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1996 Survey of Rhode Island Law: Cases: Civil Rights

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Civil Rights. *Wayne Distributing Co. v. Rhode Island Commission for Human Rights*, 673 A.2d 457 (R.I. 1996). Neither alcoholism nor drug dependency is a handicap within the meaning of the Fair Employment Practices Act.

In *Wayne Distributing Co. v. Rhode Island Commission for Human Rights*,¹ the Rhode Island Supreme Court considered whether alcohol and drug dependency are handicaps under the Fair Employment Practices Act.² The supreme court, quashing a superior court decision, held that the statute unambiguously excludes alcohol and drug dependency as handicaps.³

FACTS AND TRAVEL

In the fall of 1988, Dennis Santos (Santos), was hired as a merchandiser by Wayne Distributing Co. (Wayne), a beverage distributor.⁴ On November 4, 1988, Santos notified Wayne's director of marketing that he was entering a residential substance abuse treatment facility.⁵ Three days later, Santos received a registered letter from Wayne stating that his employment was terminated.⁶ The letter did not give any reason for the discharge.⁷ On January 24, 1989, Santos filed a discrimination complaint with the Rhode Island Commission of Human Rights (Commission) alleging that his termination was the result of his "physical and mental handicaps in violation of § 28-5-7."⁸ As part of its investigation, the Commission held a hearing, at which Santos's supervisor gave several reasons for the dismissal, none of which were found credible by the Commission.⁹ Finding that Santos was a recovering alcoholic and a drug-dependent person in treatment at the time of his

1. 673 A.2d 457 (R.I. 1996).

2. R.I. Gen. Laws § 28-5-7 (1995 & Supp. 1996).

3. *Wayne Distrib.*, 673 A.2d at 460.

4. *Id.* at 458. Santos was hired on a 90 day probationary period, and his job of setting up promotional displays at beverage retailers required him to drive a car. *Id.*

5. *Id.*

6. *Id.* Santos was released from the treatment facility on November 20, 1988. *Id.* at 459.

7. *Id.*

8. *Id.*

9. Santos's supervisor testified that several of their clients complained that Santos did not complete his work, and in one month, Santos was absent from work for "unexplained 'personal reasons.'" *Id.*

discharge, the Commission held that Santos was discharged because of his handicap, which constituted employment discrimination under the Rhode Island Fair Employment Practices Act.¹⁰ After the superior court affirmed the Commission's decision, Wayne filed a petition for certiorari with the Rhode Island Supreme Court which was granted.¹¹

BACKGROUND

With the Rhode Island Fair Employment Practices Act, the General Assembly established broad protections against employment discrimination for handicapped persons.¹² The statute provides that "[i]t shall be an unlawful employment practice . . . for any employer . . . [t]o refuse to hire any applicant for employment because of his [or her] . . . handicap."¹³ "Handicap" is defined by the statute as "any physical or mental impairment which substantially limits one or more major life activities."¹⁴ "Physical or mental impairment" is further defined as "any physiological disorder or condition . . . or any mental or psychological disorder, *such as* mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."¹⁵

Although neither alcoholism nor drug addiction are specifically enumerated in the Rhode Island statute, other jurisdictions have interpreted comparable statutes to determine whether alcoholism and drug dependency constitute protected handicaps, and they have reached differing results.¹⁶ The New York Court of Ap-

10. R.I. Gen. Laws § 28-5-7 (1995 & Supp. 1996). As a penalty, the Commission ordered Wayne to pay Santos lost wages and benefits, with interest, and attorney fees. *Wayne Distrib.*, 673 A.2d at 459.

11. *Id.*

12. R.I. Gen. Laws § 28-5-7 (1995 & Supp. 1996).

13. *Id.* § 28-5-6(7).

14. *Id.*

15. *Id.* § 28-5-6(7)(A) (emphasis added).

