

North Coast Women's Care Medical Care Group, Inc., et al., v. San Diego County Superior Court S 142892. Ct. App. 4/1 D045438

1) Reference Details

Jurisdiction: United States of America, Supreme Court of California

Date of decision: 18 August 2008

Link to full case: <http://www.courtinfo.ca.gov/opinions/documents/S142892.PDF>

2) Facts

The case involved an attempt by the plaintiff (Ms. Benitez), a lesbian who lived with her partner, to become pregnant. Following a number of unsuccessful attempts, Ms. Benitez and her partner met with Dr. Brody from North Coast Medical Care Group (North Coast), who indicated that at some point, if other methods proved unsuccessful, a procedure known as intrauterine insemination (IUI) might have to be considered. Dr. Brody also explained that if this was necessary her religious beliefs would preclude her from performing the procedure for Ms. Benitez. From August 1999 through to June 2000 Dr. Brody treated Ms. Benitez for infertility.

According to Ms. Benitez in April 2000, when she still had not become pregnant, she decided with the advice and consent of Dr. Brody to try IUI. However, in May 2000, she unsuccessfully resorted to an alternative treatment using fresh sperm rather than sperm from a sperm bank. Following this Ms. Benitez decided to try IUI using fresh sperm. Dr. Brody replied that this would pose a problem for North Coast. During a period of vacation taken by Dr. Brody, Dr. Fenton assumed responsibility for Ms. Benitez's treatment. Dr. Fenton, however, was unaware that Ms. Benitez intended to use fresh sperm (which would have required special preparation) for the IUI procedure.

Of North Coast physicians, only Dr Fenton was licensed to perform the special procedure task. He refused to prepare the fresh sperm because of religious objection. Two of his colleagues, Drs. Charles Stoopack and Ross Langley, had no such religious objection, but unlike Dr. Fenton, they were not licensed to prepare fresh sperm. Dr. Fenton then referred Ms. Benitez to a physician outside North Coast's medical practice, Dr. Michael Kettle.

The IUI performed by Dr. Kettle did not result in a pregnancy. Ms. Benitez was unable to conceive until June 2001, when Dr. Kettle performed *in vitro* fertilization.

During the trial court proceedings Ms. Benitez successfully motioned for a summary adjudication¹ of an affirmative defence² put forward by the North Coast Women's Care Medical Care Group. That defence contended that the rights of religious freedom and free speech, guaranteed by the federal and the Californian Constitutions, exempted medical clinics and their physicians from complying with the prohibition against discrimination based on a person's sexual orientation set out in the Californian Unruh Civil Rights Act. The trial court accepted Ms. Benitez's motion and determined that the defence put forward by the North Coast lacked any legal basis.

The Court of Appeal set aside the motion of the trial court. The matter was then referred to the Californian Supreme Court.

¹ A court order ruling that certain factual issues are already determined prior to trial.

² A defence in which the defendant introduces evidence, which, if found to be credible, will negate criminal or civil liability.

3) Law

Federal Constitutional Law

- First Amendment (Religion, Speech);
- Fourteenth Amendment (Equal Protection).

State Law

- Section 51(a) of the Californian Unruh Civil Rights Act (All persons are free and equal and are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever);
- Article 1, section 4 of the Californian Constitution (Free exercise and enjoyment of religion without discrimination or preference are guaranteed).

4) Legal Arguments

The Plaintiff

Ms. Benitez sued North Coast and its physicians, Drs. Brody and Fenton, seeking damages and injunctive relief on several grounds, notably sexual orientation discrimination in violation of California's Unruh Civil Rights Act.

The Defendants

The defendants asserted a variety of affirmative defences. The defence pertinent to the appeal to the Supreme Court was affirmative defence No. 32 stating that defendants' "alleged misconduct, if any" was protected by the rights of free speech and freedom of religion set forth in the federal and state Constitutions.

5) Decision

The Supreme Court of California held that religious freedom and freedom of speech did not exempt North Coast from complying with the Californian Unruh Civil Rights Act's (the Act) prohibition against discrimination based on a person's sexual orientation.

The Court began its analysis by examining the federal constitutional provisions. It acknowledged that the First Amendment to the Federal Constitution states that "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . .*" It then examined United States Supreme Court's interpretation of that provision, provided in *Employment Div., Ore. Dept. of Human Res. v. Smith* (1990) 494 U.S. 872, 876-877 (*Smith*). Following this examination it set out:

"Thus, under the United States Supreme Court's most recent holdings, a religious objector has *no federal constitutional right* to an exemption from a neutral and valid law of general applicability on the ground that compliance with that law is contrary to the objector's religious beliefs."

Applying this interpretation it explained that the First Amendment's right to the free exercise of religion did not exempt North Coast from conforming their conduct to the anti-discrimination requirements of the Act.

The Court, rejecting North Coast's arguments in respect of the requirements of Californian law, turned to assessing the trial court and Court of Appeal's application of the law, concluding:

"The trial court's ruling simply narrowed the issues in this case by disposing of defendants' contention that their constitutional rights to free speech and the free exercise of religion exempt them from complying with the Unruh Civil Rights Act's prohibition against sexual orientation discrimination. In concluding to the contrary, the Court of Appeal erred."