JARDINE LOGAN & O'BRIEN P.L.L.P.
ATTORNEYS AT LAW

651.290.6500

8519 Eagle Point Boulevard, Suite 100
Lake Elmo, Minnesota 55042
info@jlolaw.com

JLO Newsletter Fall 2017

LaPoint v. Family Orthodontics: A Glimpse Into Minnesota Courts' Evaluation of a Pregnancy Discrimination Claim

By Abby J. Jacobson

The Minnesota Supreme Court recently remanded *LaPoint v. Family Orthodontics, P.A.* No. A15-0396, 2017 WL 1244276 (Minn. Apr. 5, 2017), a pregnancy discrimination case, back to the district court to determine if the lower court would again rule in favor of the employer after correctly applying the proper standard: whether the alleged discrimination was a substantial factor in the employment decision.

The Facts

LaPoint interviewed for a position as an orthodontic assistant and was offered the job two days later. After receiving the job offer, she informed her future employer, Dr. Ross, for the first time that she was pregnant. After extending her congratulations, the employer inquired as to how long LaPoint planned to take for her maternity leave to which LaPoint responded that she had taken 12-weeks of maternity leave during her last pregnancy. Dr. Ross expressed that her office offers six weeks of maternity leave due to the disruption of the employer's practice if an employee is gone for a longer period of time. LaPoint expressed that she would be willing to take a shorter leave, but only indicated that she would consider a ten-week leave. The next day Dr. Ross told LaPoint that she wasn't going to offer her the job yet due to concerns she had regarding why she failed to disclose her pregnancy and the amount of time she wants to take for her maternity leave. Ultimately, the employer ended up filling the orthodontic assistant position with a different female applicant who was not pregnant. Upon rescission, LaPoint sued Family Orthodontics for pregnancy discrimination in violation of the Minnesota Human Rights Act (MHRA).

District Court Finding

The MHRA prohibits an employer from discriminating against a person with respect to hiring on the basis of sex. Minn. Stat. § 363A.08, subd. 2. Under the MHRA, "sex" includes "pregnancy, childbirth, and disabilities related to pregnancy or childbirth." Minn. Stat. §363A.03, subd. 42. The MHRA also makes it an unlawful employment practice for an employer to "require or request" that a job applicant "furnish information that pertains to . . . sex . . . ." Minn. Stat. § 363A.08, subd. 4(a)(1).

Following a bench trial, the district court entered judgment in favor of the employer, concluding it did not discriminate against the employee based on pregnancy. The district court relied upon testimony from the employee and the employer, along with emails they exchanged, and handwritten notes the employer had made on the employee's resume about her pregnancy and maternity leave. The court found that in its interactions with the employee, the employer did not demonstrate any animus toward the employee because of her pregnancy, rather the employer's overriding concern was the disruption and impact a 12-week mater-

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Congratulations

Gayl v. City of Rosemount, No. A16-0046, 2016 WL 4162873 (Minn. Ct. App. 2016)

Jessica E. Schwie with the assistance of **Tal Bakke** successfully defended the City of Rosemount's decision to rezone a parcel of property to a planned unit development (PUD) and subsequent plat approvals at the Minnesota Court of Appeals. *Gayl v. City of Rosemount,* No. A16-0046, 2016 WL 4162873 (Minn. Ct. App. 2016). The Minnesota Court of Appeals affirmed the City's decision to rezone to a PUD holding furthering recreational interests, protecting wetlands and trees, and improving water quality were reasons rationally related to promoting the public health and welfare. *Id.* *4. Further, the Court of Appeals held the City could appropriately deviate from density requirements in rezoning to a PUD because the City's Ordinance expressly allowed for the same. *Id.* *5

Congratulations

Congratulations to **Joseph E. Flynn**, **Lawrence M. Rocheford**, **Leonard J. Schweich** (not pictured), **Elisa M. Hatlevig**, **Vicki A. Hruby** and **Tessa M. McEllistrem** who were named to the *2017 list of Minnesota Super Lawyers* and *Rising Stars.*

Super Lawyers is a Thomson Reuters business that provides a rating service of outstanding lawyers from more than 70 practice areas, who have attained a high-degree of peer recognition and professional achievement. The selection process is multi-phased and includes independent research, peer nominations and peer evaluations. Rising Stars selections undergo the same selection process as Super Lawyers but recognizes attorneys who are 40 years old or younger, or have been practicing for 10 years or less. No more than 2.5% of lawyers in Minnesota are named to the Rising Stars list.

