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Deseret Morning News, Tuesday, September 26, 2006

Fired UTA driver gets her day in court

By Geoffrey Fattah

Deseret Morning News

DENVER — Wearing a smart, black business suit, her long brown chestnut hair streaked with highlights, Krystal Etsitty sat in a 10th Circuit courtroom and listened to legal arguments from an attorney for her former employer, UTA.

But when she was first hired as a UTA bus driver, Etsitty was a man.

Etsitty is suing the Utah Transit Authority for discriminating against her because she is a transsexual. The case could have far-reaching legal implications if the 10th Circuit adds transsexuals as a protected class from sexual discrimination under Title 7 of the Civil Rights Act.

Her case was thrown out by a federal judge in Utah. Etsitty is asking the 10th Circuit to reverse the decision.

The case comes down to which bathroom Etsitty used while working at UTA. As a pre-operative transsexual, Etsitty lives her life as a woman but still has male genitalia. Shortly after UTA hired Etsitty in October 2001, she informed her manager that she was a transsexual and would start dressing and living like a woman.

After about two months of dressing like a woman and using the women's restroom without any complaints, UTA management expressed concern that Etsitty was using female facilities along UTA routes. Fearing liability and negative reaction, UTA fired Etsitty.

"When you discriminate against a transgender individual, you're discriminating against them based on sex," attorney Erik Strindberg told the three-judge panel on Monday.

Strindberg argued that sex is more than just genetics but is an identity as well.

Although UTA fired Etsitty, it did invite her to reapply for a job after her sex-change surgery. Strindberg argued people who are transgender are stuck in a legal limbo, not protected under the law against sex discrimination.

Judge Phillip Figa said the law doesn't take into account such a situation. However, he wondered given the lack of any complaints about Etsitty, if UTA wasn't "manufacturing a problem" to get rid of her.

UTA attorney Scott Hagen said his client was put in a difficult situation. Hagen argued that with Etsitty driving 54 different bus routes, UTA couldn't take the chance of having problems with her using the women's restrooms of local businesses. UTA contracts with local businesses to allow their drivers to use their facilities.

Bottom line, Hagen said UTA was concerned with someone wearing a UTA uniform using the wrong bathroom.

Judge Robert Henry said there is an emerging trend of court cases that suggest a transsexual who has had surgery is protected under Title 7. Some states allow a change in gender for drivers' licenses after surgery also.

Hagen said Utah lacks such a law.

Strindberg likened the situation to discrimination against women in corporate boardrooms because of a lack of women's restrooms, as well as segregated bathrooms for black people.

Outside court, Etsitty said transgender people should have the same rights as others, and she worries the court will leave her and others in legal uncertainty. When asked if she plans to have her surgery, Etsitty said "no comment" but did add she would like to work for UTA again someday.

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