

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

SANDRA MENDOZA, LPN,)
)
Plaintiff,)
)
v.)
)
DR. SANDRA MARTELL, Public Health)
Administrator of the Winnebago County)
Health Department, in her official capacity,)
JAMES POWERS, Chair of the Winnebago)
County Board of Health, in his official capacity)
and WINNEBAGO COUNTY, ILLINOIS,)
)
Defendants.)

Case No. 2016-L-160

TRIAL BY JURY DEMANDED

FILED
Date: 6/8/16
COPY
Clerk of the Circuit Court
By _____ Deputy
Winnebago County, IL

**VERIFIED COMPLAINT FOR DAMAGES
AND DECLARATORY RELIEF**

NOW COMES Plaintiff, Sandra Mendoza, by and through her undersigned attorneys, for her Verified Complaint for Damages and Declaratory Relief against the Defendants Dr. Sandra Martell, the Acting Public Health Administrator of the Winnebago County Health Department, in her official capacity, JAMES POWERS, Chair of the Winnebago County Board of Health, in his official capacity, and WINNEBAGO COUNTY, Illinois alleges as follows:

INTRODUCTION

1. This case is about how the Winnebago County Health Department unlawfully discriminated against Ms. Sandra Mendoza, a Licensed Practical Nurse (“LPN”) with eighteen years of service in pediatrics with the Health Department, because of Ms. Mendoza’s conscientious refusal to participate in any way in abortions or the provision of abortifacient or contraceptive drugs.

2. Damages and declaratory relief are sought under the Illinois Healthcare Right of Conscience Act, 745 ILCS 70/1 *et seq.*; the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 *et seq.*; and the Illinois Human Rights Act, 775 ILCS 1/1-101 *et seq.*

PARTIES

3. Plaintiff Sandra Mendoza, LPN is a resident of Winnebago County, Illinois.

4. The Defendants are Dr. Sandra Martell, RN, DNP, acting Public Health Administrator for the Winnebago County Health Department headquartered at 401 Division St., Rockford, IL 61110, sued in her official capacity; James Powers, acting chair of the Winnebago County Board of Health, in his official capacity; and WINNEBAGO COUNTY, ILLINOIS, the municipal government of which the Winnebago County Health Department is a part.

5. Venue is proper in the Circuit Court of the Seventeenth Judicial Circuit, Winnebago County, Illinois under the pertinent statutes.

MS. MENDOZA'S HEALTHCARE BACKGROUND

6. Ms. Mendoza has been a licensed practical nurse since July 20, 1990.

7. Ms. Mendoza began working for the Winnebago County Health Department on June 6, 1996, and until July 31, 2015, provided nursing services as a nurse in the Pediatric Immunization Clinic including, *inter alia*, immunizations, screenings for blood lead levels, access to medical records, and assessments for the risk of tuberculosis.

8. On May 11, 2014, Ms. Mendoza also began serving in Health Protection and Promotion by providing adult immunization, hearing and vision testing for children, and TB testing for employees.

9. Ms. Mendoza has also worked part-time as a nurse at the Walter Lawson Children's home since 1978 and for Addus Home Health since 2011.

MS. MENDOZA’S RELIGIOUS AND CONSCIENCE-BASED OBJECTIONS TO
ABORTION AND CONTRACEPTION

10. Ms. Mendoza is a lifelong, practicing Catholic who seeks to adhere to the commands and Word of God as revealed in the Holy Scriptures and to the teachings of the Catholic Church.

11. The Scriptures and the Church teach that human life is created in the image of God (Genesis 1:27, *Imagio Dei*), begins at conception (Psalms 139:13-16, Didache, 2:2), and should not, therefore, be destroyed (Exodus 20:1, 13, 21:22-25). Catholic doctrine (*Humanae Vitae* 14) also teaches against contraception by declaring it sinful to participate in “direct sterilization, whether perpetual or temporary, whether of the man or of the woman. Similarly excluded is every action which, either in anticipation of the conjugal act, or in its accomplishment, or in the development of its natural consequences, proposes, whether as an end or as a means, to render procreation impossible.”

12. Current and standard human-embryology texts also confirm that the union of a sperm and ovum creates a new and distinct organism—a whole, though developmentally immature, member of the human species. See, e.g. Moore and Persaud’s “The Developing Human,” Larsen’s “Human Embryology,” Carlson’s “Human Embryology & Developmental Biology,” and O’Rahilly and Mueller’s “Human Embryology & Teratology.”

