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# Colpitts v. W.B. Mason Co., Inc., 227 A.3d 996 (R.I. 2020)

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**Employment Law.** *Colpitts v. W.B. Mason Co., Inc.*, 227 A.3d 996 (R.I. 2020). An employer is not required to have actual knowledge that an employee is under the influence, nor that the employee manifests the specific symptoms usually associated with being under the influence, to request that an employee adhere to a drug test. To make such a request, an employer is only required to have reasonable grounds to believe that an employee is under the influence of a controlled substance.

FACTS AND TRAVEL

On March 9, 2018, Michael Colpitts (Colpitts) filed a verified complaint in the Rhode Island Superior Court against W.B. Mason alleging that on March 5, 2018, while making a delivery as a part of his work, Colpitts suffered an injury to his right hand.[1] The complaint further alleged that Colpitts then returned to the worksite and reported the injury to his supervisor, Christopher Santos (Santos).[2] Colpitts further alleged that W.B. Mason suspended and ultimately terminated his employment, in violation of Rhode Island General Law section 28-6.5-1, by wrongfully demanding that he submit to a drug test without reasonable grounds to believe that he was under the influence of any intoxicating liquors or controlled substances that might have impaired his ability to perform his job.[3] On August 16, 2018, a consolidated hearing was held to address both Colpitts's request for relief and the merits of the matter.[4]

Colpitts testified that on the day in question, he was "unable to finish the day" due to "shooting and extreme pains."[5] Colpitts recounted that he returned to the job site and requested to leave to

1. Colpitts v. W.B. Mason Co., Inc., 227 A.3d 996, 998 (R.I. 2020).
2. *See id.*
3. *See id.*
4. *See id.*
5. *See id.* at 999.

obtain medical treatment.[6] He stated that after ten to fifteen minutes, Santos returned with Mike Bonito (Bonito), the branch manager.[7] Colpitts testified that he told Santos and Bonito that he was in "lots of pain."[8] Colpitts then testified that Bonito stated he believed Colpitts "might be impaired, and that [Santos and Bonito] want[ed] to get [Colpitts] tested."[9] With respect to the pain he experienced on the day in question, Colpitts testified that he "felt like he was going to throw up," his back was "killing him," and that he repeatedly bent over trying to find relief.[10]

Colpitts stated that, on his way to a medical facility, he admitted to Santos that he used medical marijuana, and that he "couldn't take a drug test because it would prove that he smoked marijuana," and there was "no way 'to prove that he did not smoke marijuana within a certain amount of time because it stays in your system.'"[11] It was Colpitts's position that he used marijuana therapeutically to treat disabilities resulting from injuries sustained while in the United States Army.[12] Colpitts stated that although he applied for and received a medical marijuana card in Rhode Island, he never used marijuana "on the clock or on the job," nor was he ever "under the effects of marijuana during the course of his employment."[13] Colpitts further testified that, once at the facility, he refused to take the drug test but submitted to a breathalyzer, the results of which came back negative.[14] Colpitts then testified that, on March 8, 2018, Joanna Lowney (Lowney), W.B. Mason's H.R. representative, notified him that he had "violated [W.B. Mason's] fleet policy" so his employment had to be terminated.[15] On cross-examination, Colpitts conceded that during the initial exchange at the W.B. Mason warehouse, he did "stutter

6. *See id*.
7. *See id.*
8. *See id*.
9. *See id*.
10. *See id.*
11. *See id.*
12. *See id*. at 998–99.
13. *See id*. at 999.
14. *See id.*
15. *Id*. at 1000.

at times, stated he might "puke because of heartburn," and that he had forgotten to take his medication.[16]

Santos testified that on March 5, 2018, Colpitts arrived at the warehouse unannounced and asked Santos to fill out an injury report.[17] Santos testified that Colpitts was "clenching over . . . [and] putting his hands on his knees."[18] Santos described Colpitts's behavior as "weird."[19] Santos stated Colpitts's description of the events was unclear and that Colpitts was "jumping all over the place."[20] Santos claimed that that due to his suspicions about Colpitts's condition, he sought counsel from Lowney and Bonito.[21] Both parties agreed to request that Colpitts take a drug test.[22]

Santos recounted that while Colpitts was informing Bonito of what happened, Colpitts excessively used the "F word" and was unable to clearly describe which hand was injured.[23] Santos further testified that Colpitts was not making complete sentences, kept staggering back and forth, bending over, and repeating that he was "f***ed up" and that he needed to "catch his breath" and he was "going to puke."[24] Santos said that after asking Colpitts to submit to a drug test, Colpitts became agitated, said that he was fine and would go back to work.[25] While in Santos's car on the way to the medical facility, Colpitts then showed Santos his medical marijuana card, detailing that that was the reason he could not take a drug test.[26]

Bonito stated that he was concerned over Colpitts's behavior that day and described Colpitts's explanation of events as "distorted."[27] Bonito elaborated that "what caught [him] off guard the most was the barrage of 'F' bombs," but not in a way that would

16. *See id*.
17. *See id.*
18. *See id.*
19. *See id*.
20. *See id*.
21. *Id.*
22. *Id.*
23. *See id.* at 1000.
24. *Id*. at 1001.
25. *Id*.
26. *Id*.
27. *Id*.

indicate you had hurt yourself.[28] He further indicated that Colpitts was also abruptly swallowing and hunching over with his hands on his knees.[29] Bonito claimed that Colpitts said that he was going to "puke" and felt that way when he forgot to take his medication.[30] Bonito also testified that he did not see any evidence of extreme pain and that after requesting Colpitts adhere to a drug test, Colpitts stated that he was fine and would return to work.[31] On cross-examination, Bonito acknowledged that he noticed Colpitts's eyes were dilated, but could not recall if his eyes were red.[32]

