

Milton Catholic school loses gay bias case

In a decision being called the first of its kind nationally, a state judge has ruled that an all-girls Catholic school in Milton discriminated against a gay man when it rescinded a job offer after learning he was in a same-sex marriage.

Matthew Barrett accepted a position as food services director at Fontbonne Academy in 2013, but the school withdrew the offer days later after Barrett listed his husband as an emergency contact on an employee form, according to a 21-page court ruling issued Wednesday.

Barrett's lawyer, Ben Klein of Gay & Lesbian Advocates & Defenders, said the decision marks the first time a judge has rejected a religious organization's assertion that it had a constitutional right not to hire employees because they were spouses in same-sex marriages.

"Marriage equality has been the law of Massachusetts for over a decade and is now the law of the land," Klein said. "But you can't have equality if you can get married on Saturday and fired on Monday."

Several legal experts contacted Thursday by the Globe said they believed the ruling was the first in a legal dispute involving a religious organization and an employee in a same-sex marriage.

"It is the first reported case with regards to a religious institution," said Brian D. Spitz, an employment lawyer in Ohio whose firm represents clients from the LGBTQ community.

"Sexual orientation is a protected class deserving of the same level of protection as other protected classes," Spitz said. "If the Fontbonne Academy argued that it was against their religious tenets to hire a woman or a black person, their arguments would be ridiculed as absurd at first look."

The decision was blasted by the Catholic Action League of Massachusetts, which called it "a frontal assault on religious freedom" and "an appalling subordination of the First Amendment to the Massachusetts gay rights law." The organization is an independent group directed by a lay person.

Barrett, 45, who lives in Dorchester, sued Fontbonne in Norfolk Superior Court last year, claiming that the school discriminated against him on the grounds of sexual orientation and gender.

Mary Ellen Barnes, then Fontbonne's head of school and chief executive, told Barrett that he could not be hired because his marriage to another man was "inconsistent" with Catholic Church teachings, the order said.

"What they did was blatantly wrong, and they violated a Massachusetts law," Barrett said Thursday in a telephone interview. "They felt that being a Catholic-affiliated school that they can do that legally, and they can't."

In his ruling, Judge Douglas H. Wilkins rejected the three defenses the school offered.

"Fontbonne's discrimination 'because of' Barrett's same-sex marriage is undisputed and, as shown above, amounts to discriminatory intent as a matter of law," Wilkins wrote.

“It is clear that, because he is male, he suffered gender discrimination when he was denied employment for marrying a person whom a female could have married without suffering the same consequences.”

Fontbonne, a ministry sponsored by the Congregation of the Sisters of St. Joseph of Boston, had argued it is entitled to a religious exemption under the state antidiscrimination law.

It also claimed that hiring Barrett would infringe on its constitutional rights because it views his marriage as incompatible with its religious mission.

Wilkins rejected those arguments.

“As an educational institution, Fontbonne retains control over its mission and message,” he wrote. “It is not forced to allow Barrett to dilute that message, where he will not be a teacher, minister or spokesperson for Fontbonne and has not engaged in public advocacy of same-sex marriage.”

Wilkins said Fontbonne could claim a religious exemption to the state antidiscrimination law only if it limited “membership, enrollment, or participation” to members of one religion. The school, however, is open to students and employees of all faiths, except for members of its administration, theology faculty, and mission and ministry staff, he wrote.

In a statement, Fontbonne said Thursday that it is considering its options.

The school’s lawyers did not respond to messages.

Klein said that Barrett is entitled to lost wages and other damages. A hearing to determine damages has not been set, he said.

Barrett said he resigned from his position with Milton’s public schools after accepting Fontbonne’s offer.

“When they fired me, I went crawling back. I said, ‘This is what happened. I need a job,’” Barrett said. “They were thrilled to have me back. I love it.”

He is now head cook at the Collicot and Cunningham elementary schools in Milton.

Barrett said Fontbonne’s decision cost him wages, but that is not why he sued.

“That’s not my priority,” he said. “It was just wrong.”

Francis DeBernardo, executive director of New Ways Ministry, a nonprofit organization in Maryland devoted to the concerns of gay and lesbian Catholics, tracks how many people have been fired or lost employment offers at religious institutions because of their sexual orientation.

He said the number of cases has multiplied as more states, and now the nation, have legalized same-sex marriage.

“It’s something the Catholic Church still hasn’t been able to deal with,” DeBernardo said.

Sarah Warbelow, the legal director at Human Rights Campaign, said the ruling makes it clear that religious institutions must follow the law when hiring people with no ministerial duties.

“They should have the ability to earn a living just like everyone else,” she said.

By: Laura Crimaldi