

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

Meghan Fenner, f/k/a Michael Fenner,)	
)	
Petitioner,)	
)	
v.)	Cause No. 08AC-CC 00136
)	Division 2
Missouri Commission on Human)	
Rights, et al.,)	
)	
Respondents.)	

**FIRST AMENDED PETITION FOR ADMINISTRATIVE REVIEW OR IN THE
ALTERNATIVE FOR MANDAMUS**

Comes now plaintiff, Meghan Fenner, formerly known as Michael Fenner, through her counsel, and states:

1. On or about September 19, 2007, Petitioner, Meghan Fenner, f/k/a Michael Fenner, filed a timely Charge of Discrimination with the Missouri Commission on Human Rights ("MCHR" or "Commission"), No. E-09/07-32337 ("Charge"), alleging Western Dairy Transport, L.P. ("Western Dairy") violated her rights under the Missouri Human Rights Act ("MHRA"), RSMo. 213.010, *et seq.* by discriminating against her based on disability and sex. A true and correct copy of the Charge of Discrimination is attached hereto as Exhibit A.

2. Fenner is a male-to-female transsexual, meaning that she was born anatomically male, but has a female gender identity, and that she has taken steps to alter her body so that it more closely matches her female gender identity.

3. Respondent, the Missouri Commission on Human Rights was created by statute to,

- among other purposes, eliminate and prevent discrimination in employment because of sex and disability by implementing the Missouri Human Rights Act.
4. Respondent, Alisa Warren, is the executive director of MCHR.
 5. On January 9, 2008, Alisa Warren, acting in her official capacity for MCHR administratively closed the Charge, asserting the MCHR lacked jurisdiction. A true and correct copy of the administrative closure letter is attached hereto as Exhibit B.
 6. The MCHR made its decision that it lacked jurisdiction based on its determination that, "Sexual orientation is not a covered basis under the Missouri Human Rights Act, therefore we have no jurisdiction over this matter. Sexual orientation is not a disability," as indicated in a letter from the MCHR to Petitioner, a true and correct copy of which is attached hereto as Exhibit C, and an Investigative summary stating, "No Jurisdiction over sexual orientation issues," a true and correct copy of which is attached hereto as Exhibit D.
 7. Fenner commenced this action to review the MCHR's final decision on February 8, 2008. The action is timely within the requirements of RSMo. 213.085(2), because it was filed within 30 days after the mailing or delivery of the notice of the Commission's final decision.
 8. Since the time Petitioner filed this action, her name has been lawfully changed from Michael Fenner to Meghan Fenner, in Civil Action No. 08AM-FC00027, Oregon County, Missouri (37th Judicial Circuit). A true and correct copy of the name change order is attached hereto as Exhibit E.

9. Venue is proper.
10. Petitioner is seeking judicial review of said administrative closure pursuant to the provisions of RSMo. 213.085, which provides for judicial review in accordance with RSMo. 536 or, in the alternative, mandamus, pursuant to RSMo. 536.150(1).
11. The MCHR's final decision to administratively close Petitioner's charge of gender discrimination based on "lack of jurisdiction" based on its conclusion transsexualism is "sexual orientation" should be reviewed *de novo*, pursuant to RSMo. 536.140(3) as it is based on the erroneous application of law to facts, as follows:
 - A. Fenner is a male-to-female transsexual, meaning that she was born anatomically male, but has a female gender identity and that she has taken steps to alter her body so that it more closely matches her female gender identity. In particular, she has taken hormonal therapy for at least the last five years to feminize her body.
 - B. Sexual orientation and gender identity are distinct concepts. Sexual orientation is the scientifically accurate term for an individual's enduring romantic, emotional physical and/or spiritual attractions. Gender identity, on the other hand, is a person's internal, personal sense of being a man or a woman. For transsexuals, such as Fenner, birth-assigned sex and gender identity do not match.
 - C. Fenner has had a female gender identity since she was very young. With the assistance and advice of mental health professionals, she has taken steps to more

fully express her female identity, including taking feminizing hormone therapy, wearing her hair long and in stereotypically feminine hair styles, wearing her fingernails long and polished, behaving in a more feminine manner, and otherwise presenting herself as female. Even without wearing makeup and female clothing, her appearance and presentation is stereotypically feminine.

