A.L. EX REL. *D.L. V. WALT DISNEY PARKS & RESORTS U.S., INC.:* ELEVENTH CIRCUIT HOLDS THAT DISNEY'S ACCOMMODATIONS FOR DISABLED GUESTS TO RIDE THEME PARK ATTRACTIONS DOES NOT VIOLATE TITLE III OF THE AMERICANS WITH DISABILITIES ACT

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In *A.L.* ex rel. *D.L. v. Walt Disney Parks and Resorts U.S., Inc.*, the United States Court of Appeals for the Eleventh Circuit addressed whether Disney's accommodation programs for disabled guests violate Title III of the Americans with Disabilities Act ("ADA").[1] The Eleventh Circuit affirmed the district court's ruling that Disney did not violate Title III of the ADA because A.L.'s requested modifications were neither necessary nor reasonable and implementation of such measures would have fundamentally altered Disney's business model.[2]

The plaintiff, A.L., is a twenty-two-year-old man with autism.[3] A.L. has "extremely limited" communication ability, cannot care for his own hygiene without assistance, and has a limited concept of time.[4] A.L. operates on a very rigid schedule and can become overwhelmed with any deviation such that he cannot tolerate more than fifteen to twenty minutes of waiting for something.[5] D.L. is A.L.'s mother and primary caretaker and accompanied him on their December 19, 2013, visit to Disney World.[6]

This visit occurred shortly after Disney changed its program for accommodating disabled visitors from the Guest Assistance Card ("GAC") to the Disability Access Service ("DAS").[7] While all Disney guests could access its FastPass system to make advance reservations for up to three attractions per day and reduce wait times, the GAC and

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[1] 50 F.4th 1097, 1101 (11th Cir. 2022).

[2] *Id.* at 1101, 1108–12.

[3] D.L. v. Walt Disney Parks & Resorts U.S., Inc., 900 F.3d 1270, 1283 (11th Cir. 2018).

[4] *Disney*, 50 F.4th at 1102.

[5] *Id.*

[6] *Id.* at 1102, 1104.

[7] *Id.* at 1103.

DAS systems were implemented specifically to aid disabled visitors.[8] The GAC system allowed a disabled guest and his group essentially unfettered access to all rides without delay.[9] Due to this advantage, however, the system was rife with abuse because Disney was not permitted to ask for proof of disability, and thus, "[i]t became an unlimited front-of-the-line pass for anyone."[10] For these reasons, in October 2013, the GAC system was replaced by the DAS system.[11] The DAS system permitted cardholders to wait in line virtually and use the much shorter FastPass line at a designated "return time."[12] The only limitation was that a DAS visitor could hold only one "return time" on his or her card at once.[13]

In addition to DAS, Disney offered "Re-ad" passes, which acted as "an ameliorative tool."[14] Re-ad passes were available to all guests, "whether disabled or not, who have had a negative or unpleasant experience."[15] The Re-ad pass was essentially an "instant access" pass that could be used "at any time and for any ride" and allow the user to skip the line.[16] Thus, the two tools made available to A.L. to reduce wait times were the DAS system—which allowed one reservation at a time for a spot in the shorter FastPass line at a designated time—and the Re-ad pass that granted instant access.[17]

Upon A.L.'s arrival to Disney, he and his group "received a DAS card and twenty-four total Re-ad Passes (four per person in the group)" to use during their visit.[18] A.L had a list of nineteen rides he wanted to experience at the park.[19] The first ride boasted a wait time of forty-five minutes even after using the DAS card.[20] The group decided that this was too long of a wait for A.L., so instead of using the DAS card, they

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[8] *Id.* at 1102–03.

[9] *Id.* at 1103.

[10] *Disney*, 50 F.4th at 1103.

[11] *Id.*

[12] *Id.* at 1103–04.

[13] *Id.* at 1104.

[14] *Id.* at 1103 (quoting D.L. v. Walt Disney Parks & Resorts U.S., Inc., 900 F.3d 1270, 1276 (11th Cir. 2018)).

[15] *Id.*

[16] *Disney*, 50 F.4th at 1102–03. The Re-ad Pass is different than "FastPass" reservation which is only "for a specific ride at a set time and must be used within an hour of that time." *Id.* at 1103.

[17] *Id.* at 1102–04.

[18] *Id.* at 1104.

[19] *Id.*

[20] *Disney*, 50 F.4th at 1104.

agreed to each use one of their Re-ad passes to gain instant access.[21] After this ride, the group "determined that with only three Re-ad Passes remaining per person, it would not be possible to visit all of A.L.'s regular rides in order without some waiting," so they left the park.[22] Many families experienced similar frustration with the DAS system which resulted in forty-four lawsuits being filed in the United States District Court for the Middle District of Florida for Title III ADA violations since disabled visitors could not ride without a wait and in their preferred order.[23] A.L.'s case was the first to be filed, and he sought a permanent injunction requiring unlimited FastPass access or at least ten Re-ad passes.[24] The district court ultimately entered summary judgment for Disney, finding that Disney afforded A.L. the opportunity to enjoy a like benefit to able-bodied visitors; A.L. appealed this decision.[25]

The Eleventh Circuit affirmed in part and reversed in part, holding that DAS was "a significant benefit," but there were genuine issues of material fact as to whether autism presented a unique circumstance that necessitated the modifications to ensure an "equal experience."[26] On remand, the case progressed to a bench trial where the district court held A.L.'s requested accommodations were neither necessary nor reasonable.[27] The district court reasoned that DAS provided an experience at least comparable to that of able-bodied visitors and also cited evidence Disney presented at trial that A.L. could have visited all nineteen attractions that he listed on the day of his visit.[28] The district court found the requested accommodation unreasonable because of its potential for abuse like the GAC system and, further, that Disney's evidence showed the resulting increased wait times for able-bodied guests would fundamentally alter its business.[29]

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[21] *Id.*

[22] *Id.*

[23] *Id.* Plaintiffs filed cases in both the Central District of California and the Middle District of Florida; "the cases filed in California eventually were transferred to the Middle District of Florida." *Id.*

[24] *Id.* at 1104.