13. An abortion is the “induced termination of pregnancy, involving destruction of the embryo or fetus.” *The American Heritage Science Dictionary*. Boston: Houghton Mifflin. 2005.

14. Both the U.S. Food and Drug Administration (“FDA”) and the manufacturer of “Plan B” acknowledge that it can prevent an already-fertilized egg from implanting in the womb.

15. Ms. Mendoza has religious beliefs, as well as moral and ethical objections, which are in accord with the Word of God, the teachings of the Catholic Church and current science, which prevent her as a matter of conscience from participating in any way in abortions or the provision

of abortifacient and contraceptive drugs—including but not limited to the provision of the “Plan B” pill (also known as the “morning after pill”), referrals to abortion providers, and birth control.

16. In 2001, while working for the Health Department Ms. Mendoza, after consultation with her pastor and priest Fr. William Collins of St. Patrick Parrish, informed the Health Department that she could not as a matter of religious practice and conscience participate in any way in the provision of Plan B, contraception, or abortion referrals.

17. Thereafter, Ms. Mendoza continued to work for the Health Department as a nurse in the Health Department’s Pediatric Immunization Clinic and did not participate, in any way, in the provision of Plan B, contraception, or abortion referrals.

DEFENDANT’S UNLAWFUL DISCRIMINATION

18. In late 2014, Dr. Sandra Martell was employed by Winnebago County, Illinois, under the supervision of the Winnebago County Board of Health.

19. In or about March 2015, Dr. Martell began to integrate certain clinical services, including integrating the pediatric services with the women’s health services.

20. In or about May 2015, Ms. Mendoza informed human resources and Dr. Martell that she could not participate in the provision of birth control, referrals to abortion clinics, or Plan B.

21. On or about July 14, 2015, Dr. Martell sent an e-mail asking Ms. Mendoza for her “...decision regarding the accommodation that is being offered in response to your request outlined in the letter to [Ms. Mendoza] dated June 30, 2015 so that we can implement it as soon as possible with minimal impact to clients and colleagues....” July 14, 2015 E-mail attached as Exh. A.

22. Since Ms. Mendoza had not received the letter referenced in the e-mail, Ms. Mendoza contacted Ms. Martell on or about July 14, 2015 to inquire about the letter and the e-mail.

23. Ms. Mendoza was then provided a copy of the June 30, 2015 letter (attached as Exhibit B) which had been sent to the wrong address.

24. The letter acknowledges that Ms. Mendoza “conveyed that [her] religious beliefs would not permit [her] to perform a number of the required duties at the combined clinics” but that the Health Department could not “accommodate [Ms. Mendoza] within the clinic environment at the Health Department.”

25. The defendant’s letter than offered Ms. Mendoza “alternatives outside of the clinics” which consisted of demotion/transfer to a position as a County temporary/part time food inspector or employee at River Bluff nursing home.

26. Ms. Mendoza declined the demotions to temporary, part time food inspector and employee at River Bluff and was therefore forced to resign.

27. Ms. Mendoza could not work at the River Bluff nursing home because, as she informed Dr. Martell, her son Daniel Ortega was employed there as a Registered Nurse and the nursing home had a rule prohibiting working with family members.

28. As a direct and proximate result of defendants’ actions as described herein, Ms. Mendoza has suffered damages including loss of income and benefits, pain and suffering, mental anguish, inconvenience, loss of enjoyment of life and other economic and noneconomic losses.

COUNT I

Violation of the Illinois Health Care Right of Conscience Act, 745 ILCS 70/1 *et seq.*

29. Plaintiff incorporates by reference herein all preceding paragraphs.

30. The Health Care Right of Conscience Act states the following:

It is the public policy of the State of Illinois to respect and protect the right of conscience of all persons who refuse to obtain, receive, or accept, or who are engaged in, the delivery of, arrangement for, or payment of health care services and medical care whether acting individually, corporately, or in association with other

persons; and to prohibit all forms of discrimination, disqualification, coercion, disability or imposition of liability upon such persons or entities by reason of their refusing to act contrary to their conscience or conscientious convictions in refusing to obtain, receive, accept, deliver, pay for, or arrange for the payment of health care services and medical care.

