No. 21-3990

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MARY LA RICCIA, et al.,)
)
Plaintiffs-Appellants,)
)
v.) ORDER
)
CLEVELAND CLINIC FOUNDATION, et al.,)
)
Defendants-Appellees.)

Before: SUTTON, Chief Judge; ROGERS and GRIFFIN, Circuit Judges.

Plaintiffs Mary La Riccia and her husband, Travis Horn, appeal pro se from a district court order dismissing their claims—brought under the Americans with Disabilities Act ("ADA"), the Rehabilitation Act, the Affordable Care Act, and state laws—for lack of subject matter jurisdiction. Plaintiffs move for a temporary restraining order and preliminary injunction prohibiting Defendants Cleveland Clinic Foundation ("CCF"), several of its employees, and other unnamed persons from interfering with La Riccia's ability to seek treatment from her former doctor, Neil Cherian; prohibiting Defendants from interfering with her communication with Dr. Cherian by establishing a private, secure communication platform comparable to, but outside of, Defendants' MyChart application; and restricting access to her medical records to only those directly involved in her medical care until the conclusion of this action. Defendants respond and Plaintiffs reply. Plaintiffs also move for an expedited ruling on their motion and supplement their original motion, reiterating their request to restrict access to La Riccia's medical records.

A party must first move the district court for an injunction pending appeal unless it would be impracticable, the district court denied relief, or it otherwise already failed to afford the relief requested. Fed. R. App. P. 8(a)(1)(C), (a)(2)(A). This rule without more requires denial of plaintiffs' motion. As Defendants note, Plaintiffs did not first move the district court for relief pending appeal. Plaintiffs argue that it is impracticable for them to move the district court for relief pending appeal because of the district court's asserted delay in ordering that the case be dismissed, and because defendants are aware of the issues regarding the court's dismissal. If these were considered sufficient to make it impractical to seek relief pending appeal first in the district court, then the requirement of Rule 8(a)(1)(C) would be gutted.

Moreover, even if we were to disregard the requirements of Rule 8, the requirements for relief pending appeal are clearly not met in this case.

"This Court has the power to grant an injunction pending appeal to prevent irreparable harm to the party requesting such relief during the pendency of the appeal." *Overstreet v. Lexington-Fayette Urban Cnty. Gov't*, 305 F.3d 566, 572 (6th Cir. 2002) (citation omitted). "A preliminary injunction is an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it." *Id.* at 573. "In granting such an injunction, the Court is to engage in the same analysis that it does in reviewing the grant or denial of a motion for a preliminary injunction." *Id.* at 572. We balance four factors in determining whether to grant such relief: "(1) whether the movant has shown a strong likelihood of success on the merits; (2) whether the movant will suffer irreparable harm if the injunction is not issued; (3) whether the issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuing the injunction." *Id.* at 573. Dismissal for failure to state a claim is reviewed de novo. *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011).

To state a claim under Title III of the ADA, a plaintiff must allege "(1) that she is disabled within the meaning of the ADA; (2) that defendants own, lease, or operate a place of public accommodation; and (3) that defendants discriminated against her by denying her a full and fair opportunity to enjoy the services defendants provide." *Camarillo v. Carrols Corp.*, 518 F.3d 153, 156 (2d Cir. 2008) (per curiam); *see also* 42 U.S.C. § 12182(a). Regardless of the first two elements, Plaintiffs are unlikely to succeed on the merits of this claim because they cannot show that Defendants discriminated against La Riccia on the basis of her disability or that they failed to accommodate her in a way that denied her the full benefits of their services.

