STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: July 8, 2013)

RODIGO SALES ALVES, et al.	:	
	:	
v.	:	
	:	
CINTAS CORPORATION NO. 2, CINTAS CORPORATION alias John Doe Corporation, MICHAEL GREVE alias John Doe, MAURICE ANDERSON alias John Doe, JULIE GRADY HEARD alias Jane Doe, JOHN/JANE DOES NOS. 1-10.	:	**C.A. No. PC-2009-2412**

DECISION

SILVERSTEIN, J. Before the Court are two motions filed by Defendants Cintas Corporation No. 2, et al. (the Defendants) in a three-count civil action alleging that Cintas Corporation (Cintas) and certain of its employees should be held liable for violations of Rhode Island's drug testing statute, G.L. 1956 § 28-6.5-1, et seq. (the Drug Testing Statute). In its Motion for Judgment on the Pleadings, the Defendants seek dismissal as against all Cintas employees on two of the counts, and dismissal as against all Defendants on the third count. In its Motion for Partial Summary Judgment, the Defendants request a finding from this Court that emotional distress damages do not qualify as "actual damages" under the Drug Testing Statute.

I

Facts and Travel

The Plaintiffs are employees of Cintas. At all relevant times, the Plaintiffs worked in or reported from remote locations to Cintas's office in Pawtucket, Rhode Island. The Plaintiffs

have alleged that they were directed to report to the Pawtucket office for mandatory meetings on April 27, 2009 and April 28, 2009. At the meetings, Plaintiffs allege that they were illegally subjected to workplace drug testing in violation of the Drug Testing Statute.

In their Fifth Amended Complaint, the Plaintiffs seek recovery on three separate counts. On the first count, the Plaintiffs claim that all Defendants, including individual employees of Cintas involved in and with administration of the alleged workplace drug testing at issue, are subject to civil liability for violations of the Drug Testing Statute. On the second count, the Plaintiffs claim that because the Drug Testing Statute defines a criminal offense, all Defendants are subject to civil liability for criminal acts pursuant to G.L. 1956 § 9-1-2. On the third count, the Plaintiffs claim that all Defendants additionally are liable for invasion of their right to privacy, in violation of § 9-1-28.1.

The Defendants move for judgment on the pleadings and also move for partial summary judgment. In their Motion for Judgment on the Pleadings, the Defendants contend that there is no civil or criminal liability for individual employees of Cintas under the Drug Testing Statute. Therefore, the Defendants argue that the individual employee defendants cannot be held civilly liable for violations of §§ 28-6.5-1 or 9-1-2. In addition, the Defendants contend that all of the Plaintiffs' claims for invasion of the right to privacy are barred by the Rhode Island Workers' Compensation Act (the WCA). In their Motion for Partial Summary Judgment, the Defendants request a ruling that emotional distress damages are not recoverable under the Drug Testing Statute because the statute only allows recovery for "actual damages."[1]

[1] Punitive damages may also be awarded under the statute. Sec. 28-6.5-1(c)(1).

II

Analysis

1

Motion for Judgment on the Pleadings

"A Rule 12(c) motion for judgment on the pleadings provides a trial court with the means of disposing of a case early in the litigation process when the material facts are not in dispute after the pleadings have been closed and only questions of law remain to be decided." Haley v. Town of Lincoln, 611 A.2d 845, 847 (R.I. 1992). The Court is restricted to viewing the alleged facts presented in the pleadings in the manner most favorable to the nonmoving party. Id. "The factual allegations contained in the nonmovant's pleadings are admitted as true for purposes of the motion." Id. In addition, "[a]ll proper inferences to be derived from the pleadings are to be drawn in favor of the nonmovant." Id. "[A] defendant may not prevail on a Rule 12(c) motion unless that defendant is able to demonstrate to a certainty that the plaintiff will not be entitled to relief under any set of facts that might be proved at trial." Id. (citing Parente v. Southworth, 448 A.2d 769 (R.I. 1982); Romanello v. Maguire, 122 R.I. 171, 404 A.2d 833 (1979)). "If a judgment on the pleadings is to be given, it is because it is apparent beyond a reasonable doubt that a trial would be of no use in determining the merits of the plaintiff's claim for relief." Id. at 848.

A

Employees' Liability Under § 28-6.5-1

In their Motion for Judgment on the Pleadings, the Defendants first argue that the plain language of the Drug Testing Statute does not impose individual civil liability on employees, officers, or agents of employers, and therefore, that the individual Cintas employee defendants,

as a matter of law, cannot be held liable for violations of the statute. In contrast, the Plaintiffs argue that the plain language of the Drug Testing Statute does impose liability on individual employees, officers, or agents, and therefore, that the instant Motion for Judgment on the Pleadings should be denied as to the first count.