D. Fenner applied for work as a truck driver at Western Dairy Transport (“Western Dairy”) in August 2007.

E. Western Dairy hired Fenner in September 2007. At the time Ms Fenner reported for work, her legal name was still Michael and her driver’s licence identified her as male so Western Dairy identified her as male.

F. Western Dairy discharged Fenner on or about September 6, 2007 because she did not meet Western Dairy’s stereotyped expectations of how a male should appear and how a male should behave.

G. Alternatively, Western Dairy discharged Fenner because she departs from sex stereotypes by being transsexual.

H. Such conduct amounts to unlawful discrimination based on gender in violation of the MHRA’s prohibition on sex discrimination and, therefore, falls within the MCHR’s legislative mandate to accept for filing and investigate charges of discrimination. RSMo. 213.075(1).

12. The MCHR’s final decision to administratively close Petitioner’s charge of disability discrimination based on “lack of jurisdiction” because of its conclusion that transsexual-

ism is “sexual orientation” should be reviewed *de novo*, pursuant to RSMo. 536.140(3) as it is based on an erroneous application of law to facts, as follows:

- A. Fenner is a male-to-female transsexual, meaning that she was born anatomically male, but has a female gender identity and that she has taken steps to alter her body so that it more closely matches her female gender identity. In particular, she has taken hormonal therapy for at least the last five years to feminize her body.
- B. Fenner has the condition known as gender identity disorder. Gender identity disorder (“GID”) is a recognized medical condition identified in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders. DSM-IV 532 (4th ed. 1994).
- C. GID, sometimes known as gender dysphoria or transsexualism, is a serious health condition that involves a strong and consistent cross-gender identification and a persistent discomfort with one’s anatomical sex.
- D. For people with gender dysphoria, the conflict between their gender identity and their anatomy causes extreme psychological distress. Contemporary medical knowledge indicates that gender identity cannot be changed, and that attempts to change a person’s gender identity are futile and unethical.
- E. The prevailing medical standards of care dictate that hormone therapy and living full-time as a member of the gender corresponding with one’s identity are appropriate and effective treatments for that condition.

F. Fenner has had a female gender identity since she was very young. With the assistance and advice of mental health professionals, she has taken steps to more fully express her female identity, including taking feminizing hormone therapy, wearing her hair in long and stereotypically feminine hair styles, wearing her fingernails long and polished, behaving in a more feminine manner, and otherwise presenting herself as female.

G. Western Dairy hired Fenner to work as a truck driver in September 2007 and afterwards learned she was a transsexual in transition.

H. Western Dairy discharged Fenner on or about September 6, 2007 because she is a transsexual and has gender identity disorder.

I. Gender identity disorder is a disability within the meaning of the MHRA, RSMo. 213.010(4), in that it is a physical and mental impairment which substantially interferes with major life activities, including, but not limited to, socialization as defined in the MCHR regulations, 8 CSR 60-3.060(1)(C) and insofar as Western Dairy regarded Fenner as having a disability, in violation of 8 CSR 60-3.060(E).


J. Therefore, Western Dairy's discharge of Fenner amounts to unlawful discrimination under the MHRA and falls within the MCHR's legislative mandate to accept for filing and investigate charges of discrimination. RSMo. 213.075(1).

13. In the alternative, Petitioner states that the MCHR's action exceeded the MCHR's statutory authority; was unauthorized by law; was arbitrary, capricious, and


unreasonable; and, involved an abuse of discretion for the reasons set forth in Paragraphs 8 and 9, in violation of RSMo. 536.140(2).

14. Respondents have affected Petitioner's legal rights and/or privileges by denying her the benefit of an investigation and by denying Petitioner access to the courts.
15. Petitioner has no adequate remedy at law for the harm done by Respondents and, absent relief from this Court, the harm is irreparable.

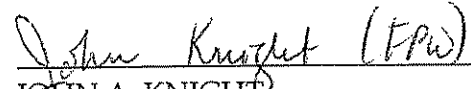
WHEREFORE, Petitioner asks this Court to reverse the final decision of the MCHR dismissing her Charge for lack of jurisdiction and order the MCHR to reopen the Charge for further administrative processing in accordance with RSMo. 213.075, or, in the alternative for mandamus to compel the MCHR to withdraw its administrative closure and reopen its investigation of Petitioner's Charge, and for such further relief as appropriate including the award of attorneys' fees and costs.