16. *Hazlett v. Martin Chevrolet, Inc.*, 496 N.E.2d 478 (Ohio 1986) (alcoholism or drug abuse are handicaps for civil rights statute); *Consolidated Freightways, Inc. v. Cedar Rapids Civil Rights Comm'n*, 366 N.W.2d 522 (Iowa 1985) (alcoholism could constitute disability); *Braun v. American Int'l Health & Rehabilitation Serv., Inc.*, 846 P.2d 1151, 1157 (Or. 1993) (alcoholism is a "physical or mental impairment" within the meaning of the statute); *Phillips v. City of Seattle*, 754 P.2d 116 (Wash. Ct. App. 1988) (periodic alcoholism is not a handicap within employment discrimination statute).

peals found that alcoholism was a "mental disability"¹⁷ within the meaning of the New York Human Rights Law.¹⁸ Conversely, the Supreme Court of Alaska held that alcoholism was not a "physical handicap" for employment discrimination purposes.¹⁹

ANALYSIS AND HOLDING

In *Wayne Distributing*, the defendant contended that alcohol and drug dependency qualified as handicaps under the "broad sweeping language" of the Fair Employment Practices Act.²⁰ The defendant also argued that because the statute does not specifically list what conditions constitute handicaps, alcoholism should be included.²¹ The court disagreed, noting that the statute does not include alcoholism or drug dependency as a handicap, so including them "would run contra to the well-recognized presumption that every word, sentence or provision of the statute was intended for some useful purpose and has some force and effect."²² In support of its opinion, the court stated that neither alcoholism nor drug dependency could constitute a "physiological disorder pursuant to § 28-5-6(7)(A)."²³ Next, the court held that the list of mental disorders enumerated in the statute limited the more general phrase, "any mental or psychological disorder."²⁴ Since the court found that the unenumerated disorders, alcoholism and drug dependency, were not "similar in kind" to those listed in the statute, it concluded that the legislature must not have intended them

17. *In re McEniry v. Landi*, 644 N.E.2d 1019, 1021 (N.Y. 1994) (An employee should not be fired for pre-rehabilitation alcohol related absenteeism where the employee has been rehabilitated and then performs the job in a satisfactory manner.).

18. *Id.* at 1021 (citing N.Y. Exec. Law § 296(1) (McKinney 1996)).

19. *Welsh v. Municipality of Anchorage*, 676 P.2d 602 (Alaska 1984).

20. *Wayne Distrib. Co. v. Rhode Island Comm'n for Human Rights*, 673 A.2d 457, 459 (R.I. 1996).

21. *Id.* The Commission filed a brief in support of Santos's position, relying on the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101-12213, which includes recovering alcoholics and drug dependent persons who are in rehabilitation programs. *Id.*

22. *Wayne Distrib.*, 673 A.2d at 460-61 (citing *Providence Journal Co. v. Mason*, 359 A.2d 682, 687 (R.I. 1976)).

23. *Id.* at 460. The court stated that alcohol and drug dependency "clearly cannot be considered a 'physiological disorder'" under the statute. *Id.* However, it did not elaborate why it so quickly eliminated this category. *Id.*

24. *Id.* at 460-61.

to be covered, and the judiciary is "not privileged to legislate, by inclusion, words which are not found in the statute."²⁵

CONCLUSION

An employee dismissed for alcohol or drug dependency cannot prevail in an action for employment discrimination under the Rhode Island Fair Employment Practices Act, as construed by the Rhode Island Supreme Court. According to the court, the Rhode Island Legislature limited coverage under this Act to specifically enumerated, or similar, disorders, and found that neither alcoholism nor drug dependency met those criteria. Assuming that the court is correct in deciding that substance abuse disorders are not physiological, it is still possible that the legislature intended that alcohol and drug abuse be included as "mental or psychological" disorders. The words "*such as*" precede the list of covered conditions, suggesting that the enumeration was meant to be illustrative, not exhaustive. Of course, if the court read the statute more narrowly than the legislature intended, a statutory amendment may be on the horizon.

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25. *Id.* at 460.