The Rhode Island Drug Testing Statute, § 28-6.5-1, states in relevant part:

> "(a) No employer or agent of any employer shall, either orally or in writing, request, require, or subject any employee to submit a sample of his urine, blood, or other bodily fluid or tissue for testing as a condition of continued employment unless that test is administered in accordance with the provisions of this section.
>
> (. . .)
>
> (b) Any employer who subjects any person employed by him or her to this test, or causes, directly or indirectly, any employee to take the test, except as provided for by this chapter, shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000) or not more than one year in jail, or both.
>
> (c) In any civil action alleging a violation of this section, the court may:
>
> 1) Award punitive damages to a prevailing employee in addition to any award of actual damages;
> 2) Award reasonable attorneys' fees and costs to a prevailing employee; and
> 3) Afford injunctive relief against any employer who commits or proposes to commit a violation of this section."

The Plaintiffs contend that § 28-6.5-1(a)'s reference to the "agent of any employer" means that the Drug Testing Statute unambiguously provides a civil remedy for violations of the Drug Testing Statute not only against an offending employer, but also directly against individual agents of the employer who were involved in carrying out an alleged underlying offense. The Defendants, also contending that the Drug Testing Statute is unambiguous with respect to who

may be held liable for violations, reach the opposite conclusion. They point to the enforcement and remedy provisions of the statute, i.e., subsections (b) and (c), and emphasize that those provisions directly stake out the terms of liability for employers who violate the statute, but do not reference any potential for individual liability on the part of an employer's agents.

The ultimate goal of construing a statute is "'to give effect to the purpose of the act as intended by the Legislature.'" Generation Realty, LLC v. Catanzaro, 21 A.3d 253, 259 (R.I. 2011) (quoting D'Amico v. Johnston Partners, 866 A.2d 1222, 1224 (R.I. 2005)). The Court must "'determin[e] and effectuat[e] that legislative intent and attribut[e] to the enactment the most consistent meaning.'" Id. (quoting Ryan v. City of Providence, 11 A.3d 68, 71 (R.I. 2011)). "'When the language of the statute is clear and unambiguous, it is [the Court's] responsibility to give the words of the enactment their plain and ordinary meaning.'" Id. (quoting Kulawas v. Rhode Island Hosp., 994 A.2d 649, 652 (R.I. 2010)). Under this "plain meaning" approach to statutory construction, however, "'it is entirely proper for [the Court] to look to the sense and meaning fairly deducible from the context.'" Id. (quoting In re Brown, 903 A.2d 147, 150 (R.I. 2006)). The Court must "'consider the entire statute as a whole,'" and "'individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections.'" Id. (quoting Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994)). Moreover, if statutory ambiguity is discerned, the Court will "examine statutes in their entirety, and will 'glean the intent and purpose of the Legislature from a consideration of the entire statute, keeping in mind [the] nature, object, language and arrangement of the provisions to be construed.'" State v. Oliveira, 882 A.2d 1097, 1110 (R.I. 2005) (quoting State v. DiCicco, 707 A.2d 251, 253 n.1 (R.I. 1998)). "[U]nder no circumstances

will this Court 'construe a statute to reach an absurd result.'" Mendes v. Factor, 41 A.3d 994, 1002 (R.I. 2012) (quoting Generation Realty, LLC, 21 A.3d at 259.)

In considering the statute as a whole, the Court finds that when the Legislature passed § 28-6.5-1 into law, it did not intend to impose individual liability on an employer's agents for violations of the Drug Testing Statute. While § 28-6.5-1(a) does refer to the "agent of any employer," this reference alone does not suggest that the Legislature intended to permit the imposition of civil liability on non-employers.

It is a long-settled rule that "an agent acting on behalf of a disclosed principal is not personally liable to a third party for acts performed within the scope of his authority." Kennett v. Marquis, 798 A.2d 416, 418 (R.I. 2002) (citing Cardente v. Maggiacomo Insurance Agency, Inc., 108 R.I. 71, 73, 272 A.2d 155, 156 (1971)). Here, the Plaintiffs allege that the individual employee defendants "were directed by Cintas and/or Cintas National to effectuate the random drug testing at its Rhode Island office." The mere reference to an employer's agent in § 28-6.5-1(a) does not mean that the Legislature thereby intended to break with the long-settled rule and impose individual liability on an agent who has been directed to perform an action that may violate the Drug Testing Statute.

