

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

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July 06, 2020

Mr. Gregory R. Nevins
LAMBDA LEGAL
Suite 640
730 Peachtree Street N.E.
Atlanta, GA 30308

RE: 18-1104 Mark Horton v. Midwest Geriatric Management

Dear Counsel:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Please review [Federal Rules of Appellate Procedure](#) and the [Eighth Circuit Rules](#) on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

CRJ

Enclosure(s)

cc: Mr. Todd Anten
Mr. David L. Barkey
Ms. Katherine Susan Barrett Wiik
Mr. Jacob Berger
Ms. Mary Bonauto
Mr. Nicholas Jacob Bronni
Mr. Gary Buseck
Ms. Gail S. Coleman
Ms. Leslie Cooper
Mr. Steven M. Freeman

Ms. Melissa Garlick
Mr. Omar Gonzalez-Pagan
Ms. Fadwa A. Hammoud
Mr. Dylan L. Jacobs
Mr. Michael L Jente
Mr. Brian D Klar
Mr. Gregory J. Linhares
Ms. Natalie T. Lorenz
Mr. Philip J. Mackey
Ms. Sharon McGowan
Mr. Shannon Price Minter
Mr. Neal F. Perryman
Mr. Joshua Michael Pierson
Mr. Eric C. Rassbach
Mr. Nicholas Robert Reaves
Mr. Justin T. Reinheimer
Mr. Anthony E. Rothert
Mr. Michael Rothstein
Mr. Mark S. Schuver
Ms. Deborah Rae Sterling Scott
Ms. Jill A. Silverstein
Mr. Christopher F. Stoll
Mr. Cory Daniel Struble
Ms. Ria A. Tabacco Mar
Mr. Gillian L. Thomas
Mr. Jeffrey J. VanDam
Ms. Ferne Paula Wolf
Ms. Miriam Zeidman

District Court/Agency Case Number(s): 4:17-cv-02324-JCH

United States Court of Appeals
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West Publishing
Opinions Clerk
610 Opperman Drive
Building D D4-40
Eagan, MN 55123-0000

RE: 18-1104 Mark Horton v. Midwest Geriatric Management

Dear Sirs:

A published opinion was filed today in the above case.

Counsel who presented argument on behalf of the appellant was Gregory R. Nevins, of Atlanta, GA. The following attorney(s) appeared on the appellant brief; Gregory R. Nevins, of Atlanta, GA., Mark S. Schuver, of Belleville, IL., Natalie T. Lorenz, of Belleville, IL., Omar Gonzalez-Pagan, of New York, NY., Sharon McGowan, of Washington, DC.

Counsel who presented argument on behalf of the appellee was Neal F. Perryman, of Saint Louis, MO. The following attorney(s) appeared on the appellee brief; Neal F. Perryman, of Saint Louis, MO., Philip J. Mackey, of Saint Louis, MO., Michael L Jente, of Saint Louis, MO.

The following attorney(s) appeared on the amicus brief of Equal Employment Opportunity Commission; Gail S. Coleman, of Washington, DC.

The following attorney(s) appeared on the amici brief of the States; Lisa Madigan, AG, State of Illinois, Tom Miller, AG, State of Iowa, Lori Swanson, AG, State of Minnesota, Xavier Becerra, AG, State of California, George Jepsen, AG, State of Connecticut, Karl A. Racine, AG, District of Columbia, Russell A. Suzuki, AG, State of Hawaii, Brian E. Frosh, AG, State of Maryland, Maura Healey, AG, Commonwealth of Massachusetts, Gurbir S. Grewal, AG, State of New Jersey, Hector Balderas, AG, State of New Mexico, Eric T. Schneiderman, AG, State of New York, Ellen F. Rosenblum, AG, State of Oregon, Thomas J. Donovan, Jr. AG, State of Vermont, Mark R. Herring, AG, State of Virginia, Robert W. Ferguson, AG, State of Washington, Karyn L. Bass Ehler, AAG, of Chicago, IL., Cynthia L. Flores, AAG, of Chicago, IL., David L. Franklin, AAG, of Chicago, IL., Cara A. Hendrickson, AAG, of Chicago, IL., Brett E. Legner, AAG, of Chicago, IL., Matthew J. Martin, AAG, of Chicago, IL., Deborah Rae Sterling Scott, AAG, of Swansea, IL., Jeffrey J. VanDam, AAG, Chicago, IL.