SOWERS & WOLF, LLC
FERNE P. WOLF, MBE #29326
530 Maryville Centre, Suite 460
St. Louis, Missouri 63141
314 744-4010
314 744-4026



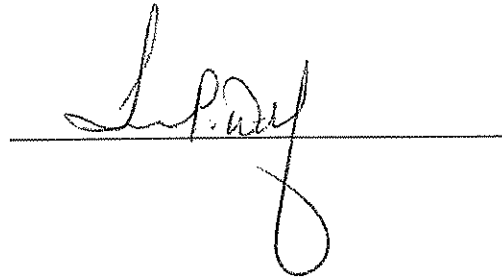
ANTHONY E. ROTHER, #44827
ACLU OF EASTERN MISSOURI
454 Whittier Street
St. Louis, Missouri 63108
(314) 652-3114
(314) 652-3112 facsimile


JOHN A. KNIGHT
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
180 N. Michigan Avenue
Suite 2300
Chicago, Illinois 60601
(312) 201-9740
(312) 288-5225

Certificate of Service

I certify that a copy of the foregoing was served by US Mail, postage prepaid, on the 21st day of May, 2008 on the following counsel of record:

Jeremiah W. (Jay) Nixon, Attorney General
Vanessa Howard Brown, Assistant Attorney General
Old Post Office
PO Box 861
St. Louis, Missouri 63188





MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
 COMMISSION ON HUMAN RIGHTS
CHARGE OF DISCRIMINATION

Enter Charge Number
 FEPA E-09/07-32337
 EEOC 288-2007-01905

This form is affected by the Privacy Act of 1974; see Privacy Act Statement before completing this form.

Missouri Commission on Human Rights and EEOC		
Name (Indicate Mr., Ms., or Mrs.) Michael Fenner	Date of Birth 03/11/1966	Home Telephone No. (Include Area Code) (417) 264-2198
Street Address hcr 64 Box 700	City, State and Zip Code Alton, MO 65606	County Oregon

Named below is the Employer, Labor Organization, Employment Agency, Apprenticeship, Committee, State or Local Government Agency who discriminated against me (if more than one list below).

Name Western Dairy Transport L.P.	No. of Employees/Members 1400	Telephone No. (Include Area Code) 800-469-7714
Street Address 950 Shelton Dr.	City, State and Zip Code Cabool, MO 65689	
Name	No. of Employees/Members	Telephone No. (Include Area Code)
Street Address	City, State and Zip Code	

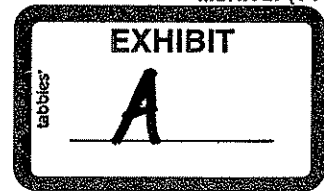
Cause of Discrimination based on (Check appropriate box(es))		Date Discrimination took Place (Month, Day, Year)
<input type="checkbox"/> Race	<input type="checkbox"/> Color	SEP 19 2007
<input type="checkbox"/> National Origin	<input type="checkbox"/> Religion	
<input checked="" type="checkbox"/> Disability	<input type="checkbox"/> Retaliation	
<input checked="" type="checkbox"/> Sex	<input type="checkbox"/> Age	
<input checked="" type="checkbox"/> Other (Specify)	<input checked="" type="checkbox"/> Continuing Action	

The Particulars Are (if additional space is needed, attach extra sheet(s)):

I am a male to female transsexual in transition, with more than 20 years truck driving experience. WDT hired me as a truck driver, I reported to orientation on 9-04-07, on 9-06-07 when the other drivers in the orientation received there job assignments I was told they had problems with my paperwork and it would take a day or so to sort it out. From the time I reported to work on 9-04-07 the mood become uncomfortable, I sat through the orientation presentation with a man who obviously had problems with my condition, he made several references to "worthless liberals", "activist judges", "relative morality", etc. On the last day of orientation he made a bad joke referencing "broke back mountain buddies" looking at me when he said it. The 5 other drivers who attended the orientation received job assignments and were sent on there way, I on the other hand was told I could not start work yet. Ron, (recruiter for company) told me I had to be sent out with a trainer for a few days and they were in the process of finding a suitable trainer. While I was waiting for the company to tell me what to do, I had conversations with Ron and Bob (new driver evaluator) during the conversation Bob told me that rumors about me had started to circulate. Ron indicated that the real problem was that they were having problems finding a driver willing to train me because of my gender issues, at which time he offered some options; those being train with a male driver, a female driver, or he personally would be happy to train me. The company rejected the latter two options and said that the male trainers would not allow me in their trucks. I have more experience than any of the other newly hired drivers, I am DOT qualified, I have a good work history, and excellent references. By the recruiter's (Ron) own admission I am being singled out based on my transsexual status, and this has become an issue of company wide debate and rumor mongoring. I did not ask for any special accomadation, although Ron in recruiting did offer, he told me that management had spoken to an attorney regarding me. The result is that they have terminated me without a stated cause, and yet have hired less qualified applicants.

