

H**Glatfelter v. Delta Air Lines, Inc.**
Ga.App.,2002.Court of Appeals of Georgia.
GLATFELTER et al.,
v.
DELTA AIR LINES, INC.
No. A01A2048.

Jan. 14, 2002.

Passenger brought personal injury action against airline, alleging that airline failed to provide wheelchair to passenger. The Fulton State Court, Dixon, J., entered summary judgment in favor of airline, and passenger appealed. The Court of Appeals, [Elington, J.](#), held that: (1) passenger failed to serve requests for admissions upon airline; (2) airline's delay of 15 to 20 minutes in providing wheelchair assistance did not constitute violation of the Air Carrier Access Act (ACAA); and (3) even if delay was violation of ACAA, delay was not proximate cause of passenger's injuries.

Affirmed.



West Headnotes

[1] Process 313  149**313 Process****313II Service****313II(E) Return and Proof of Service****313k144 Evidence as to Service****313k149 k. Weight and Sufficiency. [Most Cited Cases](#)**

Whether evidence is sufficient to overcome facts reflected in a return of service is a matter addressed to the discretion of the trial court.

[2] Process 313  149**313 Process****313II Service****313II(E) Return and Proof of Service****313k144 Evidence as to Service****313k149 k. Weight and Sufficiency. [Most Cited Cases](#)**

A marshal's return of service constitutes prima facie evidence of service as indicated and can only be set aside upon evidence which is not only clear and convincing, but the strongest of which the nature of the case will admit.

[3] Process 313  145**313 Process****313II Service****313II(E) Return and Proof of Service****313k144 Evidence as to Service****313k145 k. Presumptions and Burden of Proof. [Most Cited Cases](#)****Process 313  148****313 Process****313II Service****313II(E) Return and Proof of Service****313k144 Evidence as to Service****313k148 k. Evidence to Impeach or Contradict Return, Certificate, or Affidavit of Service. [Most Cited Cases](#)**

A defendant challenging the sufficiency of service bears the burden of establishing that the service was insufficient, such as, by disproving statements contained in a return of service; such proof may be presented, along with other evidence, in the form of sworn statements made on personal knowledge.

[4] Pretrial Procedure 307A  474**307A Pretrial Procedure****307AII Depositions and Discovery****307AII(G) Requests for Admissions**

[307Ak474](#) k. Request; Striking Request. [Most Cited Cases](#)
Passenger who brought personal injury action against airline failed to serve requests for admissions upon airline; although marshal's entry of service showed service of summons, complaint, and discovery requests upon airline's registered agent, affidavits of airline's registered agent for service and employee who received complaint from registered agent both alleged that requests for admissions were not served with complaint.

[5] Carriers 70  **262.5**

70 Carriers
70IV Carriage of Passengers
70IV(C) Performance of Contract of Transportation
70k262.5 k. Accommodations for the Handicapped. [Most Cited Cases](#)
The Air Carrier Access Act (ACAA) is not a strict liability statute, and a minimal delay in providing the requested assistance does not constitute a violation of the act. 49 U.S.C.A. § 40101(a)(1).

[6] Carriers 70  **262.5**

70 Carriers
70IV Carriage of Passengers
70IV(C) Performance of Contract of Transportation
70k262.5 k. Accommodations for the Handicapped. [Most Cited Cases](#)
Airline's delay of 15 to 20 minutes in providing wheelchair assistance to passenger who requested wheelchair for travelling between airport gates to connecting flight did not constitute violation of the Air Carrier Access Act (ACAA), requiring airline to provide such wheelchair assistance to passengers, for purposes of passenger's personal injury action against airline, arising out of fall on escalator; airline did

not refuse request for wheelchair, airline agent responded courteously to request, but wheelchair was not immediately available because of crowded conditions at airport. 49 U.S.C.A. § 40101(a)(1).

[7] Carriers 70  **305(1)**

70 Carriers
70IV Carriage of Passengers
70IV(D) Personal Injuries
70k305 Proximate Cause of Injury
70k305(1) k. In General. [Most Cited Cases](#)

Even if airline's 15 to 20 minute delay in providing wheelchair assistance to requesting passenger could be deemed actionable Air Carrier Access Act (ACAA) violation, airline's conduct was not proximate cause of passenger's injuries, arising from passenger's fall on escalator; following delay, passenger decided to walk to airport gate for his connecting flight, and instead of using elevator, passenger used an escalator, and stranger bumped into passenger, knocking him down a few steps, resulting in broken ankle and other injuries. 49 U.S.C.A. § 40101(a)(1).

****794 *254** Wilson Law Firm, L. Matt Wilson, Anthony O. Lakes, Davis K. Loftin, Atlanta, for appellants.
Strawinski & Goldberg, Michael L. Goldberg, for appellee.

***251 ELLINGTON**, Judge.
Kurvin and Irene **Glatfelter** appeal the trial court's order granting summary judgment in favor of **Delta Air Lines, Inc.** on their personal injury complaint based on **Delta's** alleged failure to provide a wheelchair for Mr. **Glatfelter's** use. Finding no error, we affirm.