745 ILCS 70/2 (emphasis added).

31. Under the Act, “health care” is defined as “any phase of patient care, including but not limited to, ... instructions; family planning, counseling, referrals, or any other advice in connection with the use or procurement of contraceptives and sterilization or abortion procedures; [or] medication...” 745 ILCS 70/3.

32. In addition, “health care professional” is defined as “any nurse, nurse’s aide, medical school student, professional, paraprofessional or any other person who furnishes, or assists in the furnishing of, health care services.” *Id.*

33. “Conscience” is defined as “a sincerely held set of moral convictions arising from belief in and relation to God, or which, though not so derived, arises from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths.” *Id.*

34. Section 5 of the Act states the following:

It shall be unlawful for any person, public or private institution, or public official to discriminate against any person in any manner, including but not limited to, licensing, hiring, promotion, transfer, staff appointment, hospital, managed care entity, or any other privileges, because of such person’s conscientious refusal to receive, obtain, accept, perform, assist, counsel, suggest, recommend, refer or participate in any way in any particular form of health care services contrary to his or her conscience.

745 ILCS 70/5.

35. Section 7 of the Act states that it is unlawful for any public or private employer, entity, or agency to “... orally question about, to impose any burdens in terms or conditions of employment on, or otherwise discriminate against any applicant, in terms of employment” or to “discriminate in relation thereto, in any other manner” on account of the applicant’s refusal to

“perform, counsel, suggest, recommend, refer, assist, or participate in any way in any forms of health care services contrary to his or her conscience.” 745 ILCS 70/7.

36. Section 9 of the Act states the following:

No person, association, or corporation, which owns, operates, supervises, or manages a health care facility shall be civilly or criminally liable to any person, estate, or public or private entity by reason of refusal of the health care facility to permit or provide any particular form of health care service which violates the facility’s conscience as documented in its ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations, or other governing documents.

745 ILCS 70/9.

37. Section 10 of the Act states the following:

It shall be unlawful for any person, public or private institution or public official to discriminate against any person, association or corporation attempting to establish a new health care facility or operating an existing health care facility, in any manner, including but not limited to, denial, deprivation or disqualification in licensing, granting of authorizations, aids, assistance, benefits, medical staff or any other privileges, and granting authorization to expand, improve, or create any health care facility, by reason of the refusal of such person, association or corporation planning, proposing or operating a health care facility, to permit or perform any particular form of health care service which violates the health care facility's conscience as documented in its existing or proposed ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations, or other governing documents.

745 ILCS 70/10.

38. Section 12 of the Act provides that “[a]ny person ... injured by any public or private person, association, agency, entity, or corporation by reason of any action prohibited by this Act may commence a suit therefore....” 745 ILCS 70/12.

39. Section 14 of the Act states, “This Act shall supersede all other Acts or parts of Acts to the extent that any Acts or parts of Acts are inconsistent with the terms or operation of this Act.”

745 ILCS 70/14.

40. The actions of the defendants, as described herein, violated the rights of Ms. Mendoza under the Illinois Healthcare Right of Conscience Act which also provides that any person injured by reason of an action prohibited by the Act may commence suit and recover treble damages, attorney's fees, and costs.

WHEREFORE, the Plaintiff respectfully requests that:

- A) This Court render a Declaratory Judgment, adjudging and declaring that Defendants violated the Illinois Health Care Right of Conscience Act, 745 ILCS 70/1 *et seq.*;
- B) This Court and a jury award Plaintiff treble damages, attorney fees, and costs against the Defendants pursuant to, at least, Section 12 of the Health Care Right of Conscience Act; and
- C) This Court award such other and further relief as it deems equitable and just.

COUNT II

Violation of the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 *et seq.*

41. Plaintiff incorporates by reference herein all preceding paragraphs.

42. Section 15 of the Illinois Religious Freedom Restoration Act of 1998, 775 ILCS 35/15 provides that:

Free exercise of religion protected. Governments may not substantially burden a person's free exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest.