Under the Drug Testing Statute, employees may only be required to submit to a drug test if the employer satisfies a complex list of prerequisites. See §§ 28-6.5-1(a)(1) – (a)(8). For example, an employee may be drug tested only if "[t]he employer has reasonable grounds to believe . . . that the employee's use of controlled substances is impairing his or her ability to perform his or her job" and if "[t]he employer provides the employee . . . the opportunity to have the sample tested or evaluated by an independent testing facility and so advises the employee." Secs. 28-6.5-1(a)(1), 28-6.5-(a)(5) (Emphases added.). Moreover, "[p]ositive tests of urine,

blood or any other bodily fluid or tissue" must be "confirmed by a federally certified laboratory by means of gas chromatography/mass spectrometry or technology recognized as being at least as scientifically accurate." Sec. 28-6.5-1(4). It is not credible to suggest that in mentioning the "agent of any employer" in § 28-6.5-1(a), the Legislature thereby intended to allow victimized employees to recover against an agent of his or her employer who was responsible for carrying out some portion of a positive drug test that ultimately was not, for example, "confirmed by a federally certified laboratory." Read as a whole, § 28-6.5-1(a) specifically imposes complex responsibilities and requirements on employers who wish to have their employees submit to a drug test. To allow the imposition of civil liability on an employer's agent under such circumstances would effectively subvert the agent's relationship with the employer and require the agent to supervise the employer's past and present conduct, vis-à-vis any drug test the agent was involved in. The Court is confident that the Legislature did not intend this result and must attribute to the statute its "most consistent meaning." Generation Realty, LLC, 21 A.3d at 259.

A broader reading of the statute only confirms that individual agents of an employer cannot be held personally liable for violations of the Drug Testing Statute. Indeed, the civil liability provisions of the statute, as set forth in § 28-6.5-1(c), make no reference at all to an employer's agent. While subsections (1) and (2) of § 28-6.5-1(c) are silent with respect to the question of who may be held civilly liable under the statute, subsection (c) permits a court only to afford injunctive relief against "any employer who commits or proposes to commit a violation of this section." (Emphasis added.) Similarly, § 28-6.5-1(b), which sets forth criminal liability for violations of the Drug Testing Statute, makes no reference at all to an employer's agent but plainly states only that "[a]ny employer who subjects any person employed by him or her" to

drug testing shall incur criminal penalties.[2] (Emphasis added.) When read in conjunction with § 28-6.5-1(a), the liability provisions of the Drug Testing Statute therefore reinforce the Court's finding that an employer's agent may not be held civilly liable for violations of the statute. Nothing in the Drug Testing Statute suggests that by mentioning the "agent of any employer" in § 28-6.5-1(a), the Legislature intended to create a multiple recovery scheme that would subject both employers and their employee-agents to separate liability for the same underlying injury or violation. If the Legislature had intended to permit multiple recoveries for the same underlying violation, those intentions would have been apparent in the Drug Testing Statute. A plain reading of § 28-6.5-1 suggests nothing more than the prospect that the Legislature intended to incorporate principles of respondeat superior into the statute. See Miller v. Maxwell's Int'l Inc., 991 F.2d 583, 587 (9th Cir. 1993). Moreover, it is clear from other contexts that the Rhode Island Legislature knows how to draft liability provisions that would clearly subject an employer's agent to civil liability. See, e.g., § 28-6.4-2 (imposing a fine upon "[a]ny employer or any agent of an employer who violates the provisions of this chapter"); § 28-6.9-2 (permitting a court to afford injunctive relief "against any employer or agent of any employer who commits or proposes to commit a violation of this chapter"). The fact that the Legislature declined to do so in this case supports the Court's conclusion that § 28-6.5-1 was never intended to permit liability against an individual agent of an employer for violations of the Drug Testing Statute.

