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**Ceballos v. NP Palace, LLC, 138 Nev. Adv. Op. 58 (August. 11, 2022)**

Lindsay Reynolds

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EMPLOYMENT LAW: NO PRIVATE RIGHT OF ACTION FOR TERMINATION RELATED  
TO MARIJUANA USE

**Summary**

NRS 613.333 creates a private right of action in favor of an employee discharged from employment for engaging in the lawful use in this state of any product outside the employer’s premises during the employee’s nonworking hours. Although marijuana is legal in Nevada, because federal law criminalizes marijuana in Nevada, its use is not “lawful . . . in this state” and, therefore, does not provide for a private right of action. Further, an employee discharged for testing positive for recreational marijuana at work does not have a common-law tortious discharge claim under NRS 678D.510(1)(a).

**Background**

Danny Ceballos worked as a table gambler at Palace Station, and toward the end of his shift, he slipped and fell in the employee breakroom. As a result of the incident, Palace Station required Ceballos to submit a drug test that returned positive for marijuana. Ceballos’s marijuana use complied with Nevada’s recreational marijuana laws. However, Palace Station terminated Ceballos.

Ceballos sued, and the district court dismissed the complaint under NRCP 12(b)(5) for his failure to state a claim upon which relief can be granted.

**Discussion**

A.

Ceballos first argues for a claim of damages under NRS 613.333, which creates a private right of action in favor of an employee discharged from employment for engaging in the lawful use in this state of any product outside the employer’s premises during the employee’s nonworking hours. The Court interpreted NRS 613.333(1) and disagreed with Ceballos’s claim. When interpreting statutes, courts employ the general-terms canon, which means that terms are to be given their general meaning.<sup>2</sup> Also, when possible, the Court interprets separate statutes harmoniously.<sup>3</sup>

Under NRS 613.333, an employee has a private right of action for a discharged employee who engaged in “the lawful use in this state of any product outside . . . .”<sup>4</sup> The Court held that the phrase “the lawful use in this state” refers to general lawfulness under both state and federal law. Under the general-term canon, the term encompasses state and federal law because it produces

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<sup>1</sup> By Lindsay Reynolds.

<sup>2</sup> ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 101 (2012).

<sup>3</sup> *Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 131 Nev. 783, 789, 358 P.3d 228, 232 (2015).

<sup>4</sup> NEV. REV. STAT. 613.333 (2020).

general coverage and does not allow courts to recognize ad hoc exceptions.<sup>5</sup> The Court further explained that the preposition phrase “in this state” is not synonymous with “under state law”; the latter indicates that when the Legislature means to specify state law, it does. The Court looked to the Colorado Supreme Court, which confronted a similar issue. The Colorado Supreme Court also held that “lawful activity” refers to both state and federal law.<sup>6</sup> Therefore, under NRS 613.333, acts committed in Nevada that violate federal law are not lawful within the state.

Ceballos cites two additional statutes: NRS 613.132 and NRS 678D.510(1)(a), to support his claim that NRS 613.333 only applies to state law. NRS 613.132 addresses hiring and provides that “it is unlawful for any employer in this State or fail or refuse to hire a prospective employee because . . . the screening test indicate[d] the presence of marijuana.”<sup>7</sup> NRS 678D.510(1)(a) does “not prohibit . . . [a] public or private employer from maintaining, enacting, and enforcing a workplace policy prohibiting or restricting actions or conduct . . . .”<sup>8</sup>

The Court held that although these statutes present policy tensions decriminalizing marijuana and employment law, the statutes do not confirm Ceballos’s interpretation of NRS 613.333. The Court held that when the statutes are read in harmony with NRS 613.333, the statutes support the interpretation that when NRS 613.333(1) refers to product use that it is lawful in this state, it means lawful under both state and federal, not just lawful under Nevada law.

## B.

Ceballos’s second claim is that his termination violates public policy in two ways. First, he maintains that Nevada has a public policy interest to protect the statutory rights of its citizens and that it is his statutory right under NRS [Chapter] 678D, to engage in [marijuana] consumption. Second, Nevada has a public policy interest in ensuring its citizens are not denied the ability to support themselves and their families due to statutorily protected and lawful activities.

The Court has found sufficient violations of compelling public policy to justify a tortious discharge claim when an employer terminated an employee (1) “for refusing to work under conditions unreasonably dangerous to the employee,”<sup>9</sup> (2) for refusing to engage in illegal conduct,<sup>10</sup> (3) for filing a workers’ compensation claim,<sup>11</sup> (4) for reporting illegal activities to outside authorities,<sup>12</sup> and (5) for performing jury duty.<sup>13</sup> Age discrimination also does not justify allowing employee to recover compensatory and punitive damages.<sup>14</sup>

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<sup>5</sup> SCALIA & GARNER, *supra* note 2, at 101.

<sup>6</sup> Coates v. Dish Network, LLC, 350 P.3d 849, 850, 852 (Colo. 2015).

<sup>7</sup> NEV. REV. STAT. 613.132 (2019).

<sup>8</sup> NEV. REV. STAT. 678D.510(1)(a) (2020).

<sup>9</sup> D’Angelo v. Gardner, 107 Nev. 704, 712, 819 P.2d 206, 212 (1991).

<sup>10</sup> Allum v. Valley Bank, 114 Nev. 1313, 1323, 970 P.2d 1062, 1068 (1998).

<sup>11</sup> Hansen v. Harrah’s, 100 Nev. 60, 64, 675 P.2d 394, 397 (1984).

<sup>12</sup> Wiltsie v. Baby Grand Corp., 105 Nev. 291, 293, 774 P.2d 432, 433 (1989).

<sup>13</sup> D’Angelo, 107 Nev. at 712, 819 P.2d at 212 (dictum).

<sup>14</sup> Chavez v. Sievers, 118 Nev. 288, 293–92, 43 P.3d 1022, 1025–26 (2002); Sands Regent v. Valgardson, 105 Nev. 436, 439–40, 777 P.2d 898, 900 (1989).

Applying the law to the public policies Ceballos's identified, his claims fall short. The Court held that Ceballos's claims differ fundamentally from the "race and exceptional cases" discussed above.

### **Conclusion**

Ceballos did not have a private right of action under NRS 613.333 because the "lawful use in this state" applies to both state and federal laws. Further, Ceballos did not have a tortious claim under NRS 678D.510(1)(a) because his termination of employment for using marijuana did not rise to a level that violated public policy. Therefore, the district court's order is affirmed.