The district court correctly concluded that Plaintiffs did not show that Defendants' actions—terminating La Riccia's doctor-patient relationship with Dr. Cherian, revoking her MyChart access, and referring her to a different physician within CCF's practice—were because of La Riccia's disability. Plaintiffs argue that La Riccia's mental illness and anxiety are directly responsible for the content and volume of her nearly 500 personal MyChart messages with Dr. Cherian, and that punishing her for the behavior resulting from her disability is akin to discriminating against her for the disability itself. Plaintiffs' arguments are flawed for three reasons. First, Plaintiffs assert that Dr. Cherian prompted and encouraged La Riccia's MyChart messages, implying that her behavior was not merely the natural manifestation of her mental illness. Even assuming the messages were a direct result of La Riccia's mental illness, providers of public accommodation are not required to accept all behavior from a mentally ill individual. *See Thompson v. Williamson County*, 219 F.3d 555, 558 (6th Cir. 2000). Second, as soon as CCF learned of the messages, it took steps to provide La Riccia with a different provider, which was an accommodation. *See Powell v. Bartlett Med. Clinic & Wellness Ctr.*, No. 2:20-cv-02118, 2021 WL 243194, at *9 (S.D. Ohio Jan. 25, 2021). Third, that the alternate provider did not share Dr. Cherian's rare specialty does not render the accommodation unreasonable. *See Baldridge-El v. Gundy*, 238 F.3d 419, 2000 WL 1721014, at *2 (6th Cir. 2000) (Table); *see also Powell*, 2021 WL

243194, at *8 (collecting authority). Thus, not only did CCF not discriminate against La Riccia on the basis of her disability but, when CCF learned of her messages with Dr. Cherian, it took steps to ensure she continued to receive adequate care.

The remainder of Plaintiffs' federal claims are likewise unlikely to succeed on the merits. The district court correctly found that Plaintiffs did not allege facts sufficient to establish a Title V claim under the ADA, as Plaintiffs did not file a charge with the Ohio Civil Rights Commission until after La Riccia had been terminated as Dr. Cherian's patient. For the reasons explained above, Plaintiffs have not established that Defendants discriminated against La Riccia or denied her medical care at CCF, nor have they shown that, if Defendants had done so, it was because of La Riccia's disability. Thus, the district court properly found that Plaintiffs did not allege facts sufficient to establish their claims under the Rehabilitation Act and the Affordable Care Act, and they are unlikely to succeed on the merits.

Plaintiffs' remaining claims are brought under state law. "[We have] held that 'a federal court that has dismissed a plaintiff's federal-law claims should not ordinarily reach the plaintiff's state-law claims.'" *Winkler v. Madison County*, 893 F.3d 877, 905 (6th Cir. 2018) (quoting *Rouster v. County of Saginaw*, 749 F.3d 437, 454 (6th Cir. 2014)). Because the district court did not err by dismissing Plaintiffs' federal claims, the district court properly declined to exercise supplemental jurisdiction over their state-law claims. *Id.*

To establish irreparable harm, "the harm alleged must be both certain and immediate, rather than speculative or theoretical." *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 154 (6th Cir. 1991). However, even if irreparable harm is established, the party seeking an injunction "is still required to show, at a minimum, 'serious questions going to the merits.'" *Id.* at 153–54 (quoting *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985).

Plaintiffs contend that La Riccia has experienced, and continues to experience, irreparable harm due to not being able to see Dr. Cherian and not being able to contact other doctors through MyChart. However, they have not shown the requisite likelihood of success on the merits of their appeal. *See Tiger Lily, LLC v. U.S. Dep't of Hous. & Urban Dev.*, 992 F.3d 518, 524 (6th Cir. 2021) (order) ("Given that the [movant] is unlikely to succeed on the merits, we need not consider the remaining stay factors."). Further, before La Riccia was terminated as his patient, both she and Dr. Cherian had acknowledged that there was nothing more he could do for her regarding her symptoms. Thus, there is no indication that La Riccia's alleged harms would be alleviated if an injunction were issued.

Plaintiffs do not address whether an injunction would cause harm to others, but Defendants argue that Dr. Cherian would be harmed by being forced to treat a patient who has sent him threatening messages, made defamatory allegations of inappropriate touching, and who has made unsolicited contact at his home and on his personal cell phone. Regarding the public interest, Plaintiffs argue that the treatment La Riccia discovered and would like to implement at CCF would benefit the public, as it would help other patients suffering from her disease and possibly other conditions. However, Defendants assert that Dr. Cherian previously informed La Riccia that he is unqualified to provide the treatment she seeks. Finally, Defendants argue that the public interest weighs in favor of allowing medical providers to transition patient care when doctor-patient relationships break down, for the good of both doctor and patient. The balance of the factors weighs against granting an injunction pending appeal.

Accordingly, the motion for a temporary restraining order and preliminary injunction pending appeal is **DENIED**. The motion to expedite and the supplemental motion for injunctive relief are **DENIED AS MOOT**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk