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Recent Developments: Board of Directors of Rotary International v. Rotary Club of Duarte: Exclusivity of All Male Membership in Private Club Destroyed by California Statute

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1249 (1987)

The court went on to reject appellant's position that *Moniodis* requires that the plaintiff prove she is completely disabled before she can recover. While the court acknowledged that appellant's argument did find some support in the language of *Leese v. Baltimore County*, 64 Md. App. 442, 497, A.2d 159, cert. denied, 305 Md. 106 (1985) and in *Hamilton v. Ford Motor Credit Co.*, 66 Md. App. 46, 502, A.2d 1057, cert. denied, 306 Md. 118 (1986) the court pointed out that these cases were clearly distinguishable because the plaintiffs failed to produce any medical evidence in support of his or her claim.

The court further observed that "in appropriate cases, 'severe' emotional distress may be inferred from the extreme and outrageous nature of the defendant's conduct alone." *Vicnire v. Ford Motor Credit Co.*, 401 A.2d 148 (Me. 1979), citing Restatement, supra, Section 46, Comment K.

The *Reagan* court noted that the appellant conceded that the evidence in this case was sufficient to find the intentional or reckless and the extreme and outrageous elements of intentional infliction of emotional distress. The court went on to state once again that the element of causation was established sufficiently to submit the question to the jury by the testimony of the appellee and Dr. Spodak. Finally, the court concluded that severity, the last ele-

ment of intentional infliction of emotional distress could be concluded from the very nature of the outrageous conduct itself, sexual molestation of a child over a six-year period.

Accordingly, the Court of Special Appeals of Maryland upheld the judgment of the Circuit Court for Baltimore County in finding that the facts of the case were sufficient to create a jury question on the claim of intentional infliction of emotional distress. In so holding, the court gives further guidance to the practitioner attempting to meet what has always been a very high standard of proof.

— Frank Borgerding

Board of Directors of Rotary International v. Rotary Club of Duarte: EXCLUSIVITY OF ALL MALE MEMBERSHIP IN PRIVATE CLUB DESTROYED BY CALIFORNIA STATUTE

The United States Supreme Court recently upheld the application of a California anti-discrimination statute to an all male local chapter of Rotary International, thereby opening regular membership to women. In *Board of Directors of Rotary International v. Rotary Club of Duarte*, 107 S. Ct. 1940 (1987), the Supreme Court decided the issue of whether the California Unruh Civil rights Act¹ ("Unruh"), Cal.

Civ. Code § 51 (West 1982), requiring local California Rotary Clubs to admit women as members, violated the first amendment right to freedom of association. The Court held that Unruh, which entitles all persons, regardless of sex, to equal accommodations in business establishments, did not abridge the first amendment freedom of private association or right of expressive association by admitting women as members to an exclusively male organization.

Rotary International (International) is a nonprofit corporation composed of local Rotary Clubs worldwide. "It is an organization of business and professional men united to provide humanitarian service, encourage high ethical standards in all vocations, and help build goodwill and peace in the world." 107 S. Ct. at 1942. Membership in local Rotary Clubs is limited to men as mandated by International's constitution and by-laws. Women are not admitted as members but are permitted to "attend meetings, give speeches, receive awards," and participate in Rotary's auxiliary organizations. *Id.* at 1943. The "classification principle" utilized by International, with certain exceptions, limits the number of male members from each classification of business or profession within the community. *Id.*

In 1977, a local Rotary Club in Duarte, California admitted three women as active members. International revoked the Duarte club's charter for having admitted the

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women in violation of its male only membership policy. After an unsuccessful appeal at the International's Convention, the local club and two of its women members brought suit for injunctive and declaratory relief against International alleging that the act of disenfranchisement violated Unruh. The state trial court denied the relief sought by the local club on the grounds that neither International nor the local club were business establishments within the meaning of Unruh. The court entered judgment for International.

On appeal, the California Court of Appeals reversed, holding that both International and the local club were business establishments within the meaning of § 51 and thus subject to regulation pursuant to Unruh. It further held that the trial court erred in concluding that: (1) International and the local club were not engaged in providing goods, services, and facilities, when International's structure and financial concerns exhibited substantial businesslike attributes; and (2) the relief sought would create a substantial risk of irreparable harm to the national and international associational integrity in International when the admission of women into the local Rotary Club of Duarte would not cause the downfall of International or seriously interfere with Rotary's objectives. Finally, the court concluded that the Unruh Act proscribed direct discrimination by International against women and the local club on account of its having admitted women, and that the relief sought would not impermissibly infringe the freedom of intimate or expressive association of International's members. *Rotary Club of Duarte v. Board of Directors of Rotary International*, 178 Cal. App. 3d 1035, 1062, 224 Cal. Rptr. 213 (1986). The court entered judgment in favor of Rotary Club of Duarte and mandated that the Board of Directors of Rotary International reinstate the local club's charter and permanently enjoined International from enforcing or attempting to enforce its male-only membership restriction.

