

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Currier v. National Board of Medical Examiners

462 Mass. 1 (2012) · Decided April 13, 2012

SUMMARY

The Massachusetts Supreme Judicial Court considered whether the National Board of Medical Examiners violated state civil rights, equal rights, public accommodation, and constitutional protections by refusing to provide a lactating medical student additional examination break time. The court held that the refusal did not constitute coercion under the Massachusetts Civil Rights Act, but that lactation is a sex-linked classification protected by the Massachusetts Equal Rights Act and that the plaintiff was entitled to summary judgment on her public accommodation claim. The court declined to decide the constitutional claim because statutory grounds provided relief.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Ireland, C.J.
JURISDICTION	Massachusetts
DECIDED	April 13, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The parties cross-moved for summary judgment in Currier's action for declaratory and injunctive relief and in the NBME's counterclaim for declaratory relief. The Superior Court denied Currier's motion and allowed the NBME's motion, entering judgments dismissing Currier's complaint and the NBME's counterclaim. Both parties appealed, and the Supreme Judicial Court granted direct appellate review.
STANDARD OF REVIEW	Summary judgment is reviewed de novo to determine whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to judgment as a matter of law. Summary judgment must be denied when a genuine issue of material fact exists.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Judicial Court of Massachusetts.
PARTIES	Sophie C. Currier, National Board of Medical Examiners v. Sophie C. Currier, National Board of Medical Examiners

TOPICS

public accommodations discrimination

civil rights

health law

statutory interpretation

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PRACTICE AREAS

civil rights

health law

statutory interpretation

constitutional law

disability discrimination

QUESTIONS PRESENTED

1. Whether the NBME's refusal to provide additional examination break time for expressing breast milk constituted coercion under the Massachusetts Civil Rights Act.
2. Whether lactation is a sex-linked classification protected by the Massachusetts Equal Rights Act.
3. Whether Currier presented sufficient evidence of purposeful sex discrimination under the Massachusetts Equal Rights Act to avoid summary judgment.
4. Whether the NBME and its contracted testing services were subject to the Massachusetts public accommodation statute despite the NBME's lack of a physical testing site.
5. Whether the public accommodation statute permits a disparate-impact claim and protects lactating mothers as a sex-linked class.
6. Whether the court should decide Currier's Massachusetts constitutional privacy claim or the NBME's requested declaratory relief concerning its policy.

HOLDINGS

1. The NBME's refusal to provide additional break time for Currier to express breast milk did not constitute coercion under the Massachusetts Civil Rights Act because the NBME did not prohibit her from expressing breast milk altogether and offered a private room with a power outlet in which she could do so during the examination.
2. Lactation and the expression of breast milk are sex-linked classifications, and the protections of the Massachusetts Equal Rights Act extend to lactating mothers.
3. The Equal Rights Act requires purposeful sex discrimination and does not permit a disparate-impact theory, but Currier presented sufficient evidence to create a genuine issue of material fact regarding purposeful discrimination.
4. The NBME is subject to the Massachusetts public accommodation statute in connection with its testing services even though Prometric, rather than the NBME, supplied the physical testing location.
5. The public accommodation statute permits a disparate-impact claim, and its protection against sex discrimination extends to lactating mothers. On the undisputed record, Currier was entitled to summary judgment on this claim.
6. The court declined to decide Currier's constitutional privacy claim because the statutory claims provided an adequate basis for relief, and it declined to enter the NBME's requested declaratory judgment because that request sought an advisory opinion.

KEY QUOTATIONS

“This same reasoning applies to the expression of breast milk (whether by breastfeeding or by expressing pursuant to a pump). The condition of lactation is inextricably linked to pregnancy and thus sex linked.” (16)

“We refuse to let the NBME escape the reach of the statute by contracting out another to provide a physical site for the services that the NBME solely provides.” (20)

“we conclude that Currier’s disparate impact claim is not prohibited under the public accommodation statute.” (21)

FACTUAL BACKGROUND

Currier was a medical student and nursing mother who needed to take the NBME's nine-hour Step 2 clinical knowledge examination as part of the process of obtaining medical licensure. The NBME accommodated her dyslexia and ADHD but initially denied her request for additional break time to express breast milk, although it later offered a private room with a power outlet and limited arrangements using existing break time. Currier presented expert evidence that a nursing mother of a four-month-old infant needed repeated pumping sessions of approximately twenty-five to thirty minutes and that the standard forty-five minutes of break time was insufficient to pump, eat, drink, use the restroom, and attend to related hygiene needs. The NBME had granted additional accommodations to some examinees with temporary medical conditions that did not qualify as ADA disabilities.

