

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1333**

Nicole LaPoint,
Appellant,

vs.

Family Orthodontics, P. A.,
Respondent.

**Filed April 9, 2018
Affirmed
Florey, Judge
Dissenting, Bratvold, Judge**

Hennepin County District Court
File No. 27-CV-13-18122

Steven Andrew Smith, Matthew A. Frank, Nichols Kaster, PLLP, Minneapolis, Minnesota
(for appellant)

Marshall H. Tanick, Teresa J. Ayling, Hellmuth & Johnson, PLLC, Edina, Minnesota (for
respondent)

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Florey,
Judge.

U N P U B L I S H E D O P I N I O N

FLOREY, Judge

On appeal following the supreme court's remand to the district court for
consideration of whether the district court correctly applied the law, appellant Nicole
LaPoint contends that the district court erred in concluding that it did not misapply the law

when it found that respondent Family Orthodontics P.A. did not discriminate against appellant under the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01-.44 (2016 & Supp. 2017). We affirm.

FACTS

This case arises from a decision by Dr. Angela Ross, owner of Family Orthodontics P.A., to rescind a job offer to appellant after appellant disclosed her pregnancy and indicated that she intended to take 12 weeks of maternity leave. Dr. Ross, in rescinding the offer, indicated that she was confused as to why appellant did not tell her of the pregnancy during the interview, and was concerned that the office could not accommodate a 12-week maternity leave. Respondent's office policy only permitted employees to take six weeks of maternity leave. The district court found that Dr. Ross rescinded the job offer because of the disruption a 12-week maternity leave would cause to the office, and not because of the pregnancy.

This court reversed the district court's judgment, holding that appellant proved her claim of discrimination. *LaPoint v. Family Orthodontics, P.A.*, 872 N.W.2d 889, 894 (Minn. App. 2015), *rev'd*, 892 N.W.2d 506 (Minn. 2017). The Minnesota Supreme Court granted review and reversed the decision of this court. 892 N.W.2d at 508. The supreme court remanded the case to the district court for consideration of whether the district court incorrectly believed that animus was required for a finding of discrimination, and whether it would have made the same findings if it had "applied the correct law regarding animus." *Id.* at 517. On remand, the district court upheld its original decision, indicating that it had not believed that animus was required for a finding of discrimination, and that it "did not

base its decision on [respondent's] lack of animus towards [appellant] or her pregnancy status.” The district court indicated that its original decision was based on appellant’s failure “to prove her pregnancy ‘actually motivated’ [respondent’s] decision not to hire her.”

This appeal followed.

D E C I S I O N

The MHRA “prohibits disparate treatment of pregnant women” in employment and hiring practices. *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 624 (Minn. 1988). Under the MHRA, it is generally an unfair employment practice for an employer to “refuse to hire” a person because of sex or to “require or request” a job applicant to provide information concerning sex. Minn. Stat. § 363A.08, subds. 2, 4(a)(1). “Sex” is defined as “pregnancy, childbirth, and disabilities related to pregnancy or childbirth.” Minn. Stat. § 363A.03, subd. 42.

“When a plaintiff alleges disparate treatment [under the MHRA], liability depends on whether the protected trait *actually motivated* the employer’s decision.” *Goins v. W. Grp.*, 635 N.W.2d 717, 722 (Minn. 2001) (emphasis added) (quotation omitted). This standard is satisfied if the plaintiff can demonstrate that the protected trait “was ‘a substantial causative factor’ in the employment decision.” *LaPoint*, 892 N.W.2d at 513 (quoting *Anderson*, 417 N.W.2d at 624). The plaintiff is not required to prove that the employer held animus toward the protected trait in order to prove that it actually motivated the employer’s decision. *Id.* at 517. Even if an employer has a legitimate reason for the adverse employment decision, a plaintiff may prevail “if an illegitimate reason ‘more likely

than not’” motivated the employer’s decision. *McGrath v. TCF Bank Sav., FSB*, 509 N.W.2d 365, 366 (Minn. 1993) (quoting *Anderson*, 417 N.W.2d at 627).

“[T]he ultimate question of whether [a] defendant discriminated against [a] plaintiff is one of fact.” *LaPoint*, 892 N.W.2d at 514. We review findings of fact for clear error and “accord[] great deference” to a district court’s findings because of the advantage the district court has in “hearing the testimony, assessing relative credibility of witnesses and acquiring a thorough understanding of the circumstances unique to the matter before it.” *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996). We review questions of law de novo. *Gamble v. Twin Cities Concrete Prods.*, 852 N.W.2d 245, 248 (Minn. 2014).

