

COA Opinion: The Elliott-Larsen Civil Rights Act applies to doctor-patient relationships.

10. November 2011 By Kristina Araya

In *Moon v. Michigan Reproductive & IVF Center, PC*, No. 299623, the Court of Appeals considered whether a doctor illegally discriminated on the basis of marital status when he refused to offer in vitro fertilization (IVF) treatment to an unmarried woman. In this case the plaintiff inquired whether the defendant fertility clinics would offer IVF to a single woman. The doctor at the clinic stated that the clinic would not offer IVF to single women because of the lack of caselaw and regulations in Michigan regarding the liability of doctors performing IVF to pay child support to the single women. The plaintiff subsequently filed suit claiming the defendants under the Elliott-Larsen Civil Rights Act (ELCRA).

The circuit court dismissed the claim and ruled that under Michigan common law a doctor-patient relationship “is voluntary and consensual” and therefore doctor “may refuse to enter into such a relationship for any reason or no reason at all.” The circuit court also noted that even if the plaintiff’s claim presented indirect evidence of disparate treatment, the doctor provided a legitimate, nondiscriminatory reason for refusing treatment when he stated that he was fearful of the potential liability given the lack of regulation or caselaw in Michigan on the issue of IVF services.

The Court of Appeals disagreed, and held that a doctor may not refuse to enter into a doctor-patient relationship based on discriminatory factors in violation of the ELCRA. A contrary interpretation would allow a doctor to “follow his personal prejudices or biases” and deny treatment based solely on protected characteristics, such as race. The Court of Appeals also held that the circuit court erred by concluding that the plaintiff failed to create a genuine issue of material fact that the defendant discriminated against her. The plaintiff provided direct evidence of discrimination based on email messages from the doctor where he stated his reasons for denying her the IVF treatment. Accordingly, the circuit court should have denied the defendant’s motions for summary disposition and proceeded to discovery and trial if necessary, because the credibility of the doctor’s claimed

motive for denying treatment was a question for the fact finder. Accordingly, the circuit court's holding was reversed and the case was remanded.