On October 5, 2018, after the close of the trial, the trial judge rendered a bench decision, concluding that both Santos and Bonito had reasonable grounds to believe that Colpitts was under the influence of a controlled substance.[33] On November 8, 2018, Colpitts's request for a preliminary injunction was denied and judgement on the merits was entered in favor of W.B. Mason.[34] Colpitts appealed.[35]

## ANALYSIS AND HOLDING

The Court began by noting the standard of review.[36] The Court noted that the factual findings of a trial justice sitting without a jury in a civil matter will not be disturbed unless those factual findings are "clearly erroneous."[37] The Court also applies a deferential standard of review for mixed questions of law and fact.[38] However, the Court reviews the trial justice's conclusions on questions of law de novo.[39]

Upon review of the trial justice's decision, the Court found that the trial justice did not abuse her discretion in holding that Santos

28. *Id*.
29. *Id*.
30. *Id.*
31. *Id*. at 1002.
32. *Id*.
33. *Id.*
34. *Id.*
35. *Id*.
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.*

and Bonito had reasonable grounds to believe that Colpitts was under the influence of a controlled substance, satisfying the standard set forth in section 28-6.5-1.[40] The Court noted that some of Colpitts's behavior was consistent with not only someone who was in extreme pain, but also with someone who was under the influence of a controlled substance.[41] The Court found that Santos and Bonito had reasonable grounds to request a drug test, due to Colpitts bending over, stating that he had to puke, staggering, and repeated use of obscenities.[42] Although Colpitts pointed out that odd behavior was not indicative of drug use, the Court reasoned that an employee's behavior does not need to lead *only* to a conclusion that the employee is under the influence, nor does the employer need actual knowledge that the employee is definitely under the influence.[43] The Court found that section 28-6.5-1 requires only that there be reasonable grounds that the employee is under the influence of a controlled substance to request testing and that Colpitts's ambiguous and odd behavior satisfied that bar.[44]

COMMENTARY

The Rhode Island Supreme Court acknowledged the difficulty of arbitrarily drawing a line between what types of behavior are indicative of drug use, or rather of extreme pain.[45] The Court was openly sympathetic to the physical condition of Colpitts, which resulted from his time served in the United States Army.[46]

40. *See id.* at 1004; *see also* 28 R.I. Gen. Laws § 28-6.5-1(a)(1) (providing that "[e]mployers may require that an employee submit to a drug test if: [t]he employer has reasonable grounds to believe based on specific aspects of the employee's job performance and specific contemporaneous documented observations, concerning the employee's appearance, behavior or speech that the employee may be under the influence of a controlled substance, which may be impairing his or her ability to perform his or her job.").

41. *Colpitts*, 227 A.3d at 1005.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* at 1005.

46. *Id.*

However, the Court was clearly bound by the "reasonable grounds" standard set forth in section 28-6.5-1.[47]

The Court took the initiative to provide some explanation as to why the standard to request an employee to submit to drug testing is so low.[48] Employers and supervisors are not medical professionals and as such should not be expected to distinguish between symptoms of pain and symptoms of being under the influence.[49] According to the Court, "there is no statutory requirement that an employer possess a degree of medical sophistication" to request that an employee submit to a drug test.[50] Through this reasoning, the Court noted that the standard to request that an employee take a drug test is low because raising the bar would effectively require that employers have some degree of medical sophistication in order to request drug testing.[51] The Court recognized that the legislative intent of section 28-6.5-1 was to permit employers to request the testing based solely on contemporaneous observations, such as unusual appearance, behavior, or speech that may be indicative of drug use, so that a worker's ability to perform their job is not impaired and the safety of all employees can be ensured.[52]

Although the cause of Colpitts's behavior was open to more than one interpretation, employers and the judicial system should not be required to decipher what is, or what is not, behavior definitively indicative of drug use. The reasonable grounds standard prevents the courts from arbitrarily drawing lines that should be left to individuals with medical expertise. It would be difficult to keep the workplace safe if the standard required an employer to have actual knowledge of an individual's drug use before requesting that they to submit to a drug test.

A secondary issue that arises in this case, as Colpitts points out, is the lack of technology currently available to precisely determine at what time an individual was, or whether they

47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.* at 1005.

currently are, under the influence of marijuana.[53] Colpitts submitted to a breathalyzer, which can tell if one is currently under the influence of alcohol, but refused to take a drug test because of current technology's inability to accurately pinpoint the time of marijuana use.[54] With the medical marijuana field growing every day, and the increase of its use by the public, the Rhode Island Supreme Court will likely have to take the absence of such technology into consideration in cases involving employees who do submit to the drug testing, subsequently test positive for marijuana use, and then challenge employment termination.

## CONCLUSION

The Rhode Island Supreme Court held that that the trial justice did not abuse her discretion because Colpitts's incoherent and volatile behavior were reasonable grounds for an employer to believe that an employee was under the influence of a controlled substance, thus giving the employer the ability to request an employee to submit to drug testing.[55] The Court determined that it was not a requirement of the statute for an employer to have a degree of medical sophistication in order to determine that an employee was definitely under the influence of a controlled substance prior to requesting testing.[56]

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53. *Id.* at 999.
54. *Id.*
55. *Id.* at 1004.
56. *Id.* at 1005–06.