CURRENT DEVELOPMENTS IN THE LAW

WORKERS' COMPENSATION ACT, FEDERAL ARBITRATION ACT AND THE FOURTH AMENDMENT

Mottram v. Fairfax County Fire and Rescue, 2001 WL 213991 (Va. App. 2001)

Plaintiff, Mottram, worked for Defendant, Fairfax, for approximately nineteen years as a paramedic and EMS supervisor. Plaintiff filed a workers compensation claim for post-traumatic stress disorder (PTSD) stemming from his employment but was denied workers' compensation benefits as the commission held that Mottram's condition was not compensable as an injury by accident. Mottram filed a new claim seeking benefits due to PTSD being an occupational disease rather than an injury. Psychiatric experts differed in their opinions as to whether or not PTSD was directly related or caused by Mottram's work in the fire department. The deputy commissioner denied Mottram's occupational disease claim, finding that his PTSD resulted from cumulative or repetitive trauma. The full commission affirmed on review and concluding that, to treat PTSD as a disease rather than a condition resulting from cumulative trauma would be to expand the definition of "d isease" too broadly.

The Workers' Compensation Act defines two compensable categories: injury by accident and occupational disease. Whether a claimant suffers from a disease within the contemplation of the Act is a mixed question of law and fact. The distinction between injury and disease lies in the obvious sudden mechanical or structural aspect of the injury. The court concluded that PTSD may be compensable as an injury by accident or as an occupational disease, depending on how it develops. The court further held that Mottram's condition resulted from "n eurochemical alterations in multiple neurotransmitter systems being a result of his body's adaptive survival responses, thus the condition is a disease. Additionally, because PTSD is a condition that may develop from the general stresses of life and is not necessarily tied to occupational stress, it must be determined whether the condition is actually compensable.

PTSD has always been and continues to be a broad and sometimes vague concept. Numerous conditions that don't easily fall under traditional categories of disease, illness or injury are lumped under the heading PTSD. Of course, there are many valid claims that do not fall into a specific category but should be

compensable, but there is also the possibility of abuse of the current workers' compensation system. Millions of dollars are paid out each year for fraudulent claims and the decision in this case will only make it easier for false claims to continue. The holding basically allows a free pass to workers' compensation for any employee who has witnessed a trauma in the line of work. The commission needs to set stricter parameters on the breadth of PTSD to ensure that false claims may be filtered out.

Circuit City v. Adams , 121 S.Ct. 1302 (2001)

In their 5-to-4 decision in Circuit City v. Adams, the Supreme Court delivered a major victory to corporate employers. The Court ruled that companies are allowed to require employees to forfeit their right to sue in court and handle their claims through binding arbitration instead. The ruling is considered a triumph for employers, since arbitration provides a fast, cheap way for companies to resolve disputes and avoid the risky terrain of unpredictable juries. Critics of arbitration argue that the process disadvantages employees by limiting damages and because arbitrators are not required to have any expertise in employment law.

Circuit City arose in 1997 when a California salesman sued Circuit City Stores alleging that he was harassed in part because of his sexual orientation. Mr. Adams had signed an arbitration agreement as a condition of employment when Circuit City first hired him in 1995. Under the agreement, all employment-related "disputes or controversies" would be resolved through binding arbitration. The District Court for the Northern District of California enforced the arbitration agreement and dismissed Adams' claim. The Ninth Circuit, however, ruled that the agreement was unenforceable because the 1925 Federal Arbitration Act does not apply to employment contracts.

The Act, which makes arbitration agreements enforceable in federal court, contains an unclear exemption clause excluding "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." The Ninth Circuit relied heavily on the Act's legislative history and interpreted the exemption clause as excluding all employment contracts. Every other federal appeals court to date had read the exclusion narrowly, as exempting only transportation workers. In a majority opinion authored by Justice Kennedy, joined by Chief Justice Rehnquist along with Justices Scalia, Thomas, and O'Connor, the Court agreed with the narrow reading and overruled the Ninth Circuit. Justice Kennedy held that to give a more expansive meaning to the phrase "engaged in foreign or interstate commerce" would "bring instability to statutory interpretation." Writing for the dissent, Justice Stevens said that the majority's narrowing of the exemption "fulfills the original – and originally unfounded – fears of organized labor." "It is clear that it was not intended to apply to employment contracts at all."

What the Court held, along with what it left unresolved, suggests that the aftermath of *Circuit City* will take many shapes. The Court left unresolved some

weighty questions about what rights employees might retain under other federal laws. Many arbitration agreements cap damages and do not allow prevailing plaintiffs to recover litigation costs and attorney's fees. The Court also left unclear whether arbitration agreements can preclude class actions. It is clear that after the *Circuit City* decision, more companies will devise arbitration plans. The decision removes the possibility that the agreements might not be enforced, so companies will no longer have to worry about wasting resources devising arbitration plans that could be invalidated. Second, employees who have signed arbitration agreements will be barred from suing over civil rights, harassment, and other employment claims, regardless of the fact that they had to sign the agreement in order to be hired. This decrease in employment lawsuits may forestall the development of employment discrimination jurisprudence. Third, the Court's holding will widen the gulf between union and nonunion grievance procedures. Research indicates that arbitration in union work sites is more evenhanded because its procedures were bargained for between management and union. Arbitration as a forum may already be unfairly biased against nonunion workers. By increasing the number of employers requiring employees to handle claims through arbitration, the *Circuit City* holding will heighten the disparity between union and nonunion work settings. Finally, droves of litigation will undoubtedly arise over what defines a transportation employee, since the Court held that the exemption applies only to their employment contracts.

