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## Davis v. Echo Valley Condominium Association, 945 F.3d 483 (6th Circuit Court, December 19, 2019)

6 Feb 2020

[David A. Rahnis](#)

In a recent case before the U.S. Court of Appeals for the Sixth Circuit, the court heard a matter involving the intersection between fair housing law and community association governance. In this case, Phyllis Davis purchased a second-floor unit in a four-unit condominium building within the Echo Valley Condominium Association in Farmington Hills, Michigan. Davis suffers from asthma and chemical sensitivity disorder. Ella and Moisey Lamnin owned a first-floor unit in the Echo Valley Condominium Association building and, in 2012, rented their unit to Wanda Rule. Thereafter, Davis complained that smoke regularly emanated from the Lamnins' condo, thereby aggravating her asthma. The Association's governing documents contained no prohibition on smoking. In fact, the record showed that the Association has long read the bylaws to permit smoking and that Echo Valley residents have long smoked in their homes. Nevertheless, the Association took several steps to address the situation, including asking Rule to smoke outside and having an HVAC contractor install a fresh-air system on Davis' ductwork. In addition, Rule agreed to use an air purifier to clean the air in her own unit. None of these steps satisfied Davis and she continued to log dates and times when she could smell smoke.

In 2017, Davis proceeded to sue the Association, the Lamnins, Rule, and the condominium management company. Davis alleged discrimination under the Fair Housing Amendments Act (FHA), 42 U.S.C. 3604(f), violations of condominium bylaws, and allowing a tortious nuisance to persist. Davis sought both damages and a community smoking ban. The basis of Davis' FHA complaint was that by refusing to ban smoking in her building, the Association had discriminated against her because of her purported asthma-related disability. The FHA defines discrimination as "a refusal to make reasonable accommodations in rules, policies, practices or services when such accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling."

It should be noted that, after the litigation commenced, the Association's board proposed to the condo owners a bylaws amendment that would prohibit smoking throughout the complex. The proposed amendment failed to pass when put before the ownership for a vote.

The Sixth Circuit affirmed the rejection of Davis's claims on summary judgment and found the requested smoking ban was not a "reasonable accommodation" under the FHA to the Association's longstanding policy of allowing smoking. The appeals court determined that Davis' request would have constituted a "fundamental change" in the Association's smoking policy, not a "moderate adjustment" to policy (which is all that the court deemed necessary), and that a smoking ban would have intruded on the rights of third parties. The appeals court also found no violation of the bylaws, since the bylaws do not restrict or even speak to smoking. In addition, the appeals court found no violation of the bylaws more general prohibitions on "offensive activities" and "nuisances" because the standard of liability must be tied to an ordinary resident, not a resident with unique needs, such as Davis.

The appeals court seemed to give great weight to the practical fact that the Association did not simply ignore Davis' concerns. Rather, they sought to facilitate a compromise, including communicating with the Lamnins, purchasing a fresh air system for Davis' condo (at the Association's expense), and holding a condo owner vote on whether to ban smoking. From a community governance standpoint, even with FHA issues in play, the court showed deference to the Association's bylaws and the vote of the owners. This decision highlights the point that not all requested accommodations under the FHA will be granted and deemed reasonable. However, for community associations, it also highlights the importance of having association bylaws and rules that clearly set forth any restrictions within the

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DAVIS V. ECHO VALLEY CONDOMINIUM ASSOCIATION, 945 F.3D 483 (6TH CIRCUIT COURT, DECEMBER 19, 2019)

community in order to avoid confusion and minimize the chances of a dispute.

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