PROCEDURAL HISTORY

Currier sued the NBME after it initially refused to provide additional examination break time for expressing breast milk, although it ultimately offered her a private room and limited break arrangements. After a preliminary injunction was issued requiring an additional sixty minutes of break time per testing day and a private room with a power outlet, Currier took the examination. She later passed the examination, and the parties filed cross-motions for summary judgment. The Superior Court ruled for the NBME, but the Supreme Judicial Court vacated the judgments, reversed the summary judgment ruling on the equal rights claim and public-accommodation claim, and remanded for further proceedings and entry of a declaration concerning the NBME's counterclaim.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgments dismissing Currier's complaint and the NBME's counterclaim were vacated. The Superior Court was directed to conduct further proceedings consistent with the opinion, including entering a declaration that the NBME was not entitled to the relief sought in its counterclaim. The court was not directed to enter final judgment on Currier's complaint because the Equal Rights Act claim remained triable. The Superior Court was to deny both parties' motions for summary judgment on that claim and proceed with the remaining litigation.

CASES CITED

- Commonwealth v. Vega, 449 Mass. 227, 234 (2007)
- Commonwealth v. Paasche, 391 Mass. 18, 21 (1984)
- Buster v. George W. Moore, Inc., 438 Mass. 635, 644-648 (2003)
- Batchelder v. Allied Stores Corp., 393 Mass. 819, 822 (1985)
- Bell v. Mazza, 394 Mass. 176, 182 (1985)
- Bally v. Northeastern University, 403 Mass. 713, 718 (1989)
- Planned Parenthood League of Massachusetts, Inc. v. Blake, 417 Mass. 467, 474-475 (1994), cert. denied, 513 U.S. 868 (1994)
- Redgrave v. Boston Symphony Orchestra, Inc., 399 Mass. 93 (1987)
- O'Connell v. Chasdi, 400 Mass. 686, 694 (1987)
- Longval v. Commissioner of Correction, 404 Mass. 325, 333-334 (1989)
- Pheasant Ridge Associates Ltd. Partnership v. Burlington, 399 Mass. 771, 781 (1987)
- Haufler v. Zotos, 446 Mass. 489, 505 (2006)
- LaCava v. Lucander, 58 Mass. App. Ct. 527, 535-536 (2003)
- Thurdin v. SEI Boston, LLC, 452 Mass. 436, 440 (2008)
- CBOCS West, Inc. v. Humphries, 553 U.S. 442, 447 (2008)
- Dartmouth Review v. Dartmouth College, 889 F.2d 13, 17 (1st Cir. 1989)
- Educadores Puertorriqueños en Acción v. Hernandez, 367 F.3d 61, 66-67 (1st Cir. 2004)
- Derungs v. Wal-Mart Stores, Inc., 374 F.3d 428, 439 (6th Cir. 2004)
- Massachusetts Electric Co. v. Massachusetts Commission Against Discrimination, 375 Mass. 160, 167-168 (1978)
- School Committee of Brockton v. Massachusetts Commission Against Discrimination, 377 Mass. 392, 398 (1979)
- General Building Contractors' Association v. Pennsylvania, 458 U.S. 375, 391 (1982)
- Gu v. Boston Police Department, 312 F.3d 6, 13 (1st Cir. 2002)
- Trustees of Health & Hospitals of Boston, Inc. v. Massachusetts Commission Against Discrimination, 449 Mass. 675, 686 (2007)
- Local Finance Co. v. Massachusetts Commission Against Discrimination, 355 Mass. 10, 13-14 (1968)
- Bynes v. School Committee of Boston, 411 Mass. 264, 269 (1991)
- Carparts Distribution Center, Inc. v. Automotive Wholesalers Association of New England, 37 F.3d 12, 20 (1st Cir. 1994)
- Cherkes v. Westport, 393 Mass. 9, 12 (1984)
- Boston v. Massachusetts Bay Transportation Authority, 373 Mass. 819, 829 (1977)
- Commonwealth v. Spearin, 446 Mass. 599, 604 (2006)
- Amherst Nursing Home, Inc. v. Commonwealth, 398 Mass. 850, 852 (1986)
- Bunker Hill Distributing, Inc. v. District Attorney for the Suffolk District, 376 Mass. 142, 145 (1978)

- Cole v. Chief of Police of Fall River, 312 Mass. 523, 526 (1942), appeal dismissed sub nom. Cole v. Violette, 319 U.S. 581 (1943)
- Hubrite Informal Frocks, Inc. v. Kramer, 297 Mass. 530, 534 (1937)
- Mills v. Green, 159 U.S. 651, 653 (1895)
- Ott v. Boston Edison Co., 413 Mass. 680, 683 (1992)
- Lockhart v. Attorney General, 390 Mass. 780, 782-783 (1984)
- Greater Lawrence Sanitary District v. North Andover, 439 Mass. 16, 20-21 (2003)
- Augat, Inc. v. Liberty Mutual Insurance Co., 410 Mass. 117, 120 (1991)
- Commonwealth v. One 1987 Mercury Cougar Automobile, 413 Mass. 534, 536 (1992)
- Golub v. Milpo, Inc., 402 Mass. 397, 400 (1988)
- Community National Bank v. Dawes, 369 Mass. 550, 554 (1976)

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