

A Catholic School Teacher Received IVF. Then She Was Fired For Being Immoral.



In March 2010, Emily Herx and her husband began in vitro fertilization — a process in which an egg and sperm are combined in a lab and then transferred to the uterus — in hopes that she would become pregnant. As part of the procedure, she needed to take a few days off from her job as a language arts teacher at St. Vincent de Paul, a Catholic school in Fort Wayne, Indiana. So in February, she e-mailed the school's principal, Sandra Guffey, who wrote back in support: "You

are in my prayers." Unfortunately, the IVF failed.

The following spring, Herx and her husband began a second round of IVF. When Herx requested time off, she was called in to a meeting with Monsignor John Kuzmich, the pastor of St. Vincent de Paul Catholic Church. Kuzmich told her that another teacher had complained about Herx's participation in IVF, and the monsignor feared a "scandal" if word of her treatment got out further.

When she was hired, Herx had signed what amounted to a "morals clause" in which she'd agreed to conduct herself "in accordance with the ... teaching, authority, law, and governance of the church." However, Herx claimed that this was the first time she had been informed that receiving fertility treatments was in violation of those teachings.

On April 25, 2011, Herx received notification that her teaching contract would not be renewed due to "improprieties relating to church teachings or law."

In a meeting that Herx requested, Kuzmich confirmed that Herx's performance had nothing to do with her termination. Yet, according to her complaint, he told her that she was a "grave, immoral sinner" and that there wouldn't have been an issue had she kept the news of her treatments to herself. In July, Herx appealed to the bishop of the Fort Wayne diocese, who also refused to renew her contract, claiming that IVF is "an intrinsic evil, which means that no circumstances can justify it."

On April 20, 2012, Herx filed a lawsuit against the diocese, claiming sex discrimination. The diocese requested that the case be thrown out, insisting that "the core issue raised in

this lawsuit [is] a challenge to the diocese's right, as a religious employer, to make religious-based decisions consistent with its religious standards on an impartial basis."

The Verdict

"The triable issue is whether Mrs. Herx was nonrenewed because of her sex or because of a belief about the morality of in vitro fertilization," wrote U.S. district judge Robert Miller in response to the motion from the diocese to throw out the case. And though the diocese tried to claim otherwise, Miller was clear that religious employers are not immune to federal laws that govern sex discrimination.

At the trial, which began on December 16, 2014, and lasted for four days, the diocese argued that its decision to terminate Herx was religiously based, since the church considers IVF to be "gravely immoral" for both women and men engaged in the treatment. Throughout the proceedings, Herx's attorney, Kathleen DeLaney, argued that "the [Civil Rights Act] must protect the rights of women to attempt to have children through all methods." The jury agreed. It awarded Herx \$1.9 million for compensatory damages, medical care, and lost wages. After the trial, attorneys for the diocese argued that the award be reduced, and Judge Miller complied, bringing the total down to \$543,803. The diocese intends to appeal.

**Now, you be the judge: Did the church have the right to fire Emily Herx?
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