

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

No.

ELANE PHOTOGRAPHY, LLC.

Plaintiff,

vs.

VANESSA WILLOCK,

Defendant.

**APPEAL FROM THE DECISION AND FINAL ORDER
OF THE NEW MEXICO HUMAN RIGHTS COMMISSION**

COMES NOW Plaintiff, by and through its attorney, and for its complaint states as follows:

Pursuant to Section 28-1-13(A), New Mexico Statutes Annotated, and Rule 1-076(B), Supreme Court Rules Annotated, Plaintiff appeals from the Decision and Final Order of the New Mexico Human Rights Commission in case HRD No. 06-12-20-0685, dated April 9, 2008, copies of which are attached hereto.

1. Elane Photography is a limited liability company owned by Jon and Elaine Huguenin. It is a commercial business that sells its services of taking and creating photographs of weddings, portraits and performing other photographic services.
2. Plaintiff's place of business is in Bernalillo County, New Mexico, and all events connected with this case took place in Bernalillo County.
3. Elaine Huguenin is one of the owners of Elane Photography. She is the main photographer Elane Photography uses for its shoots of various jobs. Elaine Huguenin considers

her photography to be artistic expression because it takes great skill, planning and aesthetic judgment to create a photograph. Elaine Huguenin believes that she implicitly endorses the viewpoints communicated by her photography. Therefore, she will not take photographs that may communicate to others that she or Elane Photography support the viewpoints communicated by her photographs when in fact she does not agree with them and does not want to advance those viewpoints in the marketplace of ideas.

4. Jon Huguenin, the co-owner of Elane Photography with his wife, Elaine, holds the same beliefs expressed in the preceding paragraph and operates Elane Photography with his wife in accord with those beliefs.

5. Because of their beliefs, Jon and Elaine Huguenin agree that Elane Photography will not take photographs of, for example, people without clothes, or photographs that present abortion or horror movies or pornography in a favorable light.

5. The owners and photographers of Elane Photography do not refuse to take photographs of people because of their sexual orientation and have never done so. They do not inquire about a person's sexual orientation from those who seek to purchase photographic services from Elane Photography.

6. Jon and Elaine Huguenin have strong moral and philosophical beliefs that marriage should be defined as one man and one woman. They believe that marriage defined as one man and one woman is the best way to benefit, protect and enhance a society, its families and its individual members.

7. Additionally, Jon and Elaine Huguenin are Christians. They believe the teachings of the Bible. They believe the Bible's teaching that God created marriage as one man and one

woman and that marriage of one man and one woman reflects the relationship of Christ loving the Church.

8. Due to these moral, philosophical and religious beliefs about the definition of marriage, the owners and photographers of Elane Photography will not photograph any situation that will communicate a view that contradicts or conflicts with the owners' beliefs about the definition of marriage. Therefore, the owners and photographers of Elane Photography will not take photographs of situations that will promote or depict favorably such practices as unmarried cohabitation, polygamy, polyamory, no-fault divorce or same-sex "marriage," regardless of the sexual orientation of the people in the photographs.

9. In a letter dated January 8, 2007, the New Mexico Division of Human Rights informed Elane Photography that a complaint had been filed against it. Vanessa Willock filed that complaint, alleging sexual orientation discrimination by a public accommodation under New Mexico Statute § 28-1-7(F) dated December 18, 2006.

10. The complaint to the New Mexico Division of Human Rights involved a situation that occurred on or about September 21, 2006. Elaine Huguenin received an e-mail from Vanessa Willock. The e-mail stated that "[w]e are researching potential photographers for our commitment ceremony on September 15, 2007 in Taos, NM. This is a same-gender ceremony. If you are open to helping us celebrate our day we'd [sic] like to receive pricing information."

11. Elaine Huguenin responded with an e-mail which stated, "As a company, we photograph traditional weddings, engagements, seniors, and several other things such as political photographs and singer's portfolios. Thank you for your interest in our site."

12. Vanessa Willock responded with the following e-mail on or about November 28, 2006: "Thanks for your response below of September 21, 2006. I'm a bit confused, however, by

the wording of your response. Are you saying that your company does not offer your photography services to same-sex couples?"

13. Elaine Huguenin responded on November 28, 2006 with the following e-mail: "Sorry if our last response was a confusing one. Yes, you are correct in saying we do not photograph same-sex weddings, but again, thanks for checking out our site!"

14. Vanessa Willock and Misti Collinsworth conducted a "commitment ceremony" in Taos, New Mexico on September 15, 2007.

15. Reverend Pintki Murray ("Reverend Murray") presided over the ceremony. Reverend Murray stood at the altar in front of approximately 75 guests and witnesses.

16. The flower girls and ring bearer walked down the aisle and gathered in front of the guests near the altar. Willock and Collinsworth proceeded down the aisle as music played and guests watched. Collinsworth wore a traditional white wedding gown.

