MISSOURI COURT OF APPEALS
WESTERN DISTRICT

PLANNED PARENTHOOD GREAT PLAINS, Appellant,
v.
STATE OF MISSOURI ex rel. ATTORNEY GENERAL ANDREW BAILEY, Respondent.

DOCKET NUMBER WD87008

DATE: April 15, 2025

Appeal From:

The Circuit Court of Jackson County, Missouri
The Honorable Joel P. Fahnestock, Judge

Appellate Judges:

Division Two: Janet Sutton, Presiding Judge, and Alok Ahuja and Mark D. Pfeiffer, Judges

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Attorneys:

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MISSOURI APPELLATE COURT OPINION SUMMARY

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Planned Parenthood Great Plains ("Planned Parenthood") appeals from the judgment of the Circuit Court of Jackson County, Missouri ("circuit court"), granting judgment on the pleadings against Planned Parenthood and in favor of the Attorney General of the State of Missouri ("Attorney General") and thereby enforcing the Attorney General's Civil Investigative Demand ("CID") seeking information from Planned Parenthood.

This case stems from the Attorney General's investigation into alleged violations of Missouri's Merchandising Practices Act ("MMPA") by Washington University Pediatric Transgender Center. As part of this investigation, the Attorney General served a CID on Planned Parenthood, which alleged that Washington University and other entities had violated the MMPA, incorporated the detailed affidavit of a whistleblower outlining the allegations, and informed Planned Parenthood of the Attorney General's belief that it possessed information relevant to the investigation. The CID submitted several broad requests for information, but it included a provision indicating that Planned Parenthood should identify any information within the scope of the request that it deemed privileged and the basis for asserting that privilege.

Planned Parenthood refused to respond to any of the CID's requests and instead filed a petition with the circuit court to set aside or modify the CID. The Attorney General filed a counterclaim requesting the circuit court enforce the CID as written. The parties then jointly stipulated that the facts were not in dispute and that the case could be decided by judgment on the pleadings. The circuit court denied Planned Parenthood's petition and granted the Attorney General's counterclaim, enforcing the CID without alteration.

Planned Parenthood timely appealed, raising the following seven points on appeal and arguing the circuit court erred by: in Point I, concluding that medical goods and

services fall within the statutory definition of "merchandise" under the MMPA; in Point II, concluding that oversight of medical services by the Board of Healing Arts does not preempt enforcement of the MMPA under the pleaded facts; in Point III, enforcing the CID despite it violating Planned Parenthood's rights under the Fourth Amendment and the Fifth Amendment; in Point IV, incorrectly determining that the CID complied with the MMPA even though it failed to name Planned Parenthood as a subject of the investigation; in Point V, failing to treat Planned Parenthood's well-pleaded facts as true and relying on information outside the pleadings to conclude that Planned Parenthood is a subject of the CID; and in Points VI and VII, failing to deny or modify the CID even though it requested confidential medical information.

AFFIRMED.

Division Two holds:

1. A court will not rule on a purely hypothetical controversy. The Attorney General's CID, by its very terms, does not require Planned Parenthood to produce information that it deems to be privileged patient information and instead requests Planned Parenthood to identify information within the scope of the CID that it deems privileged and the basis for that asserting privilege. Because the Attorney General has not requested the production of any privileged information, Planned Parenthood's contention that the CID will require it to produce privileged information is, currently, purely hypothetical.

2. To comply with the procedural requirements under the MMPA, a CID must specify the statute and general subject matter of the investigation and be served on any party, even a party not subject of the investigation, believed to have information or documents relevant to the investigation. Here, the CID met these requirements. Thus, the circuit court did not err in finding it procedurally valid.

3. When evaluating a motion for judgment on the pleadings, the circuit court must accept the pleadings of the parties as true and may not rely on information outside the briefs and the pleadings. Here, Planned Parenthood has not identified a specific fact that it pleaded that the circuit court did not accept as true. Additionally, the Attorney General pleaded that Planned Parenthood was a subject of its investigation. Thus, the circuit court was not required to look beyond the parties' pleadings to determine that Planned Parenthood was a subject of the investigation. The circuit court followed the proper procedure in ruling on the parties' competing motions for judgment on the pleadings.

4. The MMPA is interpreted broadly to achieve its purpose of protecting consumers without being frustrated by overly particular definitions. The MMPA's definition of merchandise encompasses any good or service and, thus, includes medical goods and services. Additionally, nothing in the MMPA precludes its enforcement in

circumstances where a separate administrative body exercises overlapping oversight. Thus, a healthcare provider may be subject to discipline from the Board of Healing Arts and liability under the MMPA for the same conduct. Therefore, Planned Parenthood's status as a healthcare provider dealing in medical goods and services does not exempt it from the MMPA.

5. As an administrative subpoena, a CID does not violate the Fourth Amendment when it complies with its authorizing statute, seeks information relevant to the administrative inquiry, and is not too indefinite or broad. The Attorney General's CID complied procedurally with its authorizing statute. Furthermore, it sought information that was relevant to the subject of the Attorney General's investigation and that was within the scope of its broad investigative authority under the MMPA. Additionally, an administrative subpoena complies with due process when its authorizing statute allows for the subpoenaed party to challenge it and that opportunity is afforded. Here, Planned Parenthood had the statutory right under section 407.070 to object to the CID in circuit court, and it exercised that right. The CID did not violate Planned Parenthood's Fourth Amendment or Fifth Amendment rights.

Opinion by: Mark D. Pfeiffer, Judge April 15, 2025

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