The Court's conclusion is further supported by reference to analogous federal case law. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3 (Title VII) prohibits an "employer" from engaging in discrimination in the workplace. Under Title VII, an "employer"

[2] The Plaintiffs argue that § 28-6.5-1(b)'s references to "him or her," and the possibility of jail time, indicate that an employer's agent may be held criminally liable for violations of the Drug Testing Statute. The Court rejects this argument but will address it in greater detail in the following section.

is defined to mean "a person engaged in an industry affecting commerce who has fifteen or more employees . . . and any agent of such a person." 42 U.S.C. § 2000e(b) (Emphasis added.). At least eleven circuit courts have addressed the question of whether individual liability exists for employees who do not otherwise qualify as an "employer" when there is a violation of Title VII. Chatman v. Gentle Dental Center of Waltham, 973 F. Supp. 228, 237 (D. Mass. 1997). "Of the eleven circuits that have addressed the question, ten have rejected the imposition of individual liability under Title VII." Id. (citing cases from the Second, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits). District Court decisions from the First Circuit remain mixed on the question, however, and the Rhode Island District Court has found that supervisors may be personally liable as "agents" of an "employer" under Title VII. Iacampo v. Hasbro, Inc., et al., 929 F. Supp. 562, 571 (D.R.I. 1996) (Lagueux, J.). While the Title VII analysis requires an exercise of statutory interpretation that is peculiar to Title VII, it is compelling that federal courts have determined that "[t]he obvious purpose of th[e] [agent] provision was to incorporate respondeat superior liability into the statute." Maxwell's Int'l Inc., 991 F.2d at 587 (noting that "many of the courts that purportedly have found individual liability under the statutes actually have held individuals liable only in their official capacities and not in their individual capacities"). Given the overwhelming support in federal courts for the proposition that an employer's agent cannot be held personally liable under a civil statute expressly directed at regulating the activities of employers, the Court views the Title VII cases as strongly persuasive authority supporting this Court's present analysis.

The parties have also argued that the language of the Drug Testing Statute must be construed strictly or liberally depending on their respective readings of the statute. The Plaintiffs contend that the Drug Testing Statute is remedial, and therefore, that it must be construed to

provide a broad civil remedy against the individual employees in this case. The Defendants argue that the Drug Testing Statute should be construed strictly because it establishes rights not cognizable at common law. It is generally true that "a remedial statute is to be construed liberally." Pastore v. Samson, 900 A.2d 1067, 1078 (R.I. 2006) (citing Asadoorian v. Warwick Sch. Comm., 691 A.2d 573, 580 (R.I. 1997)). It is also generally true that "when a statute establishes rights not cognizable at common law, that statute is 'subject to strict construction.'" Bandoni v. State, 715 A.2d 580, 584 (R.I. 1998) (quoting Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996)). Regardless of what type of construction is given to the Drug Testing Statute, the Court's "ultimate goal" is to give effect to the Legislature's intent, in accordance with the plain and ordinary meaning of the statutory language. See Pastore, 900 A.2d at 1078 (citing State v. Menard, 888 A.2d 57, 60 (R.I. 2005)). For all the foregoing reasons, the Court finds that the Legislature did not intend to permit the imposition of liability on an employer's agents for violations of the Drug Testing Statute. Therefore, the Court finds that under any set of facts that may be proved at trial, the individual employees of Cintas associated with administration of the allegedly violating workplace drug testing at issue in this case may not be held civilly liable under § 28-6.5-1.

B

Employees' Civil Liability Under § 9-1-2

In the second count of their Fifth Amended Complaint, the Plaintiffs claim that the individual Cintas employee defendants may be held civilly liable under § 9-1-2 for committing criminal acts. The Plaintiffs argue that the individual employee defendants are subject to criminal liability under the Drug Testing Statute, § 28-6.5-1(b), and therefore, that the individual employee defendants are subject to civil liability under § 9-1-2. In their Motion for Judgment on

the Pleadings, the Defendants contend that the individual employee defendants are not subject to criminal liability under the Drug Testing Statute, and therefore, that the individual employee defendants may not be subject to civil liability under § 9-1-2 as a matter of law.

Section 9-1-2 of the Rhode Island General Laws, titled "Civil liability for crimes and offenses," in relevant part, provides as follows:

> "Whenever any person shall suffer injury to his or her person, reputation, or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender, and it shall not be any defense to such action that no criminal complaint for the crime or offense has been made[.]"

The Plaintiffs concede that in order to find the individual employee defendants civilly liable under § 9-1-2, the individual employee defendants must be subject to the criminal liability provisions of the Drug Testing Statute.

As discussed above, the Court finds that the individual employee defendants are not subject to personal liability under the Drug Testing Statute. This absence of personal liability on the part of the individual employee defendants plainly precludes the imposition of criminal liability. Section 28-6.5-1(b) of the Drug Testing Statute delineates criminal violations of the statute, providing that:

> "Any employer who subjects any person employed by him or her to this test, or causes, directly or indirectly, any employee to take the test, except as provided for by this chapter, shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000) or not more than one year in jail, or both." (Emphasis added.)