1. The **Glatfelters** contend the trial court

erred in granting summary judgment in that **Delta** admitted liability in *judicio* when it failed to timely respond to their request for admissions during discovery. See *OCGA § 9-11-36(a)(2), (b)*. The **Glatfelters'** attorney**795 certified that the request for admissions was served “by attaching the same to the Complaint and serving same as reflected by the Marshal's Entry of Service.” The marshal's entry of service showed service of the action, summons “and discovery requests” on Delta's registered agent on August 27, 1999. Delta served its response to the Glatfelters' request for admissions on December 15, 1999.

Delta moved the trial court for a judicial determination that its response to the Glatfelters' request for admissions was timely filed. Delta claimed that the request for admissions was not served with the complaint; it supported that assertion with the affidavits of its registered agent for service and the employee who received the complaint from the registered agent. The trial court did not rule on Delta's motion to have its response declared timely before the hearing on Delta's motion for summary judgment. Implicit in the trial court's order granting Delta's motion for summary judgment is a ruling that the Glatfelters did not serve Delta with their request for admissions. See *Peterson v. Columbus Med. Center &c.*, 243 Ga.App. 749, 753(1)(b), 533 S.E.2d 749 (2000).

[1][2][3][4] “Whether evidence is sufficient to overcome facts reflected in a return of service is a matter addressed to the discretion of the trial court.” (Citations omitted.) *Webb v. Tatum*, 202 Ga.App. 89, 91, 413 S.E.2d 263 (1991). A marshal's return of service constitutes *prima facie* evidence of service as indicated and “can only be set

aside upon evidence which is not only clear and convincing, but the strongest of which the nature of the case will admit.” (Punctuation and footnote omitted.) *Duke v. Buice*, 249 Ga.App. 164, 165-166, 547 S.E.2d 561 (2001). See *Webb*, 202 Ga.App. at 91, 413 S.E.2d 263. A defendant challenging the sufficiency of service bears the burden of establishing that the service was insufficient, such as, by disproving statements contained in a return of service. *Bullard v. West Star Financial Corp.*, 231 Ga.App. 521-522, 500 S.E.2d 51 (1998). “Such proof may be presented, along with other evidence, in the form of sworn statements made on personal knowledge.” (Citations and punctuation omitted.) *Id.* at 521, 500 S.E.2d 51. Applying the abuse of discretion standard, we conclude the sworn *252 affidavits submitted by Delta in this case were sufficient to support the trial court's implicit finding that the Glatfelters failed to serve the request for admissions.

2. The Glatfelters contend that, even if the trial court accepted and considered Delta's allegedly untimely responses to their request for admissions, questions of material fact existed which precluded summary judgment. “To prevail at summary judgment under *OCGA § 9-11-56*, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law.” *Lau's Corp. v. Haskins*, 261 Ga. 491, 405 S.E.2d 474 (1991). “The movant has the original burden of making this showing. Once the movant has made a *prima facie* showing that it is entitled to judgment as a matter of law, *the burden shifts to the respondent to come forward with rebuttal evidence.*” (Citation and punctuation omitted; emphasis-

is supplied.) *Kelly v. Pierce Roofing Co.*, 220 Ga.App. 391, 392-393(2), 469 S.E.2d 469 (1996). “In rebutting this prima facie case, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in OCGA § 9-11-56 [,] must set forth specific facts showing that there is a genuine issue for trial.” (Punctuation omitted.) *Entertainment Sales Co. v. SNK, Inc.*, 232 Ga.App. 669-670, 502 S.E.2d 263 (1998). A defendant may meet its burden on a motion for summary judgment by showing the court that the documents, affidavits, depositions, and other evidence in the record reveal that there is no evidence sufficient to create a jury issue on at least one essential element of plaintiff's case. *Lau's Corp.*, 261 Ga. at 491, 405 S.E.2d 474. Our review is de novo, and we view the evidence, and all reasonable conclusions and inferences drawn from it, in the light most favorable to the nonmovant. *White v. BDO Seidman, LLP*, 249 Ga.App. 668, 669, 549 S.E.2d 490 (2001).

Viewed in the light most favorable to the appellants, the evidence showed the following facts. The Glatfelters planned to return from a trip to Connecticut to their home in Florida on May 6, 1999. Their daughter, who purchased their tickets, requested in **796 advance that Delta provide a wheelchair in the Sarasota, Atlanta, and Hartford airports to transport Mr. Glatfelter. At the time, Mr. Glatfelter was 79 years old, obese, and had osteoarthritis in his left knee; he used a cane to walk and walked slowly and carefully.

