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# Wild v. Carriage Funeral Holdings, Inc. (Wild II)

No. 17-3072 (N.J. Super. Ct. App. Div. 2019)

New Jersey Superior Court Appellate Division

March 27, 2019

- **Although the New Jersey Compassionate Use Act does not require an employment accommodation, an employer may still be obligated to provide an accommodation under the state Law Against Discrimination.**
- **New Jersey's Compassionate Use Act does not limit the state Law Against Discrimination to immunize employers from actions that would otherwise potentially violate the discrimination law.**

## Summary:

Justin Wild (Employee) was an employee of Carriage Funeral Holdings, Inc. (Employer) as a funeral director. In 2015, Employee was diagnosed with cancer and became licensed to use medical marijuana under the New Jersey Compassionate Use Medical Marijuana Act, N.J.S.A. 24:6I-1 to -16 (Compassionate Use Act). In 2016, Employee suffered injuries from a car accident while he was working and was brought to the emergency room. Employee advised the hospital physician that he had a medical marijuana license, but was not under the influence at the time of the accident so a drug test was not necessary. A manager notified Employee that he could not return to work without having taken a drug test. Subsequently, Employee went to an urgent care and took a urine and breathalyzer test, but was never given the results, and the results are not on record. Employee returned to work the following week but received a letter from Employer stating that he was being terminated not because of his medical marijuana use, but because of his failure to disclose that he was using medical marijuana. Employee sued Employer and other employees alleging various Law Against Discrimination (LAD) violations under N.J.S.A. 10:5-1 to -49, common-law defamation, and intentional interference with prospective economic gain. Employee claims Employer's unlawful discrimination arose from his use of medical marijuana as part of his cancer treatment.

Upon the Employer's motion, the trial court dismissed the LAD claims by holding the Compassionate Use Act does not foreclose an employer's rights to terminate an employee for medical marijuana use and determined that Employee failed to sufficiently plead his common-law defamation and intentional interference claims.

On appeal, Employee argued that the LAD makes it unlawful for an employer "because of the . . . disability . . . of any individual, . . . to discharge . . . or to discriminate against such individual . . . unless the nature and extent of the disability reasonably precludes the performance of the particular employment. . . ."

The court concluded that nothing in the Compassionate Use Act "require[s]" an employer to accommodate a medical marijuana user and, as this language is unambiguous, it requires no interpretation and permits no deviation. The court held that the Compassionate Use Act negates no rights or claims available to Employee that emanate from the LAD, and even though the Compassionate Use Act does not mandate an accommodation, it cannot remove protections given under LAD.

The court reversed the dismissal of the LAD claims stating that the Compassionate Use Act does not immunize what the LAD prohibits and noted that Employee's amended complaint contains the allegations required by the LAD. Employee's defamation and intentional interference claims were dismissed without prejudice.

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