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COURT OF APPEALS

Christopher Hutchinson v. State of Maryland, No. 1, September Term, 2008, filed October 8, 2008. Opinion by Raker, J.

<http://mdcourts.gov/opinions/coa/2008/1a08.pdf>

CRIMINAL LAW - EXPERT TESTIMONY - DISCOVERY - HARMLESS ERROR

Facts: Petitioner was convicted by a jury in the Circuit Court for Montgomery County of second degree rape. At trial, the State called a forensic nurse examiner, Heidi Bresee, to testify to her examination of the victim following the sexual assault. The State had not disclosed Bresee as an expert witness pursuant to Md. Rule 4-263(b)(4). The trial court allowed Bresee to render an expert opinion, over defense counsel's objections, when she testified that the injuries she observed were consistent with the complainant's description of events. Petitioner noted a timely appeal to the Court of Special Appeals, which affirmed his conviction.

Held: Reversed and remanded for a new trial. The Circuit Court erred in permitting the forensic nurse's expert testimony, and the error was not harmless beyond a reasonable doubt. The trial court erred in permitting the State to call a witness to render an expert opinion, without the State first disclosing in discovery the witness's testimony.

The defense in the case was consent. In the instant case, the error was not harmless because the credibility of the victim's version of events and defendant's version of events was the principal issue for the trier of fact to resolve. The case was essentially a "he said, she said" and under these circumstances, the Court found that failing to disclose the expert's testimony was not harmless beyond a reasonable doubt. The forensic nurse examiner's testimony significantly bolstered the credibility of the victim's version of events, and the Court could not say beyond a reasonable doubt that the error did not contribute to the verdict. No other witness testified that the injuries were consistent with the victim's description of the incident, and thus, Bresee's testimony was not cumulative.

Linwood Bean v. Department of Health and Mental Hygiene, No. 7, Sept. Term 2008, filed 5 November 2008, Opinion by Harrell, J.

<http://mdcourts.gov/opinions/coa/2008/7a08.pdf>

CRIMINAL LAW - PROCEDURE - NOT CRIMINALLY RESPONSIBLE - ELIGIBILITY FOR RELEASE FROM COMMITMENT - EXPERT TESTIMONY ON BEHALF OF PETITIONER NOT REQUIRED IN ALL CASES IN WHICH A COMMITTED PERSON PETITIONS FOR RELEASE - WHETHER EXPERT WITNESS EVIDENCE MUST BE PRESENTED BY PETITIONER DEPENDS UPON THE FACTS AND CIRCUMSTANCES IN DISPUTE IN EACH CASE

Facts: On 3 December 1985, Linwood Bean was found by the Circuit Court for Baltimore City not criminally responsible of a charge of assault with intent to murder. He was committed to the Department of Health and Mental Hygiene ("Department") for inpatient care and treatment. Bean thereafter was released conditionally from inpatient treatment on three different occasions, the most recent of which was revoked on 15 October 2001 due to allegations that he assaulted his landlady. Since then, Bean has been a patient at the Clifton T. Perkins Hospital Center.

On 23 December 2004, pursuant to § 3-119 of the Criminal Procedure Article, Md. Code, Bean filed a petition with the Circuit Court requesting conditional release or discharge from his inpatient commitment to the Department. A jury trial was held on 20 June 2006. Bean presented, as his case-in-chief, testimony from two witnesses: himself and a friend. Bean conceded that he had a mental illness. Both Bean and his friend testified as to Bean's positive behavior upon his previous releases and his present and future willingness to continue taking prescribed medications that ameliorate the symptoms of his disorder. At the close of Bean's case-in-chief, the Department moved for judgment on the ground that Bean, who had the burden of proof, failed to present any expert testimony as to whether he would pose a danger to himself or the community if released. The trial judge denied the Department's motion.

In its case-in-chief, the Department adduced the testimony of Lisa Sloat, M.D., a psychiatrist at Perkins Hospital. Dr. Sloat testified that, in her professional opinion, Bean was unfit for release because of his lack of understanding of his mental illness and his previous poor record taking prescribed medications during his releases and while committed. Dr. Sloat's testimony, however, suggested that Bean's disorder, and the

resultant disruptive behavior, had been managed and controlled so long as Bean took those prescribed medications.

At the close of all the evidence, the Department renewed its motion for judgment on the ground that Bean, as a matter of law, could not prevail unless he presented expert testimony. The Circuit Court denied the motion, and submitted the case to the jury. The jury determined that Bean should be released from inpatient commitment, with conditions.