Appellant argues that the two concerns that Dr. Ross expressed to appellant when she rescinded the offer prove that the pregnancy actually motivated Dr. Ross’s decision; any finding to the contrary, appellant argues, is legal error based on a misapplication of the law. In the alternative, she argues, the district court’s findings of fact are clearly erroneous. Finally, she argues that the district court’s postremand order fails to adequately address the finding of no discrimination in light of the supreme court’s clarification that animus is not required; that is, appellant argues that additional findings of fact were required on remand to validate a finding of no discrimination.

Appellant also asserts that an employer’s adverse hiring decision motivated by an applicant’s proposed length of maternity leave is discrimination “as a matter of law” because the proposed leave is “related to” pregnancy. To support her argument that an employer’s decision need only be “related to” a protected status to be discriminatory, appellant cites a footnote from the supreme court remarking that “pregnancy-related

considerations” may have played a role in respondent’s hiring decision. *LaPoint*, 892 N.W.2d at 517 n.3. From this footnote, appellant argues that an employer’s illegitimate motivating factor need only be somehow “related to” a protected trait—a standard she argues she has met by labeling the requested 12-week leave of absence as maternity leave. This is not the standard rearticulated by the supreme court in *LaPoint*: the standard for whether discrimination occurred is whether a “protected characteristic actually motivated the employer’s conduct.” *Id.* at 514 (quotation omitted) (rejecting a standard that required a “specific link” between the discriminatory purpose and the employment decision); *see also Goins*, 635 N.W.2d at 722 (indicating that the protected trait “must have actually played a role in the employer’s decisionmaking process” (quotations omitted)). Based on the supreme court’s narrow instructions on remand, we need not reach appellant’s argument that the district court legally erred in its original decision when it concluded that the discrimination standard was not met by a hiring decision based on a request for 12 weeks of leave.

Appellant likewise argues that the district court committed legal error when it found that appellant’s failure to disclose the pregnancy did not actually motivate the adverse hiring decision. While it is unlawful to request or require an applicant to furnish information about pregnancy, the district court found that the adverse hiring decision was not made because of appellant’s failure to disclose her pregnancy; rather, it was made solely because of the requested leave of absence. Appellant argues that the district court legally erred, but to so conclude would require us to find that the district court’s factual finding was clearly erroneous. On this point, we defer to the supreme court’s conclusion:

“there is reasonable evidence in the record to support the [district] court’s findings.”
LaPoint, 892 N.W.2d at 516 (quotation omitted).

Finally, appellant argues that the district court failed to adequately explain on remand how it did not base its decision on Dr. Ross’s lack of animus toward the pregnancy, given the district court’s repeated references in its original order to Dr. Ross’s lack of anger or hostility. The supreme court charged the district court with considering whether it believed that animus was required for a finding of discrimination under the MHRA, and if it misapplied the law concerning animus, whether it would make the same findings. The district court concluded that it had not believed that animus was required for a finding of discrimination when it issued its decision, and it did not base its decision on Dr. Ross’s lack of animus. The district court’s postremand order adequately explained its original decision. We discern no reversible error.

Affirmed.

BRATVOLD, Judge (dissenting)

While I am mindful of the supreme court's narrow instructions on remand, I respectfully dissent. I agree with the majority's summary of the applicable law and, in particular, that this appeal turns on our review of the district court's conclusion that Family Orthodontics did not discriminate against LaPoint in rescinding her job offer after Dr. Ross found out that LaPoint was pregnant. The majority is correct that our standard of review requires that we defer to a district court's factual findings. But we review *de novo* the district court's application of the law to those facts. *In re Petition for Distribution of Attorney's Fees between Stowman Law Firm, P.A.*, 870 N.W.2d 755, 759 (Minn. 2015) (*de novo* review of legal conclusions after bench trial).

In my opinion, however, the district court's terse statement on remand that LaPoint failed to prove her pregnancy "actually motivated" Family Orthodontics' decision not to hire her is inconsistent with the law and with the district court's detailed findings of fact after trial. The district court did not amend or alter in any way the relevant factual findings upon remand. I conclude that district court's decision is founded upon a legal error that requires reversal.

The MHRA is a remedial act that should be construed liberally in order to accomplish its purpose of "secur[ing] for persons in this state, freedom from discrimination." Minn. Stat. §§ 363A.04, .02, subd. 1(a) (2016). To combat pregnancy discrimination, it is critical that we rigorously enforce the MHRA. When the correct legal standard is applied to the district court's factual findings, I can reach only one conclusion: Family Orthodontics discriminated against LaPoint on the basis of her pregnancy.