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nity leave would have on her practice. The employee had to prove that her pregnancy "actually motivated" the employer's decision not to hire her and the district court concluded that she had not done that through direct evidence or the burden-shifting analysis in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-03, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). *See Goins v. W. Grp.*, 635 N.W.2d 717, 722 (Minn. 2001) *see* also, *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 624 (Minn. 1988) (holding an employee can prove a Minnesota Human Rights Act employment discrimination claim if they can establish disparate treatment because a protected characteristic "actually motivated" their employers discriminatory conduct, or was a "substantive causative factor" in an employment decision.)

Court of Appeals Reversal

Employee appealed, and the court of appeals reversed as a matter of law noting the extensive evidence in the record that the employer had discriminated against the employee on the basis of her pregnancy in a purposeful, intentional, and overt manner. *LaPoint v. Family Orthodontics, P.A.*, 872 N.W.2d 889, 894 (Minn. App. 2015). The reversal found a specific link between the employee's pregnancy and the employer's hiring decision, holding that the district court had erred in its conclusion that the employee had failed to prove the pregnancy was a substantive causative factor in the hiring decision. The court of appeals explained that both of the employer's reasons for withdrawing the job offer were based substantially upon pregnancy or related to pregnancy and the employer's decision punished the employee for failing to disclose a fact about which an employer could not lawfully inquire.

Supreme Court Remand

On appeal to the supreme court, the employer argued that the court of appeals had applied a new and plaintiff friendly standard utilized by the 8th Circuit in *Ramlet v. E.F. Johnson Co.*, 507 F.3d 1149, 1152 (8th Cir. 2007) which required: "[d]irect evidence is evidence showing a *specific link* between the alleged discriminatory animus and the challenged decision, sufficient to support a finding by a reasonable fact finder that an illegitimate criterion actually motivated the adverse employment action." While not addressing the court of appeals application of *Ramlet,* the Minnesota Supreme Court reaffirmed the "actual motivation" and "substantive causative" factor standards from *Goins* and *Anderson*, in finding the court of appeals erred.

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2017 Legislative Update

By Tessa M. McEllistrem

The 2017 session of the Minnesota legislature provided many alternations and additions to state statutes. Below is a summary of the most significant legislation, which will impact crime, governmental entities, and elections.

Alcohol on Sundays

Effective July 1, 2017 Minnesota now allows liquor stores to sell alcohol on Sundays between the hours of 11:00 a.m. and 6:00 p.m.

Civil Forfeiture

A new law allows that a co-owner of a vehicle that has been seized during an intoxicated crime can petition for the vehicle's return. The co-owner will have the burden of proving by clear and convincing evidence that they did not know the vehicle was going to be used unlawfully or, alternatively, that the co-owner made attempts to stop the offender from using the vehicle. If the co-owner is a member of the offender's family or household and the offender has had three previous convictions for impaired driving, then the petitioner would be presumed to know that the vehicle would be used unlawfully and instead needs to petition to the court to show that they tried to stop the offender from using the vehicle.

McKenna's Law

A new law, named McKenna's Law, after 12-year old McKenna Ahrenholz, ensures that children as young as ten will know that they have a right to an attorney at no cost in child protection cases. The law is aimed at children who are removed from their homes and the responsible social services agency is charged with the responsibility of informing the child of their rights. The law requires the agency to inform the child that: "Counsel will be provided without charge to the child, that the child's communications with counsel are confidential, and that the child has the right to participate in all proceedings on a petition, including the opportunity to personally attend all hearings."

Notice and Grace Periods for Accessibility Lawsuits

A new law will require those who allege an accessibility violation against businesses or places of public accommodation provide dated notice to allow the businesses or places of public accommodation at least 60 days to remove the alleged barrier. This law prohibits civil actions before the response time is properly provided. Moreover, the law indicates that a civil action may not be brought before 30 days after the response time if the business or place of public accommodation puts forth in writing the steps and timeframe it will take to remove the barrier. Finally, the law states that a person who retains an attorney within 60 days after the civil action is brought will need the attorney to provide a dated notice to the defendant of additional time to serve an Answer to the Complaint.

