GENDER JUSTICE

6-Month Report Prepared for the Barbara McDowell and Gerald S. Hartman Foundation

April 2021

CASE INTRODUCTION

In 2019, Gender Justice filed a complaint on behalf of Andrea Anderson, who was denied service by pharmacists at not one, but *two* pharmacies in rural Minnesota – the McGregor Thrifty White and Aitkin CVS – when she sought to fill a prescription for emergency contraception (ella) in January 2019, forcing her to drive over 100 miles in a blizzard conditions to obtain time-sensitive medication.

Andrea's story highlights the particular struggle that rural women face with regards to health care access; a religious refusal at one pharmacy could be the difference between Anderson - and rural women like her across the state and country – getting her medication or going without. With this case, we hope to establish new case law establishing that religious refusals and exemptions to laws must not apply when up against civil rights and civil rights laws.

ACTIVITIES TO DATE

In September and October, 2020, Gender Justice attorneys deposed all non-expert witnesses for our case, including each of the pharmacists, pharmacy technicians, and pharmacy owners Andrea interacted with while attempting to fill her prescription. We learned that the Thrifty White pharmacist has previously denied emergency contraception to other women. In one situation, he not only refused to dispense the medication, he also confronted the young woman in the pharmacy aisle, causing her to cry.

Following depositions, we filed for affirmative summary judgment arguing that denial of contraception is *per se* sex discrimination under the Minnesota Human Rights Act. This is not a factual dispute – all parties recognize that Andrea was unable to obtain the medication she needed. We are now awaiting a decision from the judge on the question: did what happened to our client violate the Minnesota Human Rights Act or not?

We have also completed our briefings in response to CVS and Thrifty White's summary judgment requests. In their summary judgements, both CVS and Thrifty White claimed that none of their pharmacists took issue with birth control, they were simply out of supply and that the events were misinterpreted by our client as a motivated refusal. Their request is that a jury hear the case and decide the factual disputes.

These motions were briefed and heard mid-February, along with a post-hearing brief on March 2nd. The judge will issue a ruling by early June, three months from this date. During the post-hearing brief the judge did not ask either the plaintiffs or defense attorneys any specific questions to be answered. However, he did seem excited and intrigued about the case and even invited a class from Saint Paul's Mitchell Hamline School of Law to attend the hearing.

Following the hearing, the judge invited both parties to submit any additional important information. We chose to respond to the CVS brief and reiterated our position that the pharmacist was knowingly refusing to provide our client with the emergency contraception she was seeking.

At the summary judgment hearing and in our briefs we talk a bit about the constitutional standard involved but only to point out that it hasn't been raised and would need to be raised properly in order to properly weigh the factors. So far, none of the defendants have raised a constitutional defense in the case although it could come into play later on.

In addition, we did subpoena Walgreens – the final pharmacy where Andrea was able to get her medication – but they did not provide all of the information we were hoping for. We then followed up and filed a motion to compel against Walgreens with the hope that they will be able to provide us with additional evidence for the case.

PROGRESS ANTICIPATED

We are prepared for the judge to take the full three months (until June 2021) to make his decision around our summary judgment. We do have a tentative civil jury trial date – June 2022 – secured should he rule in our favor.

Support from the Foundation has been crucial to our progress on this case and making it financially feasible, especially because we do not have co-counsel from the private bar for this case. Additionally, the Foundation's support helped us to provide the needed preparation and support of our client and her therapist as they were both deposed by opposing counsel.

ATTORNEY CONTACTS

Jess Braverman
Gender Justice Legal Director
jess.braverman@genderjustice.us

Christy Hall
Gender Justice Senior Staff Attorney
christy.hall@genderjustice.us