The following attorney(s) appeared on the amici brief of American Civil Liberties Union, American Civil Liberties Union of Missouri, 9 to 5 National Association of Working Women, A Better Balance, American Association of University Women, California Women's Law Center, Coalition of Labor Union Women, Equal Rights Advocates, Feminist Majority Foundation, Gender Justice, Legal Momentum, Legal Voice, National Organization for Women Foundation, National Partnership for Women & Families, National Women's Law Center, Southwest Women's Law Center, Women Employed, Women's Law Center of Maryland, Inc., and Women's Law Project; Leslie Cooper, of New York, NY., Anthony E. Rothert, of Saint Louis, MO., Lenora Lapidus, of New York, NY., Ria Tabacca Mar, of New York, NY., Gillian L. Thomas, of New York, NY.

The following attorney(s) appeared on the amicus brief of Columbia Law School Sexuality and Gender Law Clinic; Katherine Susan Barrett Wiik, of Minneapolis, MN., Lisa Louise Beane, of Minneapolis, MN.

The following attorney(s) appeared on the amicus brief of National Center for Lesbian Rights and GLBTQ Legal Advocates & Defenders; Mary Bonauto, of Boston, MA., Gary Buseck, of Boston, MA., Shannon Price Minter, of San Francisco, CA., Christopher F. Stoll, of San Francisco, CA.

The following attorney(s) appeared on the amicus brief of St. Louis and Kansas City Missouri Chapters of the National Employment Lawyers Association; Ferne P. Wolf, of Saint Louis, MO., Jill A. Silverstein, of Saint Louis, MO., Joshua M. Pierson, of Saint Louis, MO.

The following attorney(s) appeared on the amicus brief of 47 Businesses and Organizations. AdRoll, Inc. d/b/a/ AdRoll Group, Airbnb, BASF Corporation, Caldwell Partners, CBS Corporation, Christopher Street Financial, Citrix Systems, Inc., Clockwork, Diageo North America, Inc., Diversified Health and Wellness Center, LLC, DoorDash, Inc., Dropbox, Inc., Eastern Bank, eBay, Edelman, The Estee Lauder Companies, FiftyThree, Inc., Freedom for All Americans Education Fund, Gusto, IAC/InterActiveCorp, Kargo, KEO Marketing Inc., Levi Strauss & Co., Linden Research, Inc. d/b/a Linden Lab, Lyft, Mapbox, MassMutual, National Gay & Lesbian Chamber of Commerce (NGLCC), NIO U.S., OBOX Solutions, Out Leadership, PayPal Holdings, Inc., Pinterest, Replacements, Ltd., Rhapsody International Inc. d/b/a Napster, salesforce.com, inc., Thumbtack Inc., Ultragenyx Pharmaceutical Inc., Viacom Inc., Witeck Communications, City National Bank, Deutsche Bank, Microsoft Corporation, Morgan Stanley, RBC Bank (Georgia), N.A., RBC Capital Markets, LLC, and Royal Bank of Canada; Todd Anten, of New York, NY., Justin T. Reinheimer, of San Francisco, CA., Cory D. Struble, of New York, NY., Tico Almeida, of Washington, DC., Brian D. Klar, of Saint Louis, MO.,

The following attorney(s) appeared on the amicus brief of Anti-Defamation League, Bend the Arc, A Jewish Partnership for Justice, Hindu American Foundation, Interfaith Alliance Foundation, National Council of Jewish Women, Central Conference of American Rabbis, and Women of Reform Judaism; David Barkey, of New York, NY., Jacob Berger, of Chicago, IL., Steven M. Freeman, of New York, NY., Melody L. Gaal, of Chicago, IL., Melissa Garlick, of New York, NY., Michael Rothstein, of Chicago, IL., Miriam Zeidman, of New York, NY.

The following attorney(s) appeared on the amicus brief of The Becket Fund for Religious Liberty; Eric C. Rassbach, of Washington, DC., Nicholas R. Reaves, of Washington, DC.

The following attorney(s) appeared on the amicus brief of the State of Arkansas, State of Louisiana, State of Michigan, State of Missouri, State of Nebraska, State of Oklahoma, State of South Dakota, and State of Texas; Nicholas J. Bronni, AAG, of Little Rock, AR., Dylan L. Jacobs, AAG, of Little Rock, AR., and former AAG Lee P. Rudofsky, of Little Rock, AR.

The judge who heard the case in the district court was Honorable Jean C. Hamilton. The judgment of the district court was entered on January 3, 2018.

If you have any questions concerning this case, please call this office.

Michael E. Gans
Clerk of Court

CRJ

Enclosure(s)

cc: MO Lawyers Weekly

District Court/Agency Case Number(s): 4:17-cv-02324-JCH

United States Court of Appeals
For the Eighth Circuit

No. 18-1104

Mark Horton

Plaintiff - Appellant

v.

