

NO. A09-1410

State of Minnesota
In Supreme Court

LSI CORPORATION OF AMERICA,
A MINNESOTA CORPORATION,

Appellant,

vs.

LEANN TAYLOR,

Respondent.

APPELLANT'S REPLY BRIEF

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ARGUMENT

I. There Can be No Discrimination Without a Classification.

Respondent does not explain how she can be the victim of “discrimination” under the Minnesota Human Rights Act (“MHRA”) when she is not a member of a “class” or classification. In fact, she does not address this argument in her brief at all.

Minnesota law requires membership in a protected “class” or “classification” in order to assert a *prima facie* case of employment discrimination, of any type. *Hubbard v. United Press Int’l*, 330 N.W.2d 428 (Minn. 1983) (stating: “The crux of a disparate treatment claim involving an employer’s decision to discharge an employee is that the employer is treating that employee less favorably than others *on the basis of an impermissible classification*”) (emphasis added).

The South Dakota Supreme Court highlighted this principle in *LaBore v. Muth*, 473 N.W.2d 485 (S.D. 1991) (holding that the South Dakota Human Relations Act was “intended to address discrimination because of *class membership*” not an “individual situation”) (emphasis added). In *LaBore*, the plaintiff initially filed a defamation action against two employees of “Sylvester’s,” a bar and restaurant located east of Britton, South Dakota. *Id.* at 486. Prior to the commencement of the slander action, LaBore had been a frequent customer of Sylvester’s. *Id.* On June 18, 1989, when LaBore went to Sylvester’s, she was told to leave because her presence in the establishment created an uncomfortable and tense situation. *Id.* There was no allegation that LaBore was acting in a disorderly manner. *Id.* LaBore then sued the restaurant under the South Dakota Human

Rights Act alleging discrimination in public accommodation while conceding that the discrimination was based on what she had done or who she was, not her membership in a protected class. The South Dakota Supreme Court affirmed dismissal of her charge of discrimination.

Taylor in this case is no different than LaBore in that she claims she was “discriminated” against because of the identity of a single person. As a matter of law, neither LaBore’s nor Taylor’s situation can properly be called “discrimination” in the same context of the evil meant to be extinguished by Federal Civil Rights laws and state laws like the MHRA. Taylor’s claim is overreaching and should be dismissed.

II. Respondent’s Reliance on Anti-Nepotism Cases is Misplaced.

Respondent cites several cases for the proposition that “other states have concluded that the proscribed conduct does include discrimination based on the spouse’s identity.” Resp. Brief at 9, *citing Ross v. Stouffer Hotel Co. (Hawaii) Ltd., Inc.* 816 P.2d 302 (Haw. 1991), *Thompson v. Board of Trustees, School District No. 12*, 192 Mont. 266, 627 P.2d 1229 (Mont. 1981), *Kraft, Inc. v. State*, 284 N.W.2d 386, (Minn. 1979), and *Washington Water Power Co. v. Washington State Human Rights Comm’n*, 91 Wash.2d 62, 586 P.2d 1149 (Wash. 1978). These cases concern anti-nepotism policies, however, and are not germane to the issue in this case, except by contrast. In the types of cases cited by Respondent, there is typically no allegation of poor performance or job elimination, but there is a policy which, on its face, prohibits the employment of anyone married to a current employee. This case, on the other hand, involves the opposite scenario—an employee whose position did not serve any purpose and a lack of any

policy or other direct evidence to show that the decision to eliminate the position was related to her marital status, however defined.

As the Hawaii Supreme Court noted in *Ross v. Stoufer Hotel*, in that case “cohabitation without going through a marriage ceremony would not have been a violation of the policy” and therefore the policy was arbitrary and discriminatory. *Id.* at 303. Conversely, if Taylor in this case had merely been “cohabitating” with Gary Taylor and was not married to him, she would still have been terminated. The statute as applied by the Court of Appeals to these facts turns the concept of marital status discrimination on its head.

III. Allowing Respondent to State a Claim Under These Facts is an Absurd Result.

The record conclusively demonstrates that, other than her husband, nobody at LSI spoke positively about Respondent or felt that her position provided any value to the company.¹ Respondent was a poor employee and her job was completely unnecessary. Anyone reviewing the record would be hard pressed to reach a different conclusion. To allow Respondent to state a claim for “discrimination” under these facts is an absurd result and cannot be what the Legislature intended when it amended the MHRA.