The Department appealed the Circuit Court's judgment and, in a reported opinion, the Court of Special Appeals reversed. *Dep't of Health & Mental Hygiene v. Bean*, 178 Md. App. 418, 941 A.2d 1232 (2008). The intermediate appellate court held that Criminal Procedure § 3-119 determinations, requiring the trier of fact to determine whether a committed person is eligible for release based on whether they would pose a danger to the community, always present a complex medical question necessarily requiring expert medical testimony.

Held: Reversed. Md. Code, Criminal Procedure § 3-119 provides that a committed person "is eligible for conditional release from commitment only if that person would not be a danger, as a result of mental disorder or mental retardation, to self or to the person or property of others if released from confinement with conditions imposed by the court." Based on the evidence presented at trial, Bean and the Department were in agreement on two material facts - that Bean has a mental disorder (Schizoaffective Disorder), and that prescribed medications, if taken regularly, can control his disorder and the resultant disruptive conduct he exhibits. Thus, the main factual dispute contested by Bean and the Department was whether Bean would continue taking prescribed medications if released with conditions. The determination of this dispute boiled down to a credibility assessment of Bean's testimony versus that of Dr. Sloat concerning Bean's present and future willingness to take prescribed medications. Because this issue was not so related particularly to some science or profession that it was beyond the ken of the average lay person on a jury, Bean was not required, as a matter of law, to present expert opinion.

The Department also contended that, although the current case only may have presented a factual issue for the jury's determination, the common law requires expert opinion to be presented by committed persons in all § 3-119 proceedings because whether a person poses a danger to the community, if released, presents a complicated medical question, requiring expert opinion. The Court rejected this argument, concluding that,

under parallel and analogous Maryland and Supreme Court authority, whether a person would pose a danger to the community does not present always a complicated medical question. For example, in competency determinations, which require a court to determine whether a criminal defendant is able to understand the nature of the proceedings against him and help in his defense (a determination that inherently renders expert medical opinion highly relevant), the Court of Special Appeals has held that expert opinion is not required absolutely. The U.S. Supreme Court also has found that expert opinion is not required absolutely in capital sentencing proceedings in which a jury is charged with determining, among other elements, the probability that the defendant would constitute a continuing threat to society. Based on these authorities, and the absence in the relevant statute of any mention of a requirement that expert opinion must be presented, the Court determined that expert medical opinion is not required always in Criminal Procedure § 3-119 proceedings.

* * *

Lemuel Lindsay McGlone, Jr. v. State of Maryland, No. 116, September Term, 2007. Opinion filed on November 13, 2008, by Greene, J.

<http://mdcourts.gov/opinions/coa/2008/116a07.pdf>

CRIMINAL LAW - STATUTORY INTERPRETATION - MD. CODE (1957, 1987 REPL. VOL.), § 643B(C) OF ARTICLE 27 - REQUIREMENTS AS TO TERMS OF CONFINEMENT FOR PREDICATE CONVICTIONS- STATUTORY INTERPRETATION - MD. CODE (1957, 1987 REPL. VOL.), § 643B(C) OF ARTICLE 27 - REQUIREMENTS AS TO SEQUENTIALITY OF PREDICATE CONVICTIONS:

Facts: On February 14, 1989, Lemuel Lindsay McGlone, Jr., appellant, was convicted by a jury in the Circuit Court for Montgomery County of various criminal offenses, including, use of a handgun in the commission of a crime of violence. For that particular conviction, McGlone was sentenced as a habitual offender, pursuant to Md. Code (1957, 1982 Repl. Vol., 1986 Cum. Supp.), Article 27, § 643B(c), to 25 years incarceration without the possibility of parole. In June 2007, McGlone filed a motion to correct an illegal sentence, contending that his two prior convictions for crimes of violence should not have qualified as predicate convictions for an enhanced sentence because they neither occurred sequentially nor were separated by a term of confinement, as required by law.

The Circuit Court denied the motion without a hearing and McGlone noted a timely appeal to the Court of Special Appeals. Prior to any proceedings in that court, we issued a writ of certiorari on our own initiative, *McGlone v. State*, 402 Md. 623, 938 A.2d 825 (2008), to consider whether two convictions that are not separated by a term of confinement qualify as two predicate convictions for purposes of sentence enhancement pursuant to Md. Code. Ann., Art. 27 § 643B(c). We also granted certiorari to resolve whether Md. Code. Ann., Art. 27 § 643B(c) is ambiguous as to the requirement of sequentiality for two prior predicate convictions used for the purpose of sentence enhancement.