17. Once the couple arrived at the altar, Reverend Murray began addressing the crowd, and conducted the wedding-like commitment ceremony, which included the reciting of vows, a ring exchange, and a prayer. At the conclusion of the ceremony, Reverend Murray pronounced Willock and Collinsworth, "Partners in Life."

18. The State of New Mexico does not recognize "marriages," or any sort of legal union, between same-sex couples.

19. The New Mexico Division of Human Rights investigated the facts and filed a Commission Complaint of sexual orientation discrimination dated November 28, 2007. The New Mexico Commission on Human Rights conducted a hearing on the complaint on January 28, 2008 where the Commission, represented by a hearing examiner, received evidence and heard witnesses.

20. In an order dated April 9, 2008, the New Mexico Human Rights Commission ruled that Elane Photography had engaged in an illegal act of sexual orientation discrimination by a public accommodation in violation of New Mexico Statute § 28-1-7 when it declined to photograph the same-sex ceremony conducted by Willock and Collingsworth. The Commission ordered Elane Photography to pay the attorney's fees of Vanessa Willock's counsel in the sum of \$6,637.94.

21. Plaintiff asks this Court to reverse the judgment of the New Mexico Human Rights Commission and dismiss the complaint because Elane Photography is not a public accommodation subject to New Mexico Statute § 28-1-7, and has not engaged in discrimination based on "sexual orientation" that New Mexico Statute § 28-1-7 prohibits.

22. Plaintiff further asks this Court to reverse the judgment of the New Mexico Human Rights Commission and dismiss the complaint because the Commission's decision and order violate the Plaintiff's right to freedom of speech under the First Amendment of the U.S. Constitution and Article II, section 17 of the New Mexico Constitution. The Commission's decision and order compels Elane Photography to participate in and advance a viewpoint it would not do so absent government coercion by the Commission. Elane Photography must choose between advancing a viewpoint it opposes or being punished by the Commission for discrimination. This violates Plaintiff's rights to freedom of speech and the implicit right to conscience guaranteed under the First Amendment and the Fourteenth Amendment of the U.S. Constitution and the New Mexico Constitution.

23. The Defendant's complaint and the Commission's decision also violate Elane Photography's rights under the Free Exercise Clause of the First Amendment to the U.S. Constitution and to Article II, Section 11 of the New Mexico Constitution. The owners of Elane

Photography have sincerely-held religious beliefs that marriage should only be defined as one man and one woman. They also have religious beliefs that they should not use Elane Photography to advance a message contrary to their views on the proper definition of marriage. The Defendant's complaint and the Commission's decision substantially burden the religious beliefs and practices of the owners of Elane Photography by forcing Elane Photography to submit to an investigation and trial, and pay attorney's fees of \$6,637.94. The government lacks a compelling state interest, implemented by the least restrictive means, to justify this substantial burden on the Plaintiff's free exercise of religion.

24. New Mexico law is not neutral towards religion or generally applicable because it exempts religious organization from the provisions of the relevant state statutes prohibiting discrimination, but does not exempt other entities, such as the Plaintiff, who exercise their religious beliefs in the operation of their business.

25. The Defendant's complaint and the Commission's ruling also violates the Plaintiff's rights under the New Mexico Religious Freedom Reformation Act ("RFRA"), N.M. Stat. §28-22-1 *et seq.*, by compelling the Company to convey a message that conflicts with its co-owners' sincerely held religious beliefs and thus forcing the owners of Elane Photography to violate those beliefs. The Commission's ruling substantially burdens the Plaintiff's free exercise of religion, and the government lacks a compelling state interest implemented by the least restrictive means.

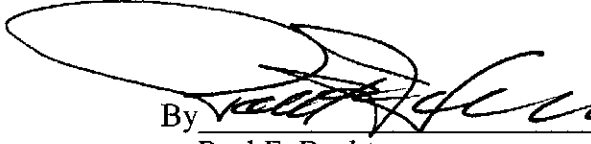
WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

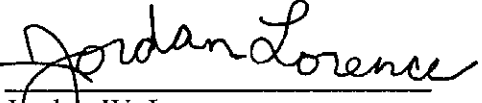
1. Reverse the Human Rights Commission's Decision and Final Order in this case, and reverse the award of attorney's fees to Vanessa Willock;

2. Dismiss the Commission Complaint and the complaint filed by Vanessa Willock with prejudice;
3. Issue a declaratory judgment that Elane Photography, Inc. is not a public accommodation for purposes of the New Mexico Human Rights Act.
4. Issue a declaratory judgment that Elane Photography, Inc., did not engage in sexual orientation discrimination in this case;
5. Rule that the Defendant's complaint, the investigation by the Division of Human Rights and the Decision and Final Order in this case violated Elane Photography's rights to freedom of speech and free exercise of religion under the First Amendment to the U.S. Constitution and Article II, sections 11 and 17 of the New Mexico Constitution, and the New Mexico Religious Freedom Restoration Act, N.M. Stat. §28-22-1 *et seq.*
6. Such other and further relief as the Court deems just and equitable.

Date: June 30, 2008

By


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