On May 6, the Glatfelters' originating flight from Hartford was delayed due to bad weather in Atlanta; they arrived in Atlanta on Concourse B after 1:00 p.m., too

late to make their connecting flight to Sarasota. No wheelchair was waiting to help Mr. Glatfelter deplane. The Glatfelters walked to the gate and spoke with a Delta gate agent. The Glatfelters learned that the next flight to Sarasota *253 was scheduled to depart from Concourse A at about 4:00 p.m. Mrs. Glatfelter asked the gate agent to locate a wheelchair to take Mr. Glatfelter to the gate for the next flight to Sarasota. The gate agent called to request a wheelchair and also suggested they find a place on a passing tram. No wheelchair was readily available, and passing trams were all full.

After 15 to 20 minutes passed without the appearance of wheelchair assistance, the Glatfelters decided to walk to Concourse A. Because of numerous weather-related flight delays and cancellations, the concourse was crowded and chaotic. As Mr. Glatfelter stepped onto the escalator to travel down to the transportation mall, the surge of the crowd pushed him and he fell down a few steps. He sustained, among other injuries, a broken right ankle which required surgery. Mr. **Glatfelter** seeks compensation for his injuries, and Mrs. **Glatfelter** seeks compensation for loss of consortium.

[5] It is undisputed that **Delta** owed Mr. **Glatfelter**, as a qualified handicapped individual, a duty to provide wheelchair assistance when requested in boarding, deplaning, and traveling between gates to make flight connections. 49 U.S.C. § 40101(a)(1) (**Air Carrier Access Act of 1986**); 14 CFR § 382.39(a)(1).^{FN1} The ACAA is not a strict liability statute, however, and a minimal delay in providing the requested assistance does not constitute a violation of the act. *Adiutori v. Sky Harbor Intl. Airport*, 880 F.Supp. 696, 701

(D.Ariz.1995) (five-to-ten minute wait for a wheelchair), *aff'd* without opinion, 103 F.3d 137 (9th Cir.1996).

FN1. 14 CFR § 382.39(a)(1) provides:

Carriers shall ensure that qualified [handicapped] individuals ... are provided the following services and equipment: Carriers shall provide assistance requested by or on behalf of qualified [handicapped] individuals ..., or offered by air carrier personnel and accepted by qualified [handicapped] individuals ..., in enplaning and deplaning. The delivering carrier shall be responsible for assistance in making flight connections and transportation between gates. This assistance shall include, as needed, the services personnel and the use of ground wheelchairs ..., on-board wheelchairs where provided in accordance with this part, and ramps or mechanical lifts.

[6][7] In this case, there is no evidence the Delta gate agent refused the Glatfelters' request for a wheelchair. To the contrary, Mrs. Glatfelter testified that the gate agent responded courteously to her request and called for a wheelchair but was unable to procure one immediately because of the crowded conditions at the airport. The undisputed evidence shows the Glatfelters, anxious to make the next connecting flight to Sarasota, decided after 15-to-20 minutes not to wait any longer for wheelchair assistance. The ACAA and the regulations applicable here do not specify how quickly requested assistance must be provided, but this does not mean that evidence of a delay of any length is sufficient to raise a jury is-

sue.^{FN2} Although we recognize that under certain circumstances a *delay* in providing requested wheelchair assistance could amount to a *failure* to provide assistance, we conclude as a matter of law that under these circumstances a delay of 15-to-20 minutes did not constitute a violation of the ACAA. *Adiutori*, 880 F.Supp. at 701. Furthermore, even if **Delta's** 15-to-20 minute delay in providing a wheelchair could be deemed an actionable ACAA violation, **Delta's** conduct could not be ****797** deemed the proximate cause of the **Glatfelters'** injuries because it was followed by other intervening events without which those injuries would not have occurred, i.e., the **Glatfelters'** decision to walk to Concourse A; the **Glatfelters'** failure to determine that an elevator was available; and the stranger's bumping into Mr. **Glatfelter**. *Bacon v. Mayor &c. of Savannah*, 241 Ga.App. 211, 213-214, 525 S.E.2d 115 (1999); *Finney v. Machiz*, 218 Ga.App. 771, 773, 463 S.E.2d 60 (1995). Accordingly, **Delta** was entitled to summary judgment on the **Glatfelters'** claims.

FN2. Cf. *Rowley v. American Airlines*, 885 F.Supp. 1406, 1410-1411 (D.Ore.1995) (14 CFR § 382.39(a)(3) provides: "Carriers shall not leave [a handicapped passenger] unattended in a ground wheelchair, boarding wheelchair, or other device, in which the passenger is not independently mobile, for more than 30 minutes." Evidence that airline employee left passenger seated in a gate lounge chair, in which she was not independently mobile, unattended for more than an hour raised a jury issue as to passenger's ACAA claim.).

Judgment affirmed.

558 S.E.2d 793
253 Ga.App. 251, 558 S.E.2d 793, 02 FCDR 201

Page 6

JOHNSON, P.J., and **RUFFIN**, J., concur.
Ga.App.,2002.
Glatfelter v. Delta Air Lines, Inc.
253 Ga.App. 251, 558 S.E.2d 793, 02
FCDR 201

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