

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

KELLY WULFEKUHLE	)	CASE NO. 4-02-CV-10282
and	)	
GARY WULFEKUHLE,	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER</b>
	)	
PLANNED PARENTHOOD OF	)	
GREATER IOWA, INC., AND	)	
SARAH CARLSON,	)	
	)	
Defendants.	)	

THE COURT HAS BEFORE IT a motion to dismiss, filed July 9, 2002 by defendants Planned Parenthood of Greater Iowa, Inc., and Sarah Carlson. Plaintiffs resisted the motion August 22, 2002, and defendants filed a reply on August 26, 2002. The motion is considered fully submitted.

I. BACKGROUND

The following facts are accepted as true, as alleged in plaintiffs' petition. *McSherry v. TransWorld Airlines, Inc.*, 81 F.3d 739, 740 (8th Cir. 1996). Plaintiff Kelli Wulfekuhle ("Kelli") was employed by defendant, Planned Parenthood, from September 30, 1993 until January 31, 2001. On November 13, 1999, Kelli informed defendant, Sarah Carlson, a supervisory employee of Planned Parenthood, that she was pregnant with an expected due date of August 16, 2000. On July 10, 2000, Kelli was placed on bed rest by her obstetrician and took leave from Planned Parenthood. On October 18, 2000, while Kelli was still on maternity leave, Carlson notified her that her job

performance had fallen below set standards, and that her position of clinic manger had been eliminated.

Plaintiffs filed a Petition with the Iowa District Court for Polk County on May 15, 2002, claiming that defendants constructively terminated Kelli's employment with Planned Parenthood by removing her from the Clinic Manager position and refusing to reinstate her. Plaintiffs alleged that defendants terminated Kelli's employment, because she sought and received maternity leave to which she was entitled under the FMLA. However, plaintiffs did not allege a violation of the FMLA. Instead, they filed a state tort claim for wrongful termination in violation of "the public policy of the State of Iowa." Specifically, plaintiffs alleged that: (1) Kelli Wulfekuhle has suffered and will continue to suffer, substantial loss in earnings, insurance benefits, retirement benefits, and other employee benefits; (2) she has incurred, and will continue to incur, expenses seeking other comparable employment; and (3) she has suffered, and will continue to suffer, mental anguish and emotional distress. Plaintiffs further claimed that defendants' actions so disabled Kelli Wulfekuhle that her husband, Gary Wulfekuhle, has been deprived of her society, companionship, and services, thereby constituting loss of consortium.

On June 18, 2002 defendants removed the case to this Court. Plaintiffs did not timely seek remand. Defendants then moved for dismissal on July 9, 2002. In their motion to dismiss, defendants argued that plaintiffs' state law claim for wrongful discharge in violation of public policy is based solely on rights set forth in the FMLA, and that the FMLA does not allow the damages sought by plaintiff.

## II. APPLICABLE LAW AND DISCUSSION

The threshold question in this case is whether the Court has subject matter jurisdiction. *See* 28 U.S.C. § 1447 ("If at any time before final judgment it appears that the district court lacks subject

matter jurisdiction, the case shall be remanded.”). Absent diversity jurisdiction, a federal court ordinarily has the power to hear a controversy only if a federal question appears on the face of plaintiff’s well-pleaded complaint. *See Franchise Tax Bd. of the State of Cal. v. Construction Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1, 9-10 (1941). The artful pleading doctrine creates an exception to this rule, allowing removal where (1) federal law completely preempts a plaintiff’s state-law claim; *Rivet v. Regions Bank of La.*, 522 U.S. 470, 476 (1998); or (2) an issue of federal law is a necessary and central element of plaintiff’s state law claim. *Bellido-Sullivan v. American Int’l. Group, Inc.*, 123 F. Supp.2d 161, 164 (S.D.N.Y. 2000). There is no evidence in the record supporting diversity jurisdiction, and plaintiffs’ well-pleaded complaint does not pose a federal question. The Court must therefore determine whether the doctrine of artful pleading applies in this case.

