Employment: Travelling with Terminally-Ill Parent on Vacation Qualifies as "Care" Under the FMLA and Requires Employer Grant Leave

***Ballard v. Chicago Park District*, No. 13-1445 (7th Cir. Jan. 28, 2014).**

Beverly Ballard was working for the Chicago Park District when her mother, Sarah, was diagnosed with cancer. Beverly lived with Sarah in Chicago and acted as her primary caregiver, cooking, cleaning, bathing, administering medications, and dressing her. Toward the end of her life, Sarah met with a hospice worker to discuss her end-of-life goals and she said she wanted to take a family vacation to Las Vegas. The trip became a reality when the hospice worker was able to secure funding through the Fairy Godmother Foundation. For six days Sarah and Beverly traveled in Las Vegas, during which time Beverly took care of her mother just as she did at home – administering medication, driving her around, bathing her, aiding her in her daily activities, even taking her to the ER when their hotel had a fire and they were unable to access critical medication secured in the hotel room.

Ballard had requested unpaid leave so she could accompany her mother, a request which the Park District ultimately denied. A couple months after the trip Beverly was terminated for unauthorized absences accrued during her trip.

Ballard sued under the Family and Medical Leave Act (FMLA), arguing that caring for her mother, both physically and psychologically during the trip is covered by the FMLA. The Park District countered that (1) Ballard was not taking care of her mother in Las Vegas because she was already providing care at home and (2) that the trip was not covered by FMLA because it was not related to ongoing medical treatment. The district court held for Ballard, saying "[s]o long as the employee provides 'care' to the family member, where the care takes place has no bearing on whether the employee receives FMLA protections." The Park District appealed.

HELD: The Seventh Circuit affirmed, holding that FMLA applies where an employee's leave is used to provide physical and psychological care to a terminally ill parent traveling away from home.

DISCUSSION: Under FMLA, eligible employees are entitled to twelve weeks of leave "in order to care for the[ir] spouse, or a son, daughter, or parent . . . if such spouse, son, daughter, or parent has a serious medical condition."The Park District contended that Ballard did not "care for" her mother in Las Vegas, arguing that the term "care" as used here is limited to services provided in connection with ongoing medical treatment. The Circuit Court found fault with this argument on various levels, pointing out first that the statute uses the general term "care," not treatment. Moreover, the court found no statutory basis for the argument that ongoing treatment is a requirement for FMLA leave when an employee provides away-from-home care, but not when the employee provides the same care at home. A final problem for the court was that the FMLA does not – in either the statutory text or the implementing regulations – restrict care that an employee provides to a family member to a particular geographic location. For the court the important point was that the mother's physical and psychological care needs were identical in Las Vegas and at home and Ballard provided for those needs identically in both places. The Park District also described Ballard's trip as recreational and raised the issue of employees, in general, taking excessive unpaid leave for personal vacations if they could do so by simply taking ill family members on the trip. While the court said such an issue was not for it to decide,

the facts here did not indicate that was the case. Furthermore, if employers fear such an abuse they can require certifications from doctors before signing off on the leave. In the end the Circuit Court was fixed on the fact that FMLA leave would have been granted if Ballard had asked for the time to care for Sarah in Chicago or if Sarah lived in Las Vegas and Ballard traveled there to care for her. The court did not see a reason to treat the scenario of traveling with a parent any differently.

http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2014/D01-28/C:13-1445:J:Flaum:aut:T:fnOp:N:1281302:S:0 (last accessed Feb. 5, 2014)

Field Code Changed

Formatted: Font: (Default) Arial

Guns: Louisiana Laws Prohibiting Juvenile Gun Possession and Concealed Carry Are Not Invalidated by Revised Constitution Stating "Any Restriction of this Right Shall Be Subject to Strict Scrutiny."

Formatted: Font: (Default) Arial

***State of Louisiana in the Interest of J.M.*, No. 2013-CK-1717 (La. Jan. 28, 2014).**

Formatted: Font: (Default) Arial

In December 2012, J.M., a juvenile in Baton Rouge was charged with knowingly possessing a handgun in violation of La. R.S. 14:95.8, and intentionally concealing a weapon in violation of La. R.S. 14:95(A). The first of these laws prohibits juveniles from carrying handguns, but provides seven exceptions, including those for hunting and shooting ranges and parental supervision and/or permission. None of the exceptions applied to J.M, and the State brought charges against him in juvenile court for East Baton Rouge Parish..

Formatted: Font: (Default) Arial

Just four days before J.M.'s arrest for these offenses, Louisiana had passed a Constitutional amendment. It changed La. Const. art. I, §II from the statement that "The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person," to instead read "The right of each citizen to keep and bear arms is fundamental and shall not be infringed. Any restriction of this right shall be subject to strict scrutiny."

Formatted: Font: (Default) Arial

J.M.'s lawyer challenged the statutes under which the juvenile was charged, alleging both were unconstitutional because they failed strict scrutiny.

Formatted: Font: (Default) Arial

The juvenile court found the State had a compelling interest in preventing juveniles from possessing handguns, but that only three of the seven exceptions were narrowly drawn, striking the rest from the statute. As to the second statute, which prohibited carrying concealed weapons, the court found the government had a compelling interest in such a law, but that it was not narrowly drawn—the law was unconstitutional as it related to juveniles since juveniles were already prohibited from carry handguns under the first statute. The State challenged both findings, seeking direct review in the state supreme court.

Formatted: Font: (Default) Arial

HELD: The Louisiana Supreme Court reversed the juvenile court, finding both statutes constitutional.