Midwest Geriatric Management, LLC

Defendant - Appellee

Equal Employment Opportunity Commission; State of Iowa; State of Minnesota; State of California; State of Connecticut; State of Hawaii; State of Maryland; State of Massachusetts; State of New Jersey; State of New Mexico; State of New York; State of Oregon; State of Vermont; State of Virginia; State of Washington; District of Columbia; Kargo; State of Illinois; 9 to 5 National Association of Working Women; A Better Balance; AdRoll, Inc.; Airbnb; American Association of University Women; American Civil Liberties Union; American Civil Liberties Union of Missouri; Anti-Defamation League; BASF Corporation; Bend the Arc; CBS Corporation; Caldwell Partners; California Women's Law Center; Central Conference of American Rabbis; Christopher Street Financial; Citrix Systems, Inc.; City National Bank; Clockwork; Coalition of Labor Union Women; Columbia Law School Sexuality and Gender Law Clinic; Deutsche Bank; Diageo North America, Inc.; Diversified Health and Wellness Center, LLC; DoorDash, Inc; Dropbox, Inc.; Eastern Bank; Edelman; Equal Rights Advocates; Feminist Majority Foundation; FiftyThree, Inc.; Freedom for All Americans Education Fund; GLBTQ Legal Advocates and Defenders; Gender Justice; Gusto; Hindu American Foundation; IAC/InterActiveCorp; Interfaith Alliance Foundation; KEO Marketing Inc.; Legal Momentum; Legal Voice; Levi Strauss & Company; Linden Research, Inc.; Lyft; MassMutual; Mapbox; Microsoft Corporation; Morgan Stanley; NIO U.S.; National Center for Lesbian Rights; National Council of Jewish Women; National Gay & Lesbian Chamber of Commerce; National Organization for Women Foundation; National Partnership for Women and Families; National

Women's Law Center; OBOX Solutions; Out Leadership; Paypal Holdings Inc; Pinterest; RBC Bank (Georgia); RBC Capital Markets, LLC; Replacements, Ltd.; Rhapsody International Inc; Royal Bank of Canada; Southwest Women's Law Center; St. Louis and Kansas City Missouri Chapters of the National Employment Lawyers Association; The Estee Lauder Companies; Thumbtack, Inc.; Ultragenyx Pharmaceutical Inc.; Viacom, Inc.; Witeck Communications; Women Employed; Women of Reform Judaism; Women's Law Center of Maryland, Inc.; Women's Law Project; eBay; Salesforce.com, Inc.

Amici on Behalf of Appellant

The Becket Fund for Religious Liberty; State of Arkansas; State of Louisiana; State of Missouri; State of Nebraska; State of Oklahoma; State of South Dakota; State of Texas

Amici on Behalf of Appellee

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: April 17, 2019
Filed: July 6, 2020
[Published]

Before LOKEN, WOLLMAN, and STRAS, Circuit Judges.

PER CURIAM.

Mark Horton sued Midwest Geriatric Management, LLC, after it allegedly withdrew his job offer upon learning that he was gay. He claimed that this act constituted sex discrimination under Title VII. *See* 42 U.S.C. § 2000e-2(a)(1) (prohibiting a “refus[al] to hire . . . any individual . . . because of such individual’s . . . sex”). The district court, relying on our precedent, dismissed the case. *See Williamson v. A.G. Edwards & Sons, Inc.*, 876 F.2d 69, 70 (8th Cir. 1989) (per

curiam) (“Title VII does not prohibit discrimination against homosexuals.”); *see also* Fed. R. Civ. P. 12(b)(6).

We stayed Horton’s appeal pending the Supreme Court’s consideration of the “scope of Title VII’s protections for homosexual and transgender persons.” *Bostock v. Clayton Cty.*, 590 U.S. ___, Nos. 17-1618, 17-1623, 18-107, slip op. at 4 (June 15, 2020); *see Bostock v. Clayton Cty.*, 139 S. Ct. 1599 (Apr. 22, 2019) (order granting the petition for a writ of certiorari). In its decision, the Court held that it “defies” Title VII for “an employer to discriminate against employees for being homosexual or transgender,” because to do so, it “must intentionally discriminate against individual men and women in part because of sex.” *Bostock*, 590 U.S. at ___, slip op. at 12, 33. In light of this holding, our contrary conclusion in *Williamson* is no longer good law.

We accordingly reverse the judgment of the district court and remand for further proceedings in light of *Bostock*.¹

¹

Horton alleged two other claims: religious discrimination under Title VII and fraudulent inducement. Only the former, which the district court described as “a repackag[ing]” of his sex-discrimination claim, is before us on appeal. (Citation omitted). This claim, too, warrants another look in light of *Bostock*.