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September 5, 2012

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Associational Discrimination under the ADA

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One of the lesser known provisions of the Americans with Disabilities Act ("ADA") prohibits discrimination against an individual who is not disabled because of that individual's association or relationship with someone who is known to be disabled. A recent Seventh Circuit decision, *Magnus v. St. Mark United Methodist Church*, 2012 WL 3194633 (Aug. 8, 2012), addressed an ADA association claim brought by a church secretary who asserted that her employment was terminated because of her employer's unfounded assumptions about her association with her disabled daughter.

St. Mark United Methodist Church (the "Church") hired Ms. Magnus for a part-time secretarial position in 2006. The Church learned, shortly after it hired her, that she had a mentally disabled daughter. Ms. Magnus' position required working weekends. During the first few years of her employment, however, working weekends was not a problem for Ms. Magnus because her son took care of her disabled daughter. In February 2008, Ms. Magnus was offered and accepted a full-time secretarial position. Initially, her work schedule was Monday through Friday. The other secretary, who worked every weekend, decided that she no longer wanted to maintain that schedule, and she proposed that she and Ms. Magnus alternate working weekends. The Church wanted to comply with the other secretary's request and on several occasions asked Ms. Magnus to work weekend days, too. Ms. Magnus refused because at that point her son was no longer available to care for her daughter on the weekends. The Church considered having volunteers fill in but decided that was not a viable solution.

In the interim, Reverend McCoy (who had hired Ms. Magnus) observed issues with Ms. Magnus' job performance. She was not

entering required information into the daily log reports, and she needed to improve scheduling, operating the telephone answering machine, and timely bulletin production. Ms. Magnus admitted that she was sometimes distracted because of her daughter's condition and stated that she often took calls at work from her daughter's assisted living facility to resolve issues related to her daughter. Nonetheless, at the beginning of 2009 she received a five percent raise. On January 25, 2009, the Church decided to terminate Ms. Magnus' employment. The personnel committee was scheduled to meet on January 28th to discuss the mechanics of her termination. On January 27, 2009, Ms. Magnus called in and told the other secretary that she would be late due to a medical issue that had arisen with her daughter. When she arrived at work, Ms. Magnus explained to Reverend McCoy why she was an hour late and stated that she would come in an hour earlier the next day. He told her that was okay. The following day when Ms. Magnus arrived at work, her employment was terminated, and she was given a letter explaining that her termination was a result of poor performance. According to Reverend McCoy, it was also because of her refusal to work weekends.

Ms. Magnus sued the Church, claiming that her termination for refusing to work weekends violated the association provision of the ADA. She was required to show that it was more likely than not that the Church terminated her employment because of her association with her disabled daughter. Unlike typical ADA claims, however, in an associational ADA claim employers are not required to provide reasonable accommodations to non-disabled employees. The ADA only requires that disabled persons be accommodated. The court pointed out that while an employer does not have to accommodate an employee because of her association with a disabled individual, an employer cannot terminate (or take any other adverse action against) an employee based on "unfounded assumptions" about the employee's need to care for the disabled person. Thus, according to the ADA regulations, an employer cannot make decisions based on the belief that the employee would have to miss work frequently or leave work early in order to take care of a disabled person. However, that was not the case with Ms. Magnus.

The Church provided legitimate, nondiscriminatory reasons for its actions, including her meetings with Reverend McCoy about her poor work performance. There was no evidence that she corrected these problems. The court emphasized that even if Ms. Magnus' performance issues were due to distractions caused by her disabled daughter, the Church was not required to provide her with an accommodation to enable her to perform her job in accordance with the Church's expectations. Also undermining Ms. Magnus' ADA claim was that the Church knew she had a disabled daughter, that this sometimes distracted Ms. Magnus, and that the Church still promoted her to the full-time position. The court also found that the Church's request that both secretaries rotate weekends supported the conclusion that the

Church was not discriminating against Ms. Magnus but instead treating both secretaries similarly.

The *Magnus* case is important beyond the reminder that the associational provision of the ADA does not obligate employers to accommodate the schedule of an employee with a disabled relative. It also serves as a reminder that employment decisions based on stereotyped or unfounded assumptions - such as presumed future absences to care for a disabled relative - are prohibited. Further, it serves as a good reminder of the importance of treating similarly situated employees consistently.


Forward this issue