43. As set forth above, the Defendants substantially burdened Ms. Mendoza's free exercise of religion and will be unable to bear the burden of proving that the substantial burden is justified by a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

WHEREFORE, the Plaintiff respectfully requests that:

A) This Court render a Declaratory Judgment, adjudging and declaring that Defendants violated the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 *et seq.*;

B) This Court and a jury award Plaintiff damages, attorney fees, and costs against the Defendants pursuant to Section 20 of the Illinois Religious Freedom Restoration Act.

C) This Court award such other and further relief as it deems equitable and just.

Respectfully submitted this 6th day of June, 2016.

/s/ Noel W. Sterett

Noel W. Sterett, Ill. Bar No. 6292008
Mauck & Baker, LLC

Noel W. Sterett (ARDC No. 6292008)
Mauck & Baker, LLC
One North LaSalle Street, Suite 600
Chicago, Illinois
Telephone: (312) 726-1243
Facsimile: (866) 619-8661
nsterett@mauckbaker.com

Nathan J. Noble, P.C. (ARDC No. 6290348)
Attorney Nathan J. Noble
504 North State Street
Belvidere, Illinois 61008
Telephone: (815) 547-7700
nnoble@attorneynoble.com

Counsel for Plaintiffs

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that she is authorized to make this verification by certification, that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and that as to such matters the undersigned certifies as foresaid that she verily believes the same to be true.

As to paragraphs 1, 3, 6 to 10, 15 to 28, Plaintiff verifies these statements to be true.

Sandra Mendoza
Plaintiff Sandra Mendoza
June 4, 2016

EXHIBIT A

Sandra Mendoza

From: Sandra Martell
Sent: Tuesday, July 14, 2015 8:07 AM
To: Sandra Mendoza
Cc: Kimberly Ponder; Charlotte LeClercq
Subject: Accommodation Decision

Sandra,

Please inform me of your decision regarding the accommodation that is being offered in response to your request as outlined in the letter to you dated June 30, 2015 so that we can implement it as soon as possible with minimal impact to clients and colleagues. I also left you a voice mail message as well.

Best,

Sandra Martell, RN, DNP

Public Health Administrator

Winnebago County Health Department

P.O. Box 4009

401 Division Street

Rockford, IL 61110-0509

PH: 815.720.4200 FAX: 815.720.4002



EXHIBIT B



Promoting a Safer and Healthier Community Since 1854

Sandra Martell, RN, DNP
Public Health Administrator

June 30, 2015

Sandra Mendoza, LPN
1721 South Main Street
Rockford, IL 61102

Dear Ms. Mendoza:

On June 24, 2015, you approached management at the Health Department requesting a religious accommodation due to the consolidation of duties at the various Health Department clinics which is to occur on July 1, 2015. You are currently working in the Pediatric Immunization Clinic and indicated a preference to stay with pediatrics. You conveyed that your religious beliefs would not permit you to perform a number of the required duties at the combined clinics. Unfortunately, business necessity has compelled the consolidation of the clinics, including the Pediatric Immunization Clinic, requiring cross-training of all employees.

We have diligently considered your request for an accommodation and have determined that we cannot accommodate you within the clinic environment at the Health Department. The terms of the grants that we work under require the nursing staff in the clinics to utilize a non-directed approach with our clients. Frequently this will involve job duties that you have indicated are objectionable to you. We have determined that we cannot segregate you, as the only full-time Licensed Practical Nurse (LPN), from these job duties without creating an undue hardship for the other employees in the clinics and the Health Department as a whole.

While we cannot accommodate you in the Health Department clinics, we can offer some alternatives outside of the clinics. The first position would be as a temporary part-time food inspector for the Health Department. The second would be as an LPN at River Bluff Nursing Home, which is owned by the County of Winnebago. Should you have any questions or be interested in either of these positions, please let me know and we can assist you or direct you to the appropriate personnel to assist you.

I realize that you have a lot to consider. We will continue to make a temporary accommodation for you for the next fourteen (14) days to give you time to decide what you would like to do. I look forward to your response within that time frame.

Sincerely,

A handwritten signature in cursive script that reads 'Sandra Martell'.

Sandra Martell, RN, DNP
Public Health Administrator

Cc: Lisa Gonzalez – Center Director, Family Health Services
Kim Ponder - Winnebago County, Director of Human Resources
Charlotte LeClercq – State's Attorney



Celebrating 150 Years and Beyond
401 Division St. P.O. Box 4009 Rockford, IL 61110-0509 (815) 720-4000
www.wchd.org