¹ Respondent points to positive performance reviews by Mary Ausen, who was at that time Respondent’s husband’s secretary. Resp. Brief at 2, citing APP 0351. Ausen testified in her affidavit, however, that Gary Taylor instructed her to sign employment documentation regarding Respondent that he drafted. APP 0485. She also testified that Respondent’s job was eliminated. APP 0486. Ausen, who has served as the executive secretary under three LSI presidents, was diplomatic in her deposition and said she got along with Respondent. APP 353. She also stated, however, that Respondent did not get along with most employees at LSI. *Id.* When asked whom Respondent did not get along with, Ausen said, “you’d almost need a roster” and proceeded to list entire departments such as the Engineering Department and the Estimating Department. *Id.*

Respondent argues that she was not terminated because of job poor performance. Resp. Brief. p. 6, citing APP 0374. But the testimony of Darryl Rosser upon which she relies does not support her statement. Rosser actually testified that, although it was not an issue of “satisfying customer concerns” APP 0374, Respondent’s position was one of a couple of “very easy, very visible positions” that he decided to eliminate. APP 0375.

Respondent admits that Rosser told her that her job was being eliminated, and it was in fact eliminated. APP 102. Respondent’s suggestion that the savings of a mere \$35,000 to \$40,000 in annual salary is somehow not worth the effort of a multi-million dollar business is illogical. Resp. Brief at 4-5 and 19-20. Every business has a responsibility to not spend money on something for which it receives no value. According to Respondent’s mathematics, no business expenditure under \$35,000 would merit review. This approach would quickly lead to financial ruin.

Respondent suggests it is an interesting “coincidence” that the elimination of her position occurred shortly after Gary Taylor resigned. Resp. Brief at 19. This is no coincidence. Respondent only obtained and retained her position because Gary Taylor created it and protected it from scrutiny. Once the shroud of protection was lifted, the fact that she had no utility, and in fact was a negative factor in the workplace, became evident to all, including the corporate holding company. That does not mean she is a victim of marital discrimination.

IV. Respondent Concedes That the Issue of Whether She Stated a *Prima Facie* Case is Fully Briefed and Ripe for Final Adjudication.

Both sides in this litigation briefed the *McDonnell Douglas* standard as part of Defendant's summary judgment motion at the district court. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Following then-Court of Appeals precedent, Judge Stephen Aldrich of Hennepin County District Court dismissed the action on summary judgment because the allegations did not constitute a "direct attack on the institution of marriage." ADD 006. The district court therefore never reached a decision on the *McDonnell Douglas* test. *Id.*

In its opening brief to this Court, Appellant set forth those portions of the record and supporting law showing why summary judgment should be affirmed on the alternative bases that Respondent has failed to establish a *prima facie* case and failed to demonstrate that the reason for her termination was a pretext for discrimination. App. Brief at 25-30. In her Responsive Brief, Respondent sets forth her arguments in opposition; in fact she uses the majority of her brief to do so. Resp. Brief at 12-21. Notably, however, Respondent agrees that the *McDonnell Douglas* test applies and does not argue that it is improper or inappropriate for the Supreme Court to squarely address this issue on the merits instead of remanding the question back to the district court. *See* Resp. Brief at 12-13 ("Although the Trial Court never analyzed [Respondent's] claims within the *McDonnell Douglas* framework, [Respondent] is required to make such a showing to survive summary judgment and we will, therefore, provide the Court with the argument made at summary judgment.") She does not, for example, argue that there is a

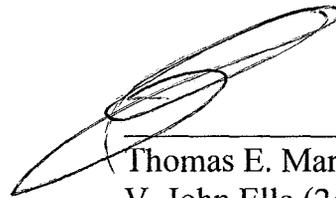
need for further discovery or that she did not have sufficient opportunity to brief the issues before this Court, or any other. This makes sense because a full ruling could potentially bring finality to the matter and reduce the prospect of further cost, delay and uncertainty.

CONCLUSION

For the reasons set forth, the decision of the Court of Appeals should be reversed and Respondent's Complaint should be dismissed with prejudice.

Dated: September 27, 2010.

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