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COVER STORY

Transgender inmate's civil rights suit revived



Daily Journal Photo

Veteran civil rights attorney Sanford Jay Rosen wrote an amicus brief on behalf of a transgender prisoner who claims that blocking her request for sex reassignment surgery constitutes a civil rights violation.

By John Roemer / Daily Journal Staff Writer

Transgender state prison inmates seeking sex reassignment surgery face huge hurdles, chiefly strong pushback from government officials. But as the culture moves towards another gay rights frontier, shown by broad acceptance of former Olympic champion Caitlyn Jenner's transition from male to female, relief could be in sight even for those behind bars.

On Friday, a 9th U.S. Circuit Court of Appeals panel reversed an Eastern District judge and revived a civil rights suit by a transgender inmate who claims to have severe gender dysphoria, a condition previously known as gender identity disorder.

The state's defense lawyers conceded that gender dysphoria is a serious medical condition, the panel said.

The judges added that deliberate indifference to a prisoner's serious medical needs is cruel and unusual punishment under the Eighth Amendment.

Without ruling on whether sex reassignment surgery is medically necessary for plaintiff Mia Rosati, or whether prison officials have other legitimate reasons for denying her that treatment, the panel held that U.S. District Judge Ralph R. Beistline of Alaska, who heard the case by assignment, should not have dismissed the matter. *Rosati v. Igbinoso*, 2015 DJDAR 7387.

Such suits are becoming more common. Another that is further advanced is set for oral argument Aug. 13 in San Francisco on the state's appeal of a Northern District judge's order to prison officials to

provide Michelle-Lael Norsworthy with sex reassignment surgery promptly. *Norsworthy v. Beard*, 15-15712.

Both Rosati and Norsworthy are serving time for murder in men's prisons, lawyers said.

A veteran civil rights lawyer involved in the Norsworthy case, Sanford Jay Rosen, noted that *Rosati* was published on the day that the U.S. Supreme Court ruled same-sex marriage a right.

"There's huge cause to rejoice," said Rosen, of San Francisco's Rosen Bien Galvan & Grunfeld LLP. "Marriage equality and transgender progress on the same day — we are twice blessed. The gay rights juggernaut is still moving at lightning speed."

He added, "For many homophobic people, transgender rights are the hardest to accept."

Rosen wrote a friend of the court brief for Norsworthy on behalf of Bay Area Lawyers for Individual Freedom, a bar association of more than 600 lesbian, gay, bisexual and transgender attorneys.

In an interview, he said that prison officials' argument that they had afforded Norsworthy hormone therapy was insufficient.

"I commend the CDCR for giving at least some recognition to these issues," he said, referring to the California Department of Correction and Rehabilitation. "But Ms. Norsworthy suffered a horrific gang rape in prison and contracted hepatitis C, making hormone therapy no longer effective."

In Friday's case, the circuit panel wrote that Rosati plausibly alleged that prison officials were aware of her medical history and need for treatment. She cited repeated episodes of attempted self-castration.

Her allegations that officials denied the surgery due to a blanket policy against that medical procedure were also plausible, the panel held. Indeed, the prison's lawyers conceded at oral argument that no California prisoner has ever received sex reassignment surgery.

'Deprivation of medical care isn't part of a prison sentence.'

— Peter C. Renn

The panel quoted from a 2014 opinion holding that the "blanket, categorical denial of medically indicated surgery solely on the basis of an administrative policy that one eye is good enough for prison inmates is the paradigm of deliberate indifference."

The lawyer who argued Rosati's case, Peter C. Renn of Lambda Legal Defense & Education Fund, said, "Deprivation of medical care isn't part of a prison sentence."

"The state calls sex reassignment surgery a cosmetic procedure, but it can be life-saving," he added. "Ms. Rosati's case is as grim as it gets. She successfully castrated herself. Yet they had the gall to say she didn't have a severe enough condition to warrant surgery."

Government lawyers could not be reached. In court filings, they argued that no deliberate indifference was involved because Rosati's claims amount only to a difference of medical opinion.

The circuit panel, consisting of Barry G. Silverman, Ronald M. Gould and Andrew D. Hurwitz, cited cases in other jurisdictions that have held similar allegations by transgender inmates are sufficient for cases to go forward.