

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 25 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SANDRA EDMONDS,

No. 22-55465

Plaintiff-Appellant,

D.C. No.

v.

2:21-cv-00261-RGK-SK

BARCHESTER CALIFORNIA, LP,

MEMORANDUM*

Defendant-Appellee,

and

DOES,

Defendant.

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Argued and Submitted January 13, 2023
Pasadena, California

Before: WATFORD, FRIEDLAND, and BENNETT, Circuit Judges.
Dissent by Judge FRIEDLAND.

Plaintiff-Appellant Sandra Edmonds sued Barchester California, LP
("Barchester"), asserting that various architectural barriers on its property

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

(“Property”) violated the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (“ADA”). Following a bench trial, the district court entered judgment for Barchester. We affirm.

The district court held that Edmonds failed to establish standing because the only evidence of her deterrence from visiting the Property came from her testimony, and the court did not find this testimony credible. *See Chapman v. Pier 1 Imps. (U.S.) Inc.*, 631 F.3d 939, 949 (9th Cir. 2011) (en banc). We review the district court’s standing determination de novo and review its underlying factual findings for clear error. *Am.-Arab Anti-Discrimination Comm. v. Thornburgh*, 970 F.2d 501, 506 (9th Cir. 1991). Under Federal Rule of Civil Procedure 52(a), credibility determinations “demand[] even greater deference to the trial court’s findings; for only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener’s understanding of and belief in what is said.” *Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1985).

The district judge determined that Edmonds’s testimony was not credible because she was vague in describing her disability and the barriers she allegedly encountered; she made unresponsive, unsolicited, and disruptive remarks; and she was combative while testifying. Although it is possible that there were justifications for Edmonds’s uncooperative demeanor, it is also possible that her demeanor, her vague descriptions of barriers not documented anywhere else, and

the other matters identified by the district court caused legitimate problems with her testimony that permissibly led the district judge to disbelieve her. With only the trial transcript before us, we cannot evaluate how Edmonds's "variations in demeanor and tone" might have affected the district judge's "understanding of and belief in what [wa]s said." *Id.* Given Rule 52(a)'s demand of heightened deference to the trial court's determinations regarding credibility, we affirm the determination that Edmonds was not credible.

The only evidence of Edmonds's deterrence from visiting the Property came from her testimony. Because the district court did not clearly err in deeming her testimony not credible, we affirm its holding that Edmonds lacked standing. *See Chapman*, 631 F.3d at 949. We therefore do not reach Edmonds's argument that the district court erred in failing to consider her allegations regarding the weather strip.

AFFIRMED.

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U.S. COURT OF APPEALS*Edmonds v. Barchester*, No. 22-55465

FRIEDLAND, Circuit Judge, dissenting:

The district court's conclusion that Edmonds's testimony was vague is unsupported by the record, and its other reasons for deeming her not credible are unrelated to truthfulness and thus seem illogical. I would remand for the district court to either better explain why it found Edmonds not credible or to treat her testimony as credible and reconsider the merits of her claims in light of that testimony.

Although the district court criticized Edmonds for being vague in her testimony about her disability and the barriers she encountered, the trial transcript indicates that she was in fact clear. She explained that her disability affects her knees, lower back, and hips, causing her severe arthritis and chronic pain. She explained that because of her pain and impaired mobility, she must move slowly. Edmonds was similarly specific when describing the barriers she encountered at the Property. She explained that uneven pavement made it difficult for her to maneuver her walker because its wheels caught on the pavement. She further testified that she had difficulty getting out of her own car because other cars were parked too close to the accessible parking space; she hypothesized that these parking problems occurred because of vandalism obscuring the accessible parking sign. The fact that Edmonds testified that she did not encounter difficulties with the weather strip one month before her first problematic visit to the Property did

not render her description of her disability or that alleged barrier vague, given her testimony that the effects of her disability vary depending on the day and that she was in pain during her first problematic visit to the Property.

The fact that Edmonds spoke out of turn is irrelevant to her credibility. It is true that at multiple points throughout her testimony, she made statements that indicated a lack of familiarity with courtroom procedure and the formal nature of direct and cross examination. Yet a litigant's lack of familiarity with the legal system should not undermine her credibility. To hold otherwise would risk prejudicing litigants with limited resources or sophistication.

Finally, although the record indicates that Edmonds did appear combative at points during the trial, she seems to have been justifiably frustrated with Barchester's counsel for photographing her without her permission as she navigated barriers at the courthouse—barriers that, as she pointed out, she had no choice but to navigate—in an apparent attempt to suggest that she was fabricating her disability. Had the district court held that it did not believe that Edmonds was disabled, her combativeness here might have been understood as excessive defensiveness that called into question the veracity of her disability. But the district court did not question whether Edmonds was disabled; rather, it doubted whether she encountered the barriers she alleged.

Because the district court's explanation for its adverse credibility determination is unsupported by the record, I would vacate and remand for the district court to provide a more fulsome explanation for its credibility determination, or else to deem Edmonds credible and conduct further proceedings.