

SIXTH CIRCUIT ISSUES OPINION AFFIRMING DISMISSAL OF PHYSICIAN'S CLAIMS ARISING OUT OF SUSPENSION OF HOSPITAL PRIVILEGES

EXECUTIVE SUMMARY

On November 15, 2013, the Sixth Circuit Court of Appeals released an unpublished [opinion](#) affirming Summary Judgment in favor of St. Mary Mercy Hospital in the case *Brintley v. St. Mary Mercy et al.* (No. 12-2616). The court held that Dr. LaCesha Brintley was not an employee of the hospital and therefore had no valid claim of employment discrimination under Title VII of the Civil Rights Act of 1964, a federal employment discrimination statute. Although Plaintiff physician was a member of the hospital medical staff, the court held that she was not an employee inasmuch as she ran her own business, filed tax returns that showed she was not an employee, billed her own patients and held privileges at other hospitals. The court also determined that the hospital's bylaws did not create a contract between the parties. According to the court, the physician's state law discrimination claims were also properly dismissed because she failed to identify similarly situated physicians who had received preferential treatment.

THE DECISION: *BRINTLEY V. ST. MARY MERCY ET AL.*

The court noted that in January of 2008, during a routine appendectomy, Plaintiff accidentally cut two of her patient's major blood vessels while using a blind-trocar technique. While the patient survived, the hospital requested that Dr. Brintley take herself off the emergency-call list and stop using the blind-trocar technique. The hospital also conducted a statistical analysis of the physician's cases that revealed her complication rate to be much higher than the other surgeons at the hospital. The physician subsequently agreed to a voluntary proctorship and was notified that failure to abide by all of the requirements of the proctorship would result in additional adverse action. However, the physician failed to comply with the directives of her proctors, including, on one occasion, arguing with her proctor in a manner that a nurse stated caused great concern for the well being and safety of the patient. Two proctors discontinued their involvement and oversight, citing Dr. Brintley's failure to accept their direction. The hospital's Medical Executive Committee subsequently suspended the physician's surgical privileges. A peer review hearing was conducted, after which the suspension was upheld. Additional levels of internal review also affirmed the suspension.

The physician then sued the hospital and several members of the medical staff. She filed an 11-count complaint in the United States District Court for the Eastern District of Michigan alleging racial and gender discrimination, breach of contract and additional tort claims. The trial court granted summary judgement to the hospital on all of Plaintiff's claims, and she appealed to the United States Court of Appeals for the Sixth Circuit. The appellate court first addressed Plaintiff's Title VII employment discrimination claims. The court applied the common law agency test to determine that Plaintiff physician was an independent contractor, not an employee, of the hospital. In support of this determination, the court noted that Plaintiff controlled all aspects of her surgeries prior to the botched appendectomy, ran her own business, held privileges at other facilities, billed her own patients and filed her tax returns for her business that indicated that she was not an employee.

The court also upheld the dismissal of Plaintiff's claim under 42 U.S.C §1981, a federal statute prohibiting discrimination in making or enforcing contracts. Plaintiff claimed that the hospital's bylaws created a contract between the hospital and the physician because the bylaws did not disclaim any such contract. The court rejected the claim, noting that Plaintiff failed to explain which provisions of the bylaws created a contract and held that the hospital's "bylaws...do not create a contract with Brintley."

Lastly, the court affirmed the dismissal of Plaintiff's state law discrimination claims that were brought under Michigan's Elliot-Larsen Civil Rights Act (MCL 37.2102). The court found no unlawful discrimination occurred, inasmuch as Plaintiff failed to identify a similarly situated doctor who had received preferential treatment. While Plaintiff attempted to compare herself to two other doctors, neither of the other doctors had the history of serious complications that she did. Hall Render attorneys David French, Timothy Gutwald and Peter VanLaan represented St. Mary Hospital throughout the litigation and filed a brief on behalf of St. Mary Mercy Hospital with the United States Court of Appeals for the Sixth Circuit.

Circuit Judge Raymond Kethledge authored the opinion and was joined by Circuit Judge Jeffery Sutton and District Court Judge Robert Dow,

who was sitting by designation.

PRACTICAL TAKEAWAYS

The Sixth Circuit opinion is significant due to the fact that it addresses several claims that commonly arise out of peer review decisions. Of particular importance is the fact that the Sixth Circuit held that the physician was not an employee merely because she was a member of the medical staff that held privileges at the hospital. The court's holding that the hospital's bylaws are not a contract provides support that hospitals can cite in defending breach of contract claims that are commonly brought after peer review decisions. Even though the court rejected Plaintiff's contract claims, it should be noted that Plaintiff attempted to rely upon the absence of any provision in the bylaws that expressly stated that the bylaws do not constitute a contract. She claimed that if the bylaws did not constitute a contract between the physician and the hospital, the bylaws would so state. Hospitals should consider whether to include such an express disclaimer in their medical staff bylaws in order to obviate any alleged misunderstandings and potential claims about the nature of the bylaws.

In addition to representing health care entities at all stages of the peer review matters, David French, Timothy Gutwald and Peter VanLaan are each members of Hall Render's Complex Litigation Team. The Complex Litigation Team represents clients in the defense of high-stakes and difficult cases, including False Claims and quit tam actions, class and collective-action employment disputes, other class actions and other complex civil litigation matters. If you have questions regarding the above or would like additional information, please contact:

- David French at dfrench@hallrender.com 248-457-7813;
- Timothy Gutwald at tgutwald@hallrender.com 248-457-7892;
- Peter VanLaan at pvanlaan@hallrender.com 248-457-7828; or
- Your regular Hall Render attorney.

Please visit the Hall Render Blog at <http://blogs.hallrender.com/> for more information on topics related to health care law.