Ferguson v. Charleston, 2001 WL 273220 (U.S. 2001)

In Ferguson v. Charleston, the Court considered whether a state hospital could constitutionally screen pregnant women for cocaine use, without their consent, and report illegal drug use to law enforcement. If a woman tested positive for cocaine use, the hospital forced her to enter a drug rehabilitation program. If she failed to successfully complete the drug rehabilitation program, the hospital threatened her with arrest. The Court held that such tests, without consent, were warrantless searches that ran afoul of the Fourth Amendment. The state's interest in deterring pregnant women from using cocaine was insufficient to warrant a departure from the general rule that warrantless searches, without consent, were unconstitutional.

In the fall of 1998, the Medical University of South Carolina ("MUSC") adopted Policy M-7, which permitted hospital workers to test pregnant women for cocaine use if they met one or more of nine criteria (no prenatal care; late prenatal care; incomplete prenatal care; abruptio placentae; intrauterine fetal death; preterm labor of no obvious cause; intrauterine growth retardation of no obvious cause; previously known drug or alcohol abuse; or unexplained congenital anomalies). The policy allowed the hospital to report positive drug tests to law enforcement to provide the "necessary leverage" to make the policy effective. Justice Stevens,

writing for the Court, noted that none of the nine criteria constituted probable cause, and thus, the hospital could not perform the test without a warrant.

Moreover, the Court noted that the searched failed the "special needs test" which allows an exception to the general ban against warrantless, consentless searches. In all other "special needs" cases, the state interest that justified the warrantless search was "one divorced from the State's general interest in law enforcement." Yet, in this case, the use of law enforcement was the central focus of Policy M-7, which attempts to use law enforcement intervention to coerce pregnant women into receiving substance abuse treatment. The Court was unpersuaded by the hospital's assertion that the ultimate goal was to get pregnant women into substance abuse programs, because "the immediate objective of the searches was to generate evidence for law enforcement purposes." The Court noted that there is always some broader social purpose behind law enforcement, and in this case it was impossible to separate the hospital's stated goal with the needs of law enforcement.

Justice Kennedy concurred in the judgment, and Justice Scalia filed a dissenting opinion, in which Chief Justice Rehnquist and Justice Thomas joined as to Part II.

The Supreme Court may have been more likely to uphold Policy M-7, if they had a non-law enforcement policy behind the test. As one commentator has noted, a "slightly altered, hypothetical counterpart" may pass constitutional muster.[1] For example, the opinion hints that the Court may uphold similar policies if the city had also tested for legal drugs, or if the police had charged the mothers with endangering their unborn children.[2] In this case, the war on drugs did not justify a relaxed view of Fourth Amendment principles. However, under slightly different facts it may.

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Illinois v. McArthur, 121 S.Ct. 946 (2001)

According to the United States Supreme Court, there is no Fourth Amendment violation where the police, acting on probable cause, refuse to allow a defendant free access to his or her home and supervise his actions on the premises until a search warrant is secured.

The facts of the case are quite simple: In April of 1997, Tera McArthur asked two police officers to accompany her while she moves out of her trailer where she lived with her husband Charles. She then notified the police that her husband was harboring illicit substances in their home. When the police asked Charles for

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[1] *See* Evan P. Schultz, *Losing Civil Liberties: The War on Drugs has put a Heavy Price on Our Rights*, FULTON DAILY, Jan. 3, 2001, at 6.

[2] Id.

permission to search the trailer, Charles refused. One of the officers then left the scene with Tera to secure a warrant while the other one remained behind, supervising Charles form the doorstep of the trailer and refusing to allow him to be alone in the trailer. Once the warrant was secured, the officers discovered a marijuana pipe and a small amount of marijuana. Charles McArthur was then arrested.

Speaking for the Court, Justice Breyer states that the police were justified in delaying the defendant because there was probable cause that the trailer contained evidence of a crime, namely drugs, and they had good reason to fear that the defendant would destroy the drugs before a warrant was secured. Breyer concludes that the police acted reasonably: neither searching the trailer nor arresting the defendant until a warrant was secured. Finally, the restraint imposed was only for a limited period of time (two hours) and therefore fell within the confines of the Court's decision in *Terry v. Ohio*.[3] Focusing primarily on the presence of legitimate probable cause and the reasonable belief that contraband would have been destroyed if the defendant was left unattended, the Court concludes that McArthur's restraint met the Fourth Amendment's demands. The police action was justified under the law and McArthur's conviction upheld.

In his dissent, Justice Stevens argues for a greater balance between privacy-related and law-enforcement related concerns. Because the offense at issue was a misdemeanor, Stevens seeks greater constitutional protection for the sanctity of one's home. In his eyes, the issues should not have been granted certiorari until a more serious offense came before the court. Under graver circumstances, however, Stevens seems to hint he would agree with the majority.

The case of *McArthur* provides yet another weapon for law enforcement to employ in the battle against Fourth Amendment intrusion. As long as there is probable cause, the police may be justified in intruding upon the sanctity of an individual's home while securing a warrant if they have reason to believe that the individual may destroy evidence of criminal activity if left alone inside their home. With the pendulum swinging back towards law enforcement after this decision, query how closely courts will scrutinize the actions of the police in such circumstances. With probable cause and/or reasonable suspicion as a springboard, it would appear that police in similar circumstances will need to be above board, and above all, *reasonable* in their actions. But how much of a solace is that? Perhaps by interpreting their state constitutions as providing broader search and seizure protection than that of the U.S. Constitution, state courts will be able to inhibit the application of *McArthur*. Until state courts undertake that course of action, however, the law will favor the police in these circumstances.

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[3] 88 S.Ct. 1868 (1968) (temporary stop justified when reasonable suspicion present)