Sprinkler Systems

A new law allows for new construction of two unit townhomes to not require fire sprinkler systems any longer in order to create uniformity between Minnesota's building code with neighboring states.

Condo Association Lawsuits

Condominium associations will now have a higher bar to clear before they file construction defect lawsuits. Specifically, condominium associations, also known as common interest communities, will now need to get a majority of association voters' approval before filing litigation and they are also going to be required to have a maintenance schedule. Contractors and developers will receive immunity for losses and damages due to common interest communities failing to follow the maintenance plans. Currently, common interest communities are not required to create maintenance plans and schedules so they have a grace period until January 1, 2019 to create those plans. The plans must be based upon the best available information and "generally accepted standards" of maintenance. This new law will also allow common interest communities and a development party to go to mediation prior to pursuing a construction defect claim.

Geotracking

A new law states that breathalyzer-like systems, also known as ignition interlock devices, which are used to authorize a vehicle's start can no longer have location tracking enabled on them, unless mandated by the court. Furthermore, this law amends how law enforcement can conduct DUI arrests to comply with recent Supreme Court decisions. Specifically, it clarifies that it is a crime to refuse to provide a blood or urine sample pursuant to a valid warrant. Additionally, the law requires that a person's driver's license be revoked if the person fails or refuses a test pursuant to a valid warrant and streamlines procedures for challenging and reviewing that revocation.

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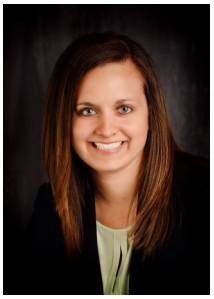
LaPoint v. Family Orthodontics, P.A., 892 N.W.2d 506 (Minn. 2017). In its reversal of the court of appeals, the supreme court noted that the court of appeals did not find any of the district court's findings of fact erroneous. Instead, the court noted that the district court may have made its determination through an improper application of "animus" as being required to "actually motivate" an employment decision. "[T]he district court's reasoning suggests it may have incorrectly believed that animus was *required* for a finding of discrimination under the MHRA." *Id.* at 517. Thus, the supreme court reversed the court of appeals decision and remanded this case as it was "unable to determine whether the district court, if it had applied the correct law regarding animus, would have made the same findings of fact." *Id.*

Conclusion

Although the outcome of this case is not yet concrete, its procedural background provides a glimpse into the process courts go through to evaluate disability discrimination claims related to pregnancy. It is clear when evaluating pregnancy discrimination claims that courts will consider an employer's reaction and feelings towards an employee but that animus or lack thereof will not be the only deciding factor as to whether an employer's actions rise to the level of pregnancy discrimination. Rather, it will be considered in combination with other factors in determining whether an employee's pregnancy actually motivated or was a substantial, causative factor in the employer's decision. Thus, an employer may give congratulations or express happiness for an employee regarding pregnancy but it is necessary for an employer to have other factors to support an employment decision in order to avoid pregnancy discrimination claims.

About the Authors



Abby J. Jacobson
Associate
ajacaobson@jlolaw.com
651.290.6504

Abby is an associate at Jardine, Logan & O'Brien, P.L.L.P. and practices civil litigation in the areas of Construction Law and Insurance Coverage. Abby received her J.D., *magna cum laude*, from William Mitchell College of Law in 2014.

Tessa M. McEllistrem
Senior Associate
tmcellistrem@jlolaw.com
651.290.6541

Tessa is a senior associate at Jardine, Logan & O'Brien, P.L.L.P. and practices civil litigation in the areas of Motor Vehicle Law and Government Liability. Tessa received her J.D. from William Mitchell College of Law in 2010.

About the Firm

Jardine, Logan & O'Brien, P.L.L.P., is a mid-sized civil litigation law firm that has handled some of the region's largest and most difficult disputes with outstanding results for clients. Litigation has always been our primary focus. With trial attorneys admitted in Minnesota, Wisconsin, North Dakota, South Dakota, and Iowa, our firm has the ability and expertise to manage cases of any size or complexity. We are trial lawyers dedicated to finding litigation solutions for our clients. View our website at www.jlolaw.com to obtain additional information. Please call us to discuss a specific topic.

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