The California Supreme Court denied International's petition for review of the constitutionality of Unruh. However, the United States Supreme Court granted certiorari to address the constitutional validity of Unruh. In a decision that essentially mirrored the California Court of Appeals' reasoning, the Court unanimously decided that International's constitutional claims were invalid.

Justice Powell, writing for the majority, cited case law in which the Court had previously upheld, against a first amendment challenge a state statute that required women to be admitted into an all male

nonprofit membership organization. *Roberts v. United States Jaycees*, 468 U.S. 609 (1984). In *Roberts*, the Court held that application of the Minnesota Human Rights Act, Minn. Stat. § 363.03 (1982), to prevent sex discrimination against the membership policies of the Jaycees, did not violate that organization's freedom of intimate or expressive association. Thus, the Court in *Roberts* provided the framework for analyzing International's constitutional claims. Justice Powell stated,

[A]s we observed in *Roberts*, our cases have afforded constitutional protection to freedom of association in two distinct senses. First, the Court has held that the Constitution protects against unjustified government interference with an individual's choice to enter into and maintain certain intimate or private relationships. Second, the Court has upheld the freedom of individuals to associate for the purpose of engaging in protected speech or religious activities.

107 S. Ct. at 1945.

The key determinant under *Roberts* was the effect of the challenged state action on an individual's freedom of private association and one's freedom of expressive association. *Id.*

Applying the first prong of the *Roberts* test, the Court noted that among the highly personal relationships entitled to constitutional shelter are those that attend the creation and sustenance of a family such as a marriage, childbirth, the raising and education of children and living with relatives. *Id.* at 1945-46. The Court explained that the first amendment only protects relationships with these qualities and those others leading to an understanding of freedom of association as an intrinsic element of personal liberty. Therefore, the only factors relevant in determining whether a particular association is sufficiently personal or private for constitutional protection are "size, purpose, policies, selectivity, and other characteristics, such as whether others are excluded from critical aspects of the relationship." *Id.* at 1946 (citing 468 U.S. at 620). In the present case, the Court ruled that several features of *Rotary International* clearly placed it outside the category of relationships worthy of this kind of constitutional protection, such as its size, purpose and membership arrangement. The Court concluded that the application of Unruh to the local Rotary Club did not interfere with the member's freedom of association.

With respect to the second prong dealing with the freedom of expressive association, the Court asserted that the right to asso-

ciate for expressive purposes was not absolute since infringements on that right may be justified by relations adopted to serve compelling state interests unrelated to the suppression of ideas and that which cannot be achieved through means significantly less restrictive of associational freedoms. *Id.* at 1947-48.

The Court did not distinguish the Minnesota Act in *Roberts* from Unruh in the present case. Instead, the Court pointed out that like the Minnesota Act, Unruh: (1) does not distinguish between prohibited and permitted activity on the basis of viewpoint; (2) does not aim at the suppression of speech; and (3) does not require International to change its objectives, open its membership to the public nor seek to invalidate its "inclusive" selective membership requirements. *Id.* at 1948. With this analysis in mind, the Court found that California's compelling interest in assuring equal access to women extended to the acquisition of leadership skills and business contacts as well as tangible goods and services. The Court concluded that the application of Unruh to California Rotary Clubs did not violate the right of expressive association afforded by the first amendment.

In attempting to define the limits of free association rights, the holding in *Rotary International* raises more questions than it resolves. The narrow decision, though striking favor with womens rights groups, does not resolve the question of whether the civil rights law will apply to fraternal organizations or civic organizations. Thus, future situations have been left for resolution on a case by case basis.

In Maryland, the court of appeals has yet to address Maryland's Public Accommodations Law, Md. Ann. Code Art. 49B, § 5 (1986), and its federal counterparts in light of nonprofit membership organizations. However, the impact of the decision in *Rotary International* is a signal to Maryland and other states that associational rights will be determined on a sliding scale and presumptively within the analysis set forth in *Roberts*. This could ultimately lead to an influx of litigation from private clubs, male-only or otherwise, challenging their status within the meaning of Maryland's public accommodation provisions.

— Gloria S. Wilson

Notes

¹The Unruh Civil Rights Act provides, in part: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." Cal. Civ. Code §51 (West 1982).