant County will complete as soon as practicable the items delineated in Appendix A. All of the Alterations delineated in Appendix A shall be completed within five (5) years of the Effective Date.

8. Notwithstanding any unforeseen future contingencies that might impact the Alterations set forth in Appendix A, Defendant County agrees to refrain from taking any action that will diminish the level of physical accessibility of the judicial program conducted in Defendant County's subject facilities as achieved through the Alterations enumerated in Appendix A. This paragraph shall not be read to prohibit the curtailment of a judicial program, service, or activity at any of Defendant County's subject facilities for reasons unrelated to compliance with the ADA unless such action eliminates the only such accessible program, service, or activity in Defendant County's subject facilities.

9. Defendant County agrees that all disability access features that are provided for in this agreement shall be inspected and maintained by the Defendant County hereafter to insure the accessibility of the judicial program in the subject facilities at all times, except for isolated or temporary interruptions due to necessary maintenance or repairs.

ENFORCEMENT AND MONITORING

10. Upon the Effective Date, the parties agree to execute an agreed order of dismissal with prejudice as to Plaintiffs' claims for injunctive relief against Defendant County. This Agreement shall be made an exhibit to the dismissal order.

11. The United States District Court for the Middle District of Tennessee shall have exclusive jurisdiction and venue to construe and enforce this Agreement, and to resolve any and all disputes arising out of or relating to this Agreement, which shall be governed by and construed in accordance with the laws of the United States and the State of Tennessee.

12. All claims resolved by this Agreement shall be dismissed with prejudice upon the Effective Date of this Agreement.

13. If any party to this Agreement believes that another party is violating its obligations under this Agreement, or believes a dispute has arisen under the Agreement (the "Complaining Party"), then the Complaining Party shall give written detailed notice (the "Notice") to the other party (the "Responding Party"). The Responding Party shall be given thirty (30) days to provide a written response to the Notice. The Complaining and Responding Parties shall attempt within the next thirty (30) days to resolve their differences regarding the issue(s) addressed in the Notice including any issues of attorneys fees, expenses, and costs. No action may be instituted in the United States District Court for the Middle District of Tennessee relating to this Agreement prior to the expiration of the time periods addressed in this Paragraph.

14. Reasonable attorneys fees, costs, and expenses may be sought by the prevailing party in any judicial proceeding relating to this Agreement to the extent allowed by law.

15. Defendant County shall provide to Plaintiffs (at the address for Plaintiffs set forth in Paragraph 22) a bi-monthly report (no less frequently than every sixty (60) days following the Effective Date) that sets forth its progress in making the Alterations set forth in Appendix A until such time as compliance with the obligations specified therein is achieved. Defendant County agrees to make good faith efforts at completing the Alterations delineated in Appendix during each sixty (60) day time period. When the Defendant County has completed making the alterations in Appendix A, said Defendant County shall submit a certified report signed by an appropriate representative of the County stating that the Alterations set forth in Appendix A have been completed.

16. If at any time Defendant County wishes to modify any portion of this Agreement because of changed conditions making performance impossible or impractical, Defendant County's designated representative will promptly notify Plaintiffs in writing (at the address for Plaintiffs set forth in Paragraph 22), setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification, and provide evidence to support their position that such modification is necessary. Until there is written assent or agreement by Plaintiffs to the proposed modification, the proposed modification will not take effect. If the requested modification is not approved within thirty (30) days of the date of written notification of such need, then Defendant County may proceed as a Complaining Party under the provisions of Paragraph 13 of the Agreement.

MISCELLANEOUS PROVISIONS

17. By entering into this Agreement, no party shall be deemed to have waived any claim or defense not otherwise specifically released in writing, until such time as the Court no longer has jurisdiction over the matters raised in this action.

18. By entering into this Agreement, Defendant County does not waive its defense based on Plaintiffs Jones, Lane, Cantrel, Ramsey and Zappola's alleged lack of standing to seek injunctive relief against Defendant County since none of these Plaintiffs has ever attempted to access judicial proceedings that are offered in Defendant County.

19. This Agreement will be null and void as to Plaintiffs Jones, Lane, Cantrel, Ramsey and Zappola if any court of competent jurisdiction reverses Judge Campbell's Order (Docket Entry No. 319), entered on December 7, 2004, relating to a Plaintiff's standing to seek injunctive relief against Defendant County although that Plaintiff allegedly has never attempted to access judicial proceedings that are offered in Defendant County. Defendant County does not dispute that Plaintiff Larson has standing to enforce this Agreement.

20. The representatives signing this Agreement on behalf of Defendant County represent that they are authorized to bind Defendant County to the provisions agreed upon herein. Each signatory to this Agreement affirms that he or she has consulted with and been

advised by counsel in connection with the execution of this Agreement and that he or she agrees that its terms are fair and reasonable.

21. This Agreement sets forth the entire agreement between Plaintiffs and Defendant County with respect to the subject matters herein, and supersedes all prior oral and written agreements and discussions. No other statement, promise, or agreement concerning the subject matters herein, either written or oral, made by any party or the agents of any party that is not contained in this written Agreement shall be effective. Plaintiffs and Defendant County represent that in entering into this Agreement, none of them has relied upon any statement of any other party to this Agreement except those statements set forth herein.

22. All notices and other correspondence sent by Plaintiffs and Defendant County to one another relating to this Agreement shall be sent to the following addresses or at such other address as the parties may designate in writing in the future:

For Defendant County:

Kenneth Broadway
Decatur County Mayor
P. O. Box 488
Decaturville, TN 38329

For Plaintiffs:

William J. Brown & Associates
23 North Ocoee Street
P.O. Box 1001
Cleveland, TN 37364-1001

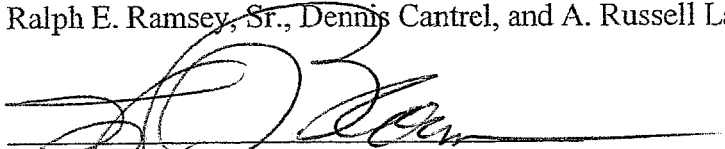
23. This Agreement shall be binding on the parties, and their elected or appointed successors in interest.

