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CIVIL RIGHTS

City Faces Trans Woman's Claim of Hostile Treatment

State judge says AIDS agency may be liable in handling request for updating gender on client ID

BY ARTHUR S. LEONARD

A Manhattan State Supreme Court judge has ruled that a transgender Jane Doe plaintiff can proceed with her discrimination claim against New York City based on the treatment she received when requesting that the HIV/AIDS Services Administration (HASA) issue her a new benefits ID card correctly identifying her name and gender.

The December 2 ruling, from Justice Margaret A. Chan, raises the puzzling question of why the City Law Department did not negotiate a settlement with Doe already and is instead spending resources litigating over what appears to be a case of bureaucratic obtuseness at HASA.

According to Chan's decision, the plaintiff, identified as male at birth in Puerto Rico, recognized her female gender identity early in life and began taking hormones and testosterone suppressants at age 12 to feminize her body. She later underwent medical and surgical procedures to transition fully, and received a New York court name-change order in March 2011.

A client of HASA, Doe applied in August 2011 to change her records and receive a new benefits card. Her complaint relates how use of her benefits card with the wrong name and gender led to situations where she was accused of fraud or otherwise subjected to embarrassment and harassment.

When Doe presented her HASA case-

worker with the court-issued name change order and a letter from her treating physician attesting to her completed gender transition, the case manager said he would pass the request for a name change on to the HRA case manager, "but could not guarantee that the request would be granted." Regarding Doe's request that her gender identification also be changed, the caseworker said that would not be possible without a new birth certificate.

Even when Doe explained that Puerto Rico does not issue new birth certificates in gender transition cases, her caseworker, his supervisor, and the manager of the local HASA office all insisted the agency could not change its records to reflect Doe's current gender identity without such a document. When she requested a written explanation for their refusal to help her, she was required to sign a release using her birth name, even though she no longer uses that name to transact business and finds it demeaning. Her complaint also alleges that HASA employees insisted on calling her by the male name on her ID card, despite the name-change order.

After continued advocacy, HASA eventually caved and changed the records, but Doe decided to challenge HASA's policy of requiring birth certificates to make gender identification changes in its records, arguing that the name-change order and doctor's certification should be sufficient. She is represented by Manhattan Legal Services attorney Daniel Pepitone.

Doe brought her lawsuit under both

state human rights law and the city's human rights ordinance, alleging gender and disability discrimination. The state law expressly forbids discrimination in providing public services because of sex or disability, while the city law goes further and specifically bars discrimination based on gender identity. Doe claims she was denied access to benefits, including immediate processing of her request to update her HASA records and issue her a new, accurate benefits card. She also claimed HASA employees violated her right to privacy by the way they treated her, "speaking loudly so that others in the office were privy to plaintiff's request and knowledge of her change of gender."

The city responded that Doe was never actually denied benefits or services and that if she felt harassed or demeaned by HASA employees, her treatment did not "rise to the level of discrimination."

Justice Chan noted that the city's anti-discrimination law specifically provides that it "shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes," regardless of how similar state and federal protections would be construed.

Chan noted that though HASA's policy of requiring a new birth certificate in order to change its records regarding a client's gender is neutral on its face, "a claim of discrimination based on sexual orientation can be stated where a facially neutral policy or practice has a disparate impact on a protected group." Noting evidence to sup-

port Doe's claim that Puerto Rico does not issue new birth certificates after a gender transition, Chan found that this obstacle meant the plaintiff has hampered access to benefits for which she is eligible.

"Thus, while HASA's policy appears to be equal across the board, its practical impact for the transgender community is not," Chan wrote.

The judge, contradicting the city's argument, also found that the way HASA employees treated Doe was "not a light matter." Their actions, she wrote, were "laden with discriminatory intent," since they knew based on her documentation that she had transitioned and "yet did not treat her accordingly or appropriately."

Chan concluded, "It cannot be said that plaintiff felt demeaned for any reason other than abject discriminatory reasons," and rejected the city's motion to dismiss the case.

The burden on the city is now to show that it is somehow necessary to insist on a new birth certificate to make a change in gender in HASA records and identification documents, even when a client has presented both medical evidence and a court-ordered name change document. If Doe's medical evidence was sufficient for the court to order a name change, it's hard to imagine an argument HASA can make to justify why such evidence is not also enough for its purposes.

Chan's opinion may wake up the City Law Department to negotiate a settlement with Doe and to advise HASA to change its policy.

► HATE CRIME, from p.11

court with a sworn statement from the foreperson of the jury one week after the verdict. The foreperson indicated that the jury decided 'relatively quickly' that defendant committed a hate crime, and the jury did not find defendant guilty of the non-hate crime because that 'would have been unnecessary or even "overkill."'

Looking to the instructions that County Court Judge William D. Walsh gave the jury, Maxwell noted, "The jury was never told in this case that its verdict on any of the homicide charges for the 'non-hate' counts had to be guilty if the jury found defendant guilty of the corresponding homicide charge as a hate crime... It was reasonable (and perhaps even required) that once the jury found that defendant killed his victim as a hate crime, the jury had to reject the theory that defendant killed the victim as a non-

hate crime."

Maxwell warned that if the appellate ruling is upheld DeLee "will go virtually unpunished for killing his victim, despite the overwhelming proof that defendant killed the victim because of defendant's belief that the victim was homosexual." That would mean that DeLee, who has been in prison since his 2008 arrest, would avoid the minimum sentence of 10 years based on his past criminal record and the hate crime conviction.

After reviewing letters from Maxwell and from DeLee's attorney, the high court requested full written briefs in the case, which will be followed next spring by oral arguments.

TLDEF's Silverman told Gay City News that DeLee's conviction was the first time a defendant in New York State was found guilty of a hate crime in the killing of a transgender victim. Only one

other defendant in the nation was similarly convicted, according to TLDEF.

"The appellate ruling that put Dwight DeLee back on the streets frustrates the goal of the New York State hate crimes law," Silverman said. "The goal in the appeal is to send the message that it is not okay to commit a murder against a transgender person."

He acknowledged that DeLee's hate crime prosecution was made possible by the district attorney's ability to point to anti-gay statements the defendant made in committing the crime. That approach was "a workaround" the shortcomings of the existing hate crime law, Silverman said.

In fact, in its letter to the high court, the district attorney's office referred to the victim as "a transgender individual named Moses Cannon who identified and lived as a female and chose the name LaTeisha Green or 'Teish.'"

Silverman noted that the pending Gender Expression Non-Discrimination Act (GENDA), long stalled in the State Senate, would add the category of gender identity and expression to the 2000 hate crimes statute. Asked about statements from some of New York's district attorneys that they would prosecute anti-transgender violent crimes under the law's protections based on gender, Silverman said, "It is always better to spell out categories specifically, and that's never more true than in something like a hate crimes law. Rather than be in a position of relying on the good will" of district attorneys.

Through TLDEF, Roxanne Green, the victim's mother said, "I was outraged that our daughter's killer was released from prison on a technicality. Now I feel some relief that New York's highest court will review this case. I want justice for Teish."