[25] *Disney*, 50 F.4th at 1104–05. Twenty-nine of the other disabled plaintiffs appealed similar rulings, and the Eleventh Circuit consolidated the appeals with A.L's. *Id.* at 1105.

[26] *Id.*

[27] *Id.* at 1106.

[28] *Id.*

[29] *Id.* at 1107.

A.L.'s ensuing appeal first challenged the district court's ruling that the modifications were neither necessary nor reasonable.[30] Title III of the ADA prohibits discrimination against disabled persons in any "place of public accommodation" regarding "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations."[31] The ADA then defines discrimination as failing to make reasonable accommodations when necessary to individuals with disabilities unless doing so would "fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations."[32] The Eleventh Circuit reviewed the district court's factual findings on these issues for clear error.[33]

The court evaluated the necessity of the accommodation by how able-bodied guests use the facility and whether Disney took "reasonable steps to provide disabled guests with a 'like experience.'"[34] The record supported the district court's conclusion because D.L. testified that A.L. could wait fifteen to twenty minutes and Disney provided evidence that A.L. could have experienced all of his desired rides that day.[35] Because A.L.'s brief did not address the issue of reasonableness, the court declared that A.L. abandoned this issue on appeal.[36]

On the issue of fundamental alteration, A.L. contended the district court applied the wrong test and its conclusion lacked supporting evidence.[37] A.L. took issue with the district court's framing of the fundamental alteration question around Disney's "business" or "profitability" and argued it should instead center exclusively on the individual.[38]

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[30] *Disney*, 50 F.4th at 1107.

[31] *Id.* at 1108 (quoting Americans with Disabilities Act, 42 U.S.C. § 12182(a)).

[32] *Id.* (quoting 42 U.S.C. § 12182(b)(2)(A)(ii)).

[33] *Id.* at 1107. "Findings of fact are clearly erroneous when, after viewing all the evidence, [the court is] left with the definite and firm conviction that a mistake has been committed." *Id.* (internal quotation marks omitted) (quoting Bellitto v. Snipes, 935 F.3d 1192, 1197 (11th Cir. 2019)).

[34] *Id.* at 1108 (internal quotation marks omitted) (quoting A.L. *ex rel* D.L. v. Walt Disney Parks and Resorts U.S., Inc., 900 F.3d 1270, 1296 (11th Cir. 2018)).

[35] *Disney*, 50 F.4th at 1109.

[36] *Id.* at 1109–10. However, the court still opined that the requested accommodation was not reasonable because it would make wait times longer and could lead to similar issues as the GAC system. *Id.* at 1110. This conclusion was supported by record evidence of two Disney representatives that explained the shortcomings of the GAC system such as the impersonation of tour guides and GAC riders making up a disproportionate share of all riders. *Id.*

[37] *Id.*

[38] *Id.*

The district court addressed whether the requested modifications would affect only peripheral aspects of the rule or if they would undercut the rule's purpose, and found the latter.[39] The Eleventh Circuit upheld the district court's "fundamental-alteration" finding because the requested modification would not only impact peripheral facets of Disney's services but would alter an essential part of Disney's business.[40] The modification's infringement on able-bodied guests' access to Disney's services meant that it was not peripheral.[41]

In conclusion, Disney's DAS program did not violate Title III of the ADA because it provided disabled visitors with a like experience to able-bodied visitors.[42] A.L.'s requested modifications were neither necessary nor reasonable because the existing remedy was sufficient for purposes of the ADA.[43] Indeed, the requested accommodation in this instance would have fundamentally altered Disney's business model by increasing wait times for able-bodied patrons.[44] Under the ADA such a fundamental alteration relieves an entity of making such modifications even if they were originally deemed necessary and reasonable to providing a like experience.[45] Accommodations need not "eliminate all discomfort or difficulty," and a disabled person being afforded the same or better experience as an able-bodied person does not automatically constitute an ADA violation.[46]

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[39] *Disney*, 50 F.4th at 1111.

[40] *Id.*

[41] *Id.* at 1112. "Disney had proved that modifications to the DAS card would have to be uniformly applied to all DAS guests . . . [and] the modification in the aggregate would increase wait times for the 96.7% of guests who do not have DAS cards and would essentially be a return to the abuse-ridden GAC system." *Id.* at 1111–12.

[42] *Id.* at 1102. In addition to this finding, the Eleventh Circuit found the district court did not abuse its discretion in several evidentiary rulings challenged by A.L. concerning the exclusion of the testimony of a neurologist and an autism expert, the admission of Disney's expert report, and the exclusion of evidence of Disney's DAS program as intentional discrimination. *Id.* at 1112–14.

[43] *Disney*, 50 F.4th at 1108–10.

[44] *Id.* at 1111–12.

[45] *Id.* at 1112; .

[46] *Id.* at 1109 (citing D.L. v. Walt Disney Parks & Resorts U.S., Inc., 900 F.3d 1270, 1283 (11th Cir. 2018)).