The statute is thus clear that only an employer may be subject to criminal liability under the Drug Testing Statute. "When the language of the statute is clear and unambiguous, it is [the Court's] responsibility to give the words of the enactment their plain and ordinary meaning." Generation

Realty, LLC, 21 A.3d at 259. The Plaintiffs contend that because the criminal liability provision of the Drug Testing Statute refers to an employer as "him or her," and because it provides for a jail sentence, the statute necessarily contemplates individual criminal liability for agents or other employees, and not only for the "employer." The Plaintiffs' contention relies on self-evident rules such as the fact that "a corporation cannot be sent to jail" and the fact that a corporation "can conduct its affairs only through its officers and employees." See Melrose Distillers, Inc. v. United States, 359 U.S. 271, 274 (1959); Holmes v. Bateson, 583 F.2d 542, 560 (1st Cir. 1978). These truisms do not lend support to the Plaintiffs' contention that § 28-6.5-1(b) contemplates criminal liability on the part of an employer's agents or employees because nothing in the Drug Testing Statute requires an "employer" to be a corporation or some form of similar business entity.

This Court must give effect to the Legislature's intention and attribute to a statute its "most consistent meaning." Generation Realty, LLC, 21 A.3d at 259. A plain reading of § 28-6.5-1 clearly demonstrates that for violations of the Drug Testing Statute, the Legislature did not intend to subject anyone other than the "employer" to criminal liability. This finding does not "demote [a] significant phrase or clause to mere surplusage" because § 28-6.5-1(b)'s reference to "him or her" and its provision for a jail sentence is entirely consistent with the existence of employers who are neither corporations nor similar business entities. See State v. DeMagistris, 714 A.2d 567, 573 (R.I. 1998). Moreover, "'penal statutes must be strictly construed in favor of the party upon whom a penalty is to be imposed.'" State v. Bryant, 670 A.2d 776, 779 (R.I. 1996) (quoting State v. Calise, 478 A.2d 198, 200 (R.I. 1984)). For all these reasons, the Court finds that individual employees or agents of an employer are not subject to criminal liability under the Drug Testing Statute. Because such individuals are not subject to criminal liability,

they are also not subject to civil liability under § 9-1-2 for criminal violations of the Drug Testing Statute. Therefore, the Court finds that under any set of facts that may be proved at trial, the individual Cintas employee defendants are not subject to civil liability under § 9-1-2 in this case.

C

The WCA and § 9-1-28.1

In the third count of their Fifth Amended Complaint, the Plaintiffs allege that all Defendants should be held liable for violation of § 9-1-28.1, which sets forth a cause of action for deprivation of the right to privacy. In their Motion for Judgment on the Pleadings, the Defendants contend that this claim is barred by the exclusivity provision of the WCA, § 28-29-20, which in relevant part provides as follows:

> "The right to compensation for an injury under chapters 29--38 of this title, and the remedy for an injury granted by those chapters, shall be in lieu of all rights and remedies as to that injury now existing, either at common law or otherwise against an employer, or its directors, officers, agents, or employees: and those rights and remedies shall not accrue to employees entitled to compensation under those chapters while they are in effect, except as otherwise provided in §§ 38-36-10 and 28-36-15."

The WCA's exclusivity provision is "clearly intended to preclude any common-law action against an employer, substituting a statutory remedy at the election of the employee when he [or she] enters employment." Hornsby v. Southland Corp., 487 A.2d 1069, 1072 (R.I. 1985). The WCA "abolished the employee's right to a common-law action . . . in order to provide a simple and expeditious procedure by which an employee would receive compensation from his employer for injuries sustained in a work-related accident." Id. Although a cause of action for invasion of the right to privacy did not exist at common law in Rhode Island, see Kalian v. People Acting Through Community Effort, Inc., 122 R.I. 429, 431-32, 408 A.2d 608, 609

(1979), the WCA's exclusivity provision generally applies to statutory claims. See Cady v. IMC Mortg. Co., 862 A.2d 202, 212 (R.I. 2004). A statutory claim will not be barred by the WCA when barring the claim "would frustrate a broad, fundamental public policy which fulfills paramount purposes, such as a claim under [Rhode Island's Fair Employment Practices Act] or [Rhode Island's Civil Rights Act]." Folan v. State, 723 A.2d 287, 292 (R.I. 1999). "[T]he WCA embodies a legislative compromise between the interests of employees and employers in regard to work-related injuries." Id. at 290.

