

No. 19-1395

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

MARY WALSH, et al.,)
)
Plaintiffs/Appellants,)
)
vs.)
)
FRIENDSHIP VILLAGE OF SOUTH COUNTY,)
et al.,)
)
Defendants/Appellees.)

MOTION TO VACATE JUDGMENT

Defendants/Appellees Friendship Village of South County, d/b/a/ Friendship Village Sunset Hills and FV Services, Inc. (collectively “Friendship Village”) respectfully pray that the Court vacate the order of dismissal in their favor and remand the case for further proceedings. As grounds for this relief, Friendship Village states:

1. The gravamen of this case is that Friendship Village violated the Fair Housing Act of 1968 by refusing to admit two women married to each other to the senior living facility Friendship Village Sunset Hills. At the time, Friendship Village had a policy

against allowing same sex married people to cohabit in a single residential unit.

2. At the time of the adoption of this policy, the time of the refusal, and the time of the District Court's Memorandum and Order granting Friendship Village's motion for judgment on the pleadings, such policy was entirely legal. This Court had held that Title VII "does not prohibit discrimination against homosexuals." *Williamson v. A.G. Edwards and Sons Inc.*, 876 F.2d 69, 70 (8th Cir. 1989), *cert. denied*, 493 U.S. 1089 (1990). The District Court properly followed *Williamson* in granting the motion to dismiss.

3. In *Bostock v. Clayton County*, 2020 WL 3146866 (2020), the Supreme Court held that Title VII does prohibit discrimination on the basis of sexual orientation. While this case involves the Fair Housing Act, rather than Title VII, the relevant language in each statute is identical: each prohibits discrimination "because of . . . sex." In light of *Bostock*, the District Court's Memorandum and Order granting Friendship Village's motion for judgment on the pleadings should be vacated and the case remanded for further proceedings.

4. The Court has the authority to vacate a judgment based on the application of the appellee. *Elchuk v. United States*, 370 U.S. 722 (1962); *Gondron v. United States*, 242 F.2d 149 (5th Cir. 1957), *overruled on other grounds*, *Burks v. United States*, 437 U.S. 1 (1978).

5. Briefing and arguing this appeal when the outcome is a foregone conclusion would waste the Court's time and the parties' time and money.

Wherefore, Friendship Village respectfully prays that the Court vacate the Memorandum and Order granting Friendship Village's motion for judgment on the pleadings and remand the case for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because this motion contains 377 words, excluding the parts of the motion exempted by Fed. R. App. P. 27(a)(2)(B).

2. This motion complies with the typeface and type style requirements of Fed. R. App. P. 27(d)(1)(E) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Bookman Old Style font.

3. This motion complies with the requirements of 8th Cir. R. 25A(g) because this motion has been generated as a PDF from the original word processing file, the text of the electronic version of the motion may be searched and copied, and this motion has been scanned for viruses that confirmed the motion is virus-free.

/s/ Mark Arnold
Attorney for Appellees

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 24, 2020, 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 Arnold
Attorney for Appellees