24. This Agreement shall become effective once signed by all parties and the effective date will be the date of the last signature affixed hereto.

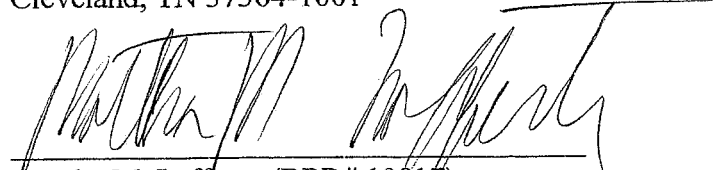
25. This Agreement is contingent on the State of Tennessee executing the Compromise and Settlement Agreement which provides, *inter alia*, that Defendant County will not be responsible for any of Plaintiffs' attorneys' fees, expenses and costs through December 17, 2004, including those relating to Defendant County, with the exception of the amount of Two Thousand Six Hundred Eighty Dollars (\$2,680.00) which reflects Defendant County's pro rata share of the amount of Plaintiffs' expenses and costs accrued through December 17, 2004 and not paid by the State, and the State approving the payments to be made by the State as set out therein.

IN WITNESS WHEREOF, Plaintiffs and Defendant County in the above-captioned action have caused this Agreement to be executed as of the dates subscribed below.

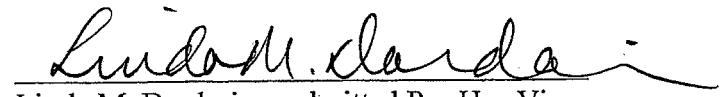
For Plaintiffs George Lane, Beverly Jones, Ann Marie Zappola,
Ralph E. Ramsey, Sr., Dennis Cantrel, and A. Russell Larson:



William J. Brown, Esq.
William J. Brown & Associates
23 North Ocoee Street
P.O. Box 1001
Cleveland, TN 37364-1001



Martha M. Lafferty (BPR# 19817)
Gary D. Housepian (BPR # 6969)
Tennessee Protection & Advocacy, Inc.
2416 21st Ave South, Suite 100
Nashville, TN 37212
(615) 298-1080

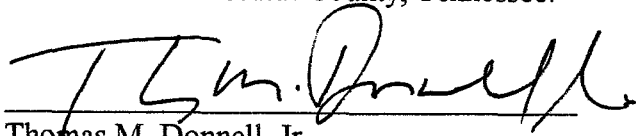


Linda M. Dardarian, admitted Pro Hac Vice
Roberta L. Steele, admitted Pro Hac Vice
GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN
300 Lakeside Drive, Suite 1000
Oakland, CA 94612-3534
(510) 763-9800

Attorneys for Plaintiffs

Date: 2/15/05

For Defendant Decatur County, Tennessee:



Thomas M. Donnell, Jr.
Stewart, Estes & Donnell
424 Church Street, Suite 1401
Nashville, Tennessee 37219

Date: 2-1-05

For Defendant County:

Decatur County, Tennessee

By: 

Name: Kenneth Broadway

Title: County Mayor

Date: 1-26-05

George Lane
George Lane, Plaintiff

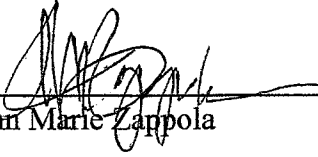
Date: 1-1-05

Beverly Jones
Beverly Jones, Plaintiff

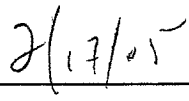
Date: 2-1-05

DECATUR COUNTY

Plaintiff:



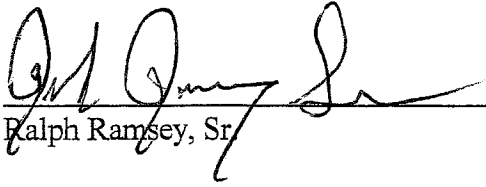
Ann Marie Zappola



Date

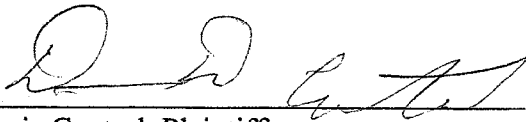
DECATUR COUNTY

Plaintiff:



Ralph Ramsey, Sr.

2-23-05
Date


Dennis Cantrel, Plaintiff

Date: 2/5/2005



A. Russell Larson, Plaintiff

Date: 2-15-05

AGREED SETTLEMENT DECATUR COUNTY

The Decatur County is currently undergoing a \$1.5 million addition to the Decatur County Courthouse. At the time of this Agreement, the construction documents are in the bidding process. The construction project is expected to take 12 months to complete once it begins. The construction of the courthouse addition will make the judicial program offered in Decatur County and the facilities therein accessible to individuals with mobility disabilities. The parties agree that the courthouse addition will resolve the ADA issues relative to Decatur County as addressed in the Plaintiffs' expert report concerning Decatur County.

Plaintiffs agree that Decatur County is not required make renovations or modifications to the portion of the Decatur County Courthouse not affected by the construction discussed herein to address ADA compliance issues pending completion of the courthouse addition.

Plaintiffs recognize and agree that the proposed completion date may be delayed for unforeseen reasons. Decatur County, through counsel, will provide the Plaintiffs with a progress report of the construction of the courthouse addition within 90 days of this Agreement and every 90 days thereafter until the courthouse addition is complete.