The Plaintiffs argue that their claims for violation of the right to privacy are not barred by the WCA because, in the past, our Supreme Court has held that claims for defamation do not fall within the WCA's exclusive-remedy provision. Nassa v. Hook-SupeRx, Inc., 790 A.2d 368, 374 (R.I. 2002). In Nassa, the Supreme Court recognized that defamation was a form of "work-related 'intangible injur[y] which rob[s] a person of dignity and self-esteem'" and therefore, that claims for defamation are not barred by the exclusivity provision. Id. The Plaintiffs contend that their claims for violation of § 9-1-28.1 also fall within this class of non-barred claims and therefore, that the Defendant's Motion for Judgment on the Pleadings on this count must be discarded.

The Plaintiffs' analogy to the law of defamation is without merit because precedential Rhode Island case law specifically indicates that claims alleging violation of the right to privacy are barred by the exclusivity provision of the WCA. As the Defendants demonstrate, our Supreme Court has, on at least two occasions, directly stated that the exclusivity provision of the WCA bars claims alleging violation of § 9-1-28.1. See Manzi v. State, 687 A.2d 461, 461-62; Folan, 723 A.2d 287, 291-92 (recognizing Manzi for the proposition that an "exclusivity clause bars [a] subsequent statutory claim of invasion of privacy"). Indeed, in Folan, the Supreme

Court pointed to a "statutory claim of invasion of privacy" as a prototypical example of the type of claim typically barred by the WCA's exclusivity provision. Folan, 723 A.2d at 291-92. Moreover, in Nassa, the Supreme Court specifically distinguished a claim for defamation from a claim for invasion of the right to privacy, and noted that its decision in that case was not "contrary to . . . previous decisions subjecting claims for . . . invasion of privacy to [the WCA exclusivity] bar." Nassa, 790 A.2d at 372-73 (citing Manzi and noting that it did not involve a defamation claim).

As a result, the Court finds that the Plaintiffs' claims against all Defendants for violation of § 9-1-28.1, prohibiting deprivation of the right to privacy, are barred by the exclusive remedy provision of the WCA. The WCA is designed to serve as the exclusive remedy for all applicable claims "against an employer, or its directors, officers, agents, or employees." See § 28-29-20. An employee who has not retained his or her rights is barred by the prohibitions contained in § 28-29-20 from bringing an action against his or her employer "in situations in which 'workers' compensation benefits are appropriate.'" Kulawas v. Rhode Island Hosp., 994 A.2d 649, 656 (R.I. 2010). Clear authority from our Supreme Court indicates that this is such a situation. See Manzi, 687 A.2d at 461-62; Folan, 723 A.2d at 291-92; Nassa, 790 A.2d at 372-73. Therefore, the Court finds that under any set of facts that may be proved at trial, the Defendants are not subject to liability under § 9-1-28.1 because any such claims are barred by the WCA.

2

Motion for Partial Summary Judgment

"A party seeking to . . . obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action . . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof." Super. R.

Civ. P. 56. Our Supreme Court has consistently acknowledged that summary judgment is a "drastic remedy" and that motions for summary judgment should be dealt with cautiously. See Estate of Giuliano v. Giuliano, 949 A.2d 386, 390-91 (R.I. 2008). "A hearing justice who passes on a motion for summary judgment 'must review the pleadings, affidavits, admissions, answers to interrogatories, and other appropriate evidence from a perspective most favorable to the party opposing the motion.'" Id. at 391 (quoting Steinberg v. State, 427 A.2d 338, 340 (R.I. 1981)). A hearing justice may only grant a motion for summary judgment if, "after conducting the required analysis, he or she determines that 'no issues of material fact appear and the moving party is entitled to judgment as a matter of law.'" Id. (quoting Steinberg, 427 A.2d at 340). Our Supreme Court permits a motion justice to rule on motions for summary judgment when faced with pure questions of law and statutory interpretation. See DelSanto v. Hyundai Motor Finance Co., 882 A.2d 561, 564 n.9 (R.I. 2005).

In their Motion for Partial Summary Judgment, the Defendants seek a ruling that emotional distress damages are not recoverable under the Drug Testing Statute because the statute only allows recovery for "actual damages." The Plaintiffs contend that "actual damages," as contemplated by the Drug Testing Statute, include recovery for emotional distress, and therefore, that the Defendants' Motion for Partial Summary Judgment should be denied.

As an initial matter, and contrary to the Plaintiffs' contention, the Defendants' Motion for Partial Summary Judgment is not procedurally flawed. The Defendants' motion does not request that this Court dismiss any of the Plaintiffs' damages claims and is not premised on any particular version of the facts. The Defendants' motion only requests that this Court resolve a pure question of law; namely, whether emotional distress damages are recoverable as "actual damages" under the Drug Testing Statute. Because this Court may rule on motions for summary

judgment when faced with pure questions of law and statutory interpretation, the Defendants' motion is procedurally sound. See DelSanto, 882 A.2d at 564 n.9.