<input checked="" type="checkbox"/> I want this charge filed with both the EEOC and the Missouri Commission on Human Rights. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY -- (When necessary to meet State and Local Requirements)
I declare under penalty of perjury that the foregoing is true and correct.	I swear or affirm that I have read the above charge and that it is the best of my knowledge, information and belief.
x <u>Michael Fenner</u> 9-18-07 Charging Party (Signature) Date	x <u>Michael Fenner</u> Signature of Complainant
	Subscribed and sworn to before me this date (Day, month and Year)

MCHR-27 (4-99) AI





MATT BLUNT
GOVERNOR

MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
MISSOURI COMMISSION ON HUMAN RIGHTS

TODD SMITH
DEPARTMENT DIRECTOR

ALVIN CARTER
COMMISSION CHAIRPERSON

ALISA WARREN
EXECUTIVE DIRECTOR

January 9, 2008

CEO
WESTERN DAIRY TRANSPORT
950 Shelton Drive
Cabool, MO 65689

RE: Michael Fenner vs. WESTERN DAIRY TRANSPORT
E-09/07-32337 28E-2007-01905C

Dear Sir or Madam:

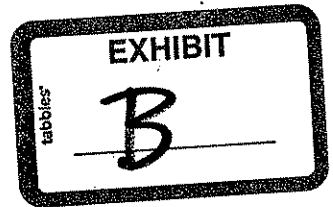
This letter is to notify you of the determination of the Missouri Commission on Human Rights (MCHR). The Executive Director has rendered a finding of Administrative Closure due to the fact that MCHR lacks jurisdiction in this matter.

The Complainant has been advised of the closure of the case and of the right to apply for judicial review. If no appeal is made, the matter will remain closed.

Please be advised that unless we are notified of an appeal, the file will be destroyed after three (3) years from the date of closure.

Respectfully,

Alisa Warren
Executive Director



3315 W. TRUMAN BLVD.
P.O. Box 1129
JEFFERSON CITY, MO 65102-1129
PHONE: 573-751-3325
FAX: 573-751-2905

111 N. 7TH STREET, SUITE 903
ST. LOUIS, MO 63101-2100
PHONE: 314-340-7590
FAX: 314-340-7238

P.O. Box 1300
OZARK, MO 65721-1300
FAX: 417-895-6024

P.O. Box 014050
KANSAS CITY, MO 64101-0050
FAX: 816-889-3582

106 ARTHUR STREET
SUITE D
SIKESTON, MO 63801-5454
FAX: 573-472-5321



MATT BLUNT
GOVERNOR

MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
MISSOURI COMMISSION ON HUMAN RIGHTS



ROD CHAPEL
DEPARTMENT DIRECTOR

ALVIN CARTER
COMMISSION CHAIRPERSON

ERIC KREKEL
ACTING EXECUTIVE DIRECTOR

November 19, 2007

Michael Fenner
HCR 64 Box 700
Alton, MO 65606

RE: Fenner v. Western Dairy Transport
E-09/07-32337

Dear Mr Fenner:

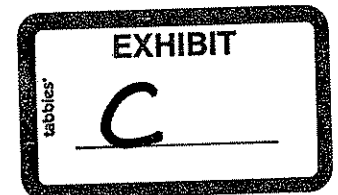
The Missouri Commission on Human Rights (MCHR) has jurisdiction to investigate complaints of discrimination in employment, housing and public accommodations on the basis of race, color, sex, age (as it relates to employment only), national origin, ancestry, religion, disability and familial status (as it relates to housing only).

Sexual orientation is not a covered basis under the Missouri Human Rights Act, therefore we have no jurisdiction over this matter. Sexual orientation is not a disability.

I am sorry we could not be of assistance in this matter. This case will be Administratively Closed.

