

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

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|------------------------------------|---|------------------|
| MARK HORTON, |) | |
| |) | |
| Plaintiff/Appellant, |) | |
| |) | Case No. 18-1104 |
| v. |) | |
| |) | |
| MIDWEST GERIATRIC MANAGEMENT, LLC, |) | |
| |) | |
| Defendant/Appellee. |) | |

APPELLANT’S STATEMENT OF THE ISSUES

COMES NOW Plaintiff/Appellant, Mark Horton, by and through his undersigned counsel, and submits the following Statement of the Issues:

1. Does Title VII’s prohibition of discrimination “because of . . . sex” prohibit an employer from discriminating against an employee due to the employee’s sexual orientation?
 - a. If an employer has treated a female employee who is attracted to men differently from a male employee who is attracted to men, has the employer discriminated on the basis of sex?¹
 - b. If an employer has treated a male employee in a relationship or marriage with a male differently than the treatment of a female in a relationship or marriage with a male, has the employer discriminated on the basis of sex?
 - c. If an employer takes an adverse employment action against a male employee because he does not conform to male stereotypes due to his relationship, attraction to, or marriage with another man, has the employer discriminated on the basis of sex?

¹ Rather than independent issues, subparagraphs (a) – (d) of Issue 1 and (a) – (c) of Issue 2 are points subsumed within Issues 1 and 2 that Plaintiff intends to raise on appeal. Nonetheless, in the interest of full disclosure and ensuring compliance with Federal Rule of Appellate Procedure 10(b)(3), Plaintiff has included these points herein. Plaintiff reserves the right to present any additional points he may determine are relevant to the three issues outlined herein, regardless of whether such points are specifically listed as subparts herein.

- d. Is this Court bound by *Williamson v. A.G. Edwards and Sons, Inc.*, 876 F.2d 69 (8th Cir. 1989), in deciding whether actions taken on the basis of sexual orientation are a subset of actions taken on the basis of sex?
2. Does Title VII's prohibition on discrimination "because of . . . religion" prohibit an employer from discriminating against an employee when the employee's sexual orientation conflicts with the employer's religious beliefs?
 - a. If, based on religious beliefs, an employer has treated a female employee who is in a relationship with, attracted to, or legally married to a male differently from a male employee who is in a relationship with, attracted to, or legally married to a male, has the employer discriminated on the basis of religion?
 - b. Is it necessary for a plaintiff to plead that he or she is a member of a particular religion that the defendant has targeted in order for the plaintiff to be protected by Title VII?
 - c. Is this Court bound by *Williamson v. A.G. Edwards and Sons, Inc.*, 876 F.2d 69 (8th Cir. 1989), in deciding whether actions taken on the basis of sexual orientation are a subset of actions taken on the basis of religion?
 3. Does a plaintiff state a claim for fraudulent inducement by pleading that the defendant (1) failed to disclose an objection to the plaintiff's proposal for completing a condition of employment, (2) represented that it was willing to hire the plaintiff after the plaintiff made the proposal, and (3) at the same time, knew or should have known that the plaintiff's proposal was not acceptable?

Respectfully Submitted,

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By /s/Mark S. Schuver

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CERTIFICATE OF SERVICE

I hereby certify that, on January 26, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/Mark S. Schuver