In addressing the matter at hand, it is clear that § 28-6.5-1(c)(1) permits this Court to award "actual damages" for violations of the Drug Testing Statute:

> "(c) In any civil action alleging a violation of this section, the court may:
>
> 1) Award punitive damages to a prevailing employee in addition to any award of actual damages." (Emphasis added.)

The Defendants rely principally on the recent United States Supreme Court case of F.A.A. v. Cooper, 132 S. Ct. 1441 (2012) for the proposition that the term "actual damages" should not be interpreted to include damages for emotional distress. In Cooper, the Supreme Court interpreted provisions of the Privacy Act of 1974 (the Privacy Act), 5 U.S.C. § 552a, and held that Congress intended the term "actual damages" as used in the Privacy Act to be limited to "proven pecuniary or economic harm," and thus not to encompass damages for purely emotional distress. Cooper, 132 S. Ct. at 1452.

Importantly, the Privacy Act in substance "contains a comprehensive and detailed set of requirements for the management of confidential records held by Executive Branch agencies." Id. at 1446. Likewise, the Privacy Act contains a waiver of sovereign immunity, permitting claimants to sue the federal government for damages when affected by violations of the Privacy Act. Id. at 1448. The Cooper decision is premised almost entirely on principles of sovereign immunity that are inapplicable in the present context. See id. at 1453 ("When waiving the Government's sovereign immunity, Congress must speak unequivocally. Here, we conclude it did not. As a consequence, we adopt an interpretation of 'actual damages' limited to proven pecuniary or economic harm."). The Drug Testing Statute is not aimed at public employers and

the instant case involves only a private employer. Because the question in the present case does not involve sovereign immunity principles that would compel a strict interpretation of the term "actual damages," the Court is not bound by the Supreme Court's interpretation of "actual damages" in Cooper. Moreover, in Cooper, the Supreme Court acknowledged that "the term 'actual damages' has often been defined broadly in common-law cases, and in [its] own, to include all compensatory damages," including "'impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering.'" Id. (quoting Gertz v. Robert Welch, Inc., 418 U.S. 323, 350 (1974)). The Supreme Court went on to note "the 'unremarkable point' that the term 'actual damages' can include nonpecuniary loss." Id. As a result, this Court finds that the Defendants' reliance on Cooper is inapposite.

The Defendants also argue that a strict construction of the term "actual damages" in the Drug Testing Statute is necessary because the rights conferred by the Drug Testing Statute are "purely a creature of statute" and because of the statute's "criminal character." In contrast, the Plaintiffs argue that the Drug Testing Statute is "remedial" in character, and therefore that the term "actual damages" should be construed liberally so as to include damages for emotional distress. When faced with "two divergent rules of statutory construction," such as those put forward by the parties in this case, the Court is not automatically bound to choose one rule of statutory construction over the other. See Pastore, 900 A.2d at 1078 ("[T]his is not the first time that we have concluded that a statute affording a 'liberal' remedy nevertheless should be complied with strictly because it is in derogation of the common law."). Moreover, regardless of what type of construction is given to the Drug Testing Statute, the Court's "ultimate goal" is to give effect to the intent of the Legislature. Menard, 888 A.2d at 60.

The Court notes first that, although the Drug Testing Statute contains a provision that sets forth criminal liability in § 28-6.5-1(b), that provision is entirely separate from the provision at issue in the Defendants' Motion for Partial Summary Judgment, which ultimately seeks to limit civil damages under § 28-6.5-1(c). In addition, the Court is unaware of any precedent requiring that when the term "actual damages" appears in a statute it must be interpreted strictly unless defined elsewhere in the statutory scheme. As Cooper implies, it is not unusual for the term "actual damages" to encompass nonpecuniary loss, and the Court is unconvinced that the mere absence of a definition for the term in the statutory scheme means that the Legislature intended to prohibit recovery for purely emotional distress when a private employer is liable for civil violations of the Drug Testing Statute. See Cooper, 132 S. Ct. at 1453 (finding it "unremarkable" that the term "actual damages" can encompass nonpecuniary loss). Further, the suggestion that this Court should adopt the Defendants' reading of the statute because it is "consistent with the damages schemes of other state drug testing laws" bears no clear relationship to the Rhode Island Legislature's intent on the "actual damages" question, however much this Court might be permitted to consider decisional authority from other states. See Manning v. Bd. of Tax Comm'rs of Rhode Island, 46 R.I. 400, 127 A. 865, 872 (1925) (stating that the decisions of a Massachusetts state court "may fairly be considered as authorities" when construing a similar Rhode Island statute). The Defendants have pointed to no out-of-state statutory schemes where the term "actual damages" prohibits recovery for purely emotional distress in the employer drug testing context.