The majority decision correctly recognizes that Family Orthodontics' liability for discrimination under the MHRA depends on whether LaPoint's failure to disclose her pregnancy "actually motivated" Dr. Ross's decision to withdraw the job offer. *See Goins v. W. Grp.*, 635 N.W.2d 717, 722 (Minn. 2001). The majority also recognizes that the supreme court's decision in the previous appeal held that this standard is satisfied if pregnancy "was 'a substantial causative factor' in the employment decision." *LaPoint v. Family Orthodontics, P.A.*, 892 N.W.2d 506, 513 (Minn. 2017).

The district court expressly found that Dr. Ross cited two reasons for her employment decision and that the reasons were interrelated. First, Dr. Ross withdrew the job offer because LaPoint chose not to disclose her pregnancy during her interview. The district court stated this finding as follows: "Although Dr. Ross' handwritten notes, voicemail, and follow-up email to [LaPoint] cited [LaPoint's] failure to disclose her pregnancy during the interview as a reason for withdrawing the job offer, the totality of the evidence establishes that Dr. Ross was not upset about the pregnancy." Second, Dr. Ross withdrew the job offer because LaPoint requested 12 weeks of maternity leave. The district court stated this finding as follows: "Dr. Ross' overriding concern has been the disruption that would be caused by [LaPoint's] absence if [Ross] were to deviate from its policy of limiting maternity leave to six weeks."

I disagree with the majority's characterization of the district court's decision as finding that the hiring decision "was made solely because of the requested leave of absence." While this is how the district court describes its decision in a posttrial memoranda, it is not consistent with the court's findings of fact. It is true that the district

court found Dr. Ross’s “overriding concern” was the length of maternity leave, but the district court also found that Dr. Ross told LaPoint that she was withdrawing the job offer because LaPoint failed to disclose her pregnancy during the interview. In fact, when the supreme court reviewed the district court’s decision in the first appeal, it determined that Dr. Ross’s statement “that LaPoint’s failure to disclose her pregnancy during the interview was a concern, provide evidence that such considerations ‘actually motivated’ Dr. Ross’s decision.” *Id.* at 516.

LaPoint’s choice not to disclose her need for maternity leave during her job interview is an illegitimate reason to withdraw a job offer. Family Orthodontics could not lawfully ask whether LaPoint was pregnant during the job interview. *See* Minn. Stat. § 363A.08, subd. 4(a)(1) (2016) (prohibiting an employer from requiring or requesting that a job applicant provide information pertaining to sex). The Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01-.44 (2016 & Supp. 2017), protects an applicant’s right to withhold her pregnancy status and the need for maternity leave. Thus, the first reason Dr. Ross rescinded her job offer penalizes LaPoint for failing to disclose a fact that Minnesota law prohibits Family Orthodontics from inquiring about during the interview.

Because Minnesota law requires that LaPoint prove that pregnancy was “a substantial causative factor” and not “the causative factor” in the employment decision, and the district court made the necessary factual finding based on the record evidence, I would reverse. Simply stated, I conclude that the district court erred in determining that Family Orthodontics may escape liability because Dr. Ross gave two reasons for her decision, even if the two reasons are interrelated. *McGrath v. TCF Bank Sav., FSB*, 509

N.W.2d 365, 366 (Minn. 1993); *see also LaPoint*, 892 N.W.2d. at 519 (Chutich, J., dissenting) (stating that “two reasons, even if interrelated, are still two reasons;” one unlawful reason “gives rise to liability” under the MHRA).

Unlike the majority, I am not persuaded by the supreme court’s single statement that there was “reasonable evidence in the record to support the [district] court’s findings.” *Id.* at 516. In reviewing the same factual findings that are before us today, the supreme court also stated it was left “with doubt about whether the district court properly applied the law.” *Id.* at 517. The supreme court remanded with instructions to consider whether the district court had incorrectly believed that animus was required for a finding of discrimination, and expressed uncertainty whether the district court would make “the same findings” upon remand. *Id.*

The district court has made the same findings of fact on remand and merely issued ten lines in a memoranda. Thus, this court is squarely presented with whether the district court erred in its application of the law to its factual findings. I conclude that it did. Affirming the district court’s decision based on its factual findings implicitly approves Dr. Ross’s discriminatory conduct and potentially renders meaningless Minn. Stat. § 363A.08, subd. 4(a)(1)’s prohibition against asking applicants about maternity needs before extending a job offer. Because the district court did not amend its findings upon remand, and these findings, as a matter of law, establish Family Orthodontics’ liability for discrimination under the MHRA, I respectfully dissent.