Considering the question of total preemption, the Court notes that “no provision of the FMLA evinces an intent by Congress that lawsuits based on wrongful termination for taking leaves of absence should be the exclusive province of the federal courts.” *Id.* To the contrary, the plain language of § 2651(b) provides: “Nothing in this Act . . . shall be construed to supercede any provision of any State or local law that provides greater family or medical leave rights than the rights established under this Act . . . .” The Court finds that the plain language of the FMLA makes clear that it does not completely preempt state law. *See Bellido-Sullivan v. American Int’l. Group, Inc.*, 123 F. Supp.2d 161, 164-67 (S.D.N.Y. 2000) (holding that FMLA does not completely preempt state law); *Findlay v. PHE, Inc.*, 1999 WL 1939246, at \*3 (M.D.N.C. 1999) (same); and *Danfelt v. Board of County Comm’rs*

of *Washington County*, 998 F. Supp. 606, 611 (D. Md. 1998) (same).<sup>1</sup>

The Court next considers whether the FMLA is a “necessary and central” element of plaintiff’s cause of action. *Bellido-Sullivan*, 123 F. Supp.2d at 164. Plaintiffs filed a common law wrongful termination claim, accompanied by a loss of consortium claim. The Iowa Supreme Court has held that the tort of wrongful termination may be successfully brought when based upon “ a clear, well-recognized public policy.” *Harvey v. Care Initiatives, Inc.*, 634 N.W.2d 681, 685 (Iowa 2001). It is up to the Iowa courts to determine whether plaintiffs’ claims fall within the contours of a clear, well-recognized public policy in the state of Iowa. This Court recognizes that plaintiffs may very well argue that the State of Iowa should adopt the public policy set forth in the FMLA. However, while the Iowa court may look to the FMLA for guidance, it need not construe or apply federal law in deciding whether defendants’ actions violate public policies of the State of Iowa. This Court therefore finds that the FMLA is not a central or necessary element of plaintiffs’ claims.

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<sup>1</sup>The Court acknowledges that some courts have held that the FMLA precludes state common law claims. *See Cavin v. Honda of America Mfg., Inc.*, 138 F. Supp. 2d 987 (S.D. Ohio 2001); *Phelan v. Town of Derry*, 1998 WL 1285898 (D.N.H. 1998); *Gearhart v. Sears, Roebuck & Co.*, 27 F. Supp. 2d 1263, 1278 (D. Kan. 1998); *Vargo-Adams v. United States Postal Service*, 992 F. Supp. 939, 944 (N.D. Ohio 1998). However, all of these cases arose under circumstances distinguishable from the case at bar.

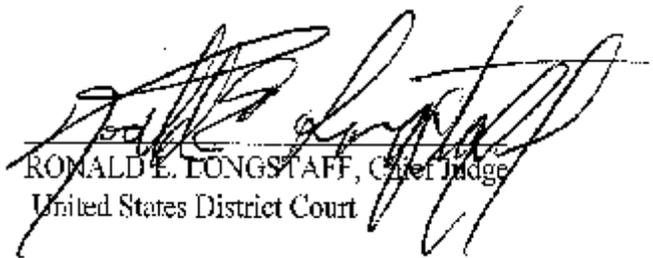
“None of these decisions . . . involve removal based on the FMLA. Rather, they note that where a plaintiff has *pleaded* claims under both the FMLA and state common law, the state common law claims may be precluded. In other words, where a complaint has already been filed in federal court that alleges both state common law and a federal statutory scheme, the federal statute may preclude the common law remedy.”  
*Bellido-Sullivan*, 123 F. Supp.2d at 164.

III. CONCLUSION

The Court finds that the FMLA does not completely preempt state law, and that the FMLA is not a necessary and essential element of plaintiffs' causes of action. Consequently, the the artful pleading doctrine is inapplicable, and this Court lacks subject matter jurisdiction. The Clerk of Court shall remand the case to the Iowa District Court for Polk County.

IT IS ORDERED.

Dated this 10<sup>th</sup> day of February, 2003.

  
RONALD E. LONGSTAFF, Chief Judge  
United States District Court