In contrast, the civil liability portion of the Drug Testing Statute is plainly remedial. "A remedial statute is 'one which affords a remedy, or improves or facilitates remedies already existing for the enforcement of rights or redress of wrongs.'" Esposito v. O'Hair, 886 A.2d

1197, 1203 (R.I. 2005) (quoting Ayers-Schaffner v. Solomon, 461 A.2d 396, 399 (R.I. 1983)). The Drug Testing Statute establishes a right for employees to be free of drug testing by their employers unless the employer conforms to the requirements in § 28-6.5-1. The Drug Testing Statute also affords employees a civil remedy for employer drug testing that occurs in violation of § 28-6.5-1, which includes punitive damages, "actual damages," reasonable attorneys' fees and costs, and injunctive relief. Under these circumstances, the Court finds that the term "actual damages" as used in the Drug Testing Statute was intended by the Legislature to encompass awards for purely emotional distress. This finding comports with the remedial nature of the Drug Testing Statute and is consistent with prevailing Rhode Island case law on cases involving recovery for emotional distress damages. For example, in Adams v. Uno Restaurants, Inc., the Rhode Island Supreme Court reinstated a jury's award, which included recovery for "emotional distress," where the underlying statute that was violated similarly permitted a "civil action for appropriate injunctive relief, or actual damages, or both[.]" 794 A.2d 489, 490 (R.I. 2002) (ruling on the award of damages under the Rhode Island Whistleblowers' Protection Act, § 28-50-4(a)). Additionally, in the context of a defamation claim, our Supreme Court has held that an award of actual damages "may be based upon the mental anguish and humiliation experienced as a result of" an offending statement. Healy v. New England Newspapers, Inc., 555 A.2d 321, 326-27 (R.I. 1989) (citing Bosler v. Sugarman, 440 A.2d 129, 132 (R.I. 1982)). To the extent that the Plaintiffs' claims under the Drug Testing Statute involve a theft of "dignity" similar to claims for defamation, see Nassa, 790 A.2d at 374, the Supreme Court's non-restrictive interpretation of "actual damages" in the defamation context is particularly instructive. Finally, permitting damages for purely emotional distress in the context of civil violations of the Drug Testing Statute is consistent with prior decisions of this Court finding that under Rhode Island

Supreme Court precedent, claims for "thought-based harm" or the "invasion of a protected legal right" do not require a showing of medically established physical symptomatology to justify recovery. See Empire Merchandising Corp. v. Bancorp Rhode Island, Inc., 2011 WL 4368923 (R.I. Super. Ct. Sept. 15, 2011) (Silverstein, J.).

For the foregoing reasons, the Court finds that recovery of purely emotional distress damages is not prohibited under the Drug Testing Statute, which permits claims for "actual damages." Sec. 28-6.5-1(c)(1). Therefore, the Defendants' Motion for Partial Summary Judgment is denied at this stage.

III

Conclusion

The Defendants' Motion for Judgment on the Pleadings is granted in full. Under any set of facts that may be proved at trial, the individual employees of Cintas associated with administration of the allegedly violating workplace drug testing at issue in this case may not be held civilly liable under § 28-6.5-1, and they may not be held subject to civil liability under § 9-1-2. In addition, no set of facts provable at trial would subject any of the Defendants to § 9-1-28.1 because those claims are barred by the WCA. The Defendants' Motion for Partial Summary Judgment is denied because the Drug Testing Statute does not prohibit recovery of damages for purely emotional distress. Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Alves, et al. v. Cintas Corporation No. 2, et al.**
CASE NO:	**PC-2009-2412**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 8, 2013**
JUSTICE/MAGISTRATE:	**Silverstein, J.**
ATTORNEYS:	
For Plaintiff:	**Carolyn A. Mannis, Esq.** **Robert G. Senville, Esq.** **Catherine A. Sammartino, Esq.** **Andrew H. Berg, Esq.**
For Defendant:	**Daniel Klein, Esq.** **John E. Duke, Esq.** **Gerald L. Maatman, Jr., Esq.** **Sherri Pizzi, Esq.** **Angela L. Carr, Esq.**