Sincerely,

Karen Anderson
Unit Supervisor
karen.anderson@dolir.mo.gov
573-522-1026



X

3315 W. TRUMAN BLVD.
P.O. Box 1129
JEFFERSON CITY, MO 65102-1129
PHONE: 573-751-3325
FAX: 573-751-2905
TTY: 573-526-5091

□

505 WASHINGTON AVENUE
ST. LOUIS, MO 63101-1298
PHONE: 314-340-7590
FAX: 314-340-7238
TTY: 314-340-7803

□

505 EAST WALNUT STREET
SPRINGFIELD, MO 65805-2305
PHONE: 417-895-5620
FAX: 417-895-5637

□

1411 MAIN STREET
2ND FLOOR
KANSAS CITY, MO 64105-2110
PHONE: 816-889-3584
FAX: 816-889-3582
TTY: 816-889-3581

□

106 ARTHUR STREET
SUITE D
SIKESTON, MO 63801-5453
PHONE: 573-472-5320
FAX: 573-472-6321
TTY: 573-472-6223

INVESTIGATIVE SUMMARY

Michael Fenner
HCR 64 Box 700
Alton, MO 65606

Complainant

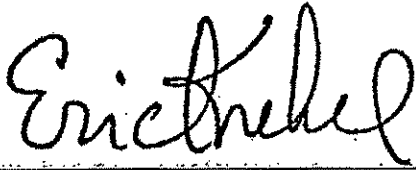
MCHR CASE NO.: E-09/07-32337
EEOC Case NO: 28E-2008-01905C

Western Dairy Transport
950 Shelton Drive
Cabool, MO 65689

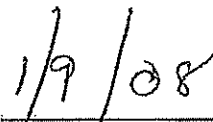
7

Respondent

Allegation: Disparate Treatment/Transsexual in transition – No Jurisdiction over sexual orientation issues



Eric Krekel, Acting Executive Director



Date



IN THE CIRCUIT COURT OF OREGON COUNTY, MISSOURI
AT ALTON

In re the Matter of:
Michael Fenner

Petitioner.

Case No. 08Am-FC00027

FILED

AT _____ O'clock _____ Minutes _____ M.

MAR 19 2008

DOROTHY BARTON
Circuit Clerk & Ex-Officio Recorder
Oregon County, MO

ORDER GRANTING CHANGE OF NAME

This matter came to be heard upon the petition of Michael Fenner, and the Court having read and considered said Petition, now finds as follows:

- (a) That this Court has jurisdiction to change the legal name of Petitioner.
- (b) That the present name of Petitioner is Michael Allen Fenner; and the name desired is Meghan Elizabeth Fenner.
- (c) That Petitioner has complied with all requirements of the law for a change of name.
- (d) That Petitioner is a resident of the county in which the change of name is sought.
- (e) That Petitioner resides at HCR 64 Box 700 Alton, MO 65606.
- (f) That the Petitioner was born on March 11, 1966 at Kalamazoo, MI, and is now 42 years old.
- (g) That Petitioner's father's name and mother's maiden name are as follows:
William B. Fenner and Sharon K. Fenner, respectively.
- (h) That Petitioner has two children and their names are:
Madison E. Fenner and Margaret M. Fenner
- ~~(i) That Petitioner has changed his/her name prior to this petition.~~
- (j) That there are 0 judgments for money pending against petitioner which have not been satisfied.
- (k) That there are 0 actions for money pending against petitioner.
- (l) That Petitioner's request is made in good faith and without intent to defraud or mislead. Petitioner does not a change of name in order to avoid or evade any debts or obligations, nor to further any fraudulent intent or illegal purpose.
- (m) That no reasonable objection has been made to the proposed change of name.
- (n) That Petitioner desires to change his/her name for good and sufficient cause.



IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above named Petition is GRANTED, that Petitioner's name be changed from Michael Allen Fenner, to Meghan Elizabeth Fenner by which said last-mentioned name, Petitioner shall be hereafter known and called, and that such change is to be made, and spread upon the records of the Court, in proper form. *Publication 10.5510.*

Dated: 3-18-08

Judge: *[Signature]*

Submitted by Petitioner:

Michael Allen Fenner
HCR 64 Box 700
Alton, MO 65606
616.706.1806

STATE OF _____)
))
COUNTY OF _____)

ss.

_____, being duly sworn, upon his/her oath, states that he/she is the above named petitioner and the facts and matters contained in the above petition are true according to his/her best knowledge and belief.

My Commission Expires: _____