Held: Affirmed. We hold that the plain language of § 643B(c), the so called "three strikes" provision, does not require intervening terms of confinement between predicate convictions. Rather, § 643B(c) requires only that the offender serve "at least one term of confinement." That confinement may occur after the first predicate conviction, after the second predicate conviction, or it may run concurrently with another sentence. We further hold that Md. Code (1957, 1987 Repl. Vol.) § 643B(c) of Article 27 contains no language which expresses or

implies that each predicate offense must be committed and convicted in the following sequence: commit offense one, conviction for offense one, commit offense two, conviction for offense two, and so on. Rather, a plain reading of § 643B(c) suggests that the only explicit requirement concerning sequentiality is via the definition of "separate occasion." Therefore, the circuit court may utilize as a predicate conviction, under § 643B(c), a second or succeeding conviction for a crime of violence if the underlying offense (to that second or succeeding conviction) occurred prior to the first (predicate) conviction for a crime of violence, but after the filing of the charging document as to the first offense. Accordingly, McGlone did not receive an illegal sentence.

* * *

Robert L. Bost v. State of Maryland, No. 98, September Term, 2007, filed October 15, 2008. Opinion by Raker, J.

<http://mdcourts.gov/opinions/coa/2008/98a07.pdf>

CRIMINAL LAW - UNIFORM ACT ON FRESH PURSUIT - ENTRY INTO MARYLAND
REQUIRED REASONABLE SUSPICION THAT DEFENDANT COMMITTED A FELONY

CRIMINAL LAW - REASONABLE SUSPICION

Facts: The Court of Appeals addressed the question of whether the Maryland Uniform Act on Fresh Pursuit, Md. Code (2001, 2006 Cum. Supp.), § 2-304 to -309 of the Criminal Procedure Article, requires probable cause that a felony has been committed at the time the officer enters into Maryland from another jurisdiction, or whether reasonable suspicion is the standard to be applied.

Petitioner had been indicted by the Grand Jury for Prince George's County on drugs and weapons charges. In the Circuit Court, appellant Robert Bost filed a motion to suppress the evidence seized by the police incident to his arrest, arguing that the out-of-state District of Columbia Metropolitan police violated the Maryland Uniform Act on Fresh Pursuit when they crossed into Maryland without probable cause to believe that Bost had committed a felony. Testimony at the ensuing evidentiary hearing revealed that a group of District of Columbia Metropolitan police officers were conducting a patrol in a high crime area on a block separating the District of Columbia and Maryland. Several officers approached a group of about a dozen people on the sidewalk, at which point Bost immediately took flight while clutching his waistband. Officers pursued Bost into Prince George's County, where they attempted to physically restrain him, and in the process discovered a concealed semiautomatic pistol. Bost was arrested and a further search incident to arrest revealed cocaine in Bost's pants. The Metropolitan Police immediately contacted Prince George's County officials, who responded and took custody of Bost.

The Circuit Court denied the motion to suppress the evidence, found Bost guilty and sentenced him to three years incarceration, with all but one year suspended.

Bost noted a timely appeal to the Court of Special Appeals. The Court of Appeals, on its own initiative, issued a writ of certiorari before the intermediate appellate court decided the appeal.

Held: The Court of Appeals affirmed the trial court's ruling

denying the motion to suppress on the grounds that the Metropolitan police officers did not violate the Maryland Uniform Act on Fresh Pursuit. Section 2-305 of the statute authorizes a state, county, or municipal law enforcement officer of another state to enter Maryland if in "fresh pursuit." Fresh pursuit is defined in § 2-304 as follows:

- "(b) 'Fresh pursuit' includes:
 - (1) fresh pursuit as defined by the common law;[] and
 - (2) pursuit without unreasonable delay, but not necessarily instant pursuit, of a person who:
 - (i) has committed or is reasonably suspected of having committed a felony;
or
 - (ii) is suspected of having committed a felony, although a felony has not been committed, if there is reasonable ground for believing that a felony has been committed."

The Court of Appeals held that, based on the plain language, the phrase "reasonably suspected" in § 2-304(b)(2)(i) of the Act authorizes an out-of-state officer to enter Maryland to arrest and hold a person in custody if the officer has reasonable suspicion that a person has committed a felony at the time of entering into Maryland, and probable cause at the time of arrest.

The Court of Appeals reasoned that its interpretation comports with the purpose of the Maryland Uniform Act on Fresh Pursuit, which is to grant authority to officers from other jurisdictions to cross state lines to arrest criminals who might otherwise use state lines to escape apprehension. The Court noted that requiring probable cause at the time of entering into another state is too strict an interpretation of the "reasonably suspected" language.

The Court affirmed the trial court's denial of the motion to suppress, finding that under the totality of the circumstances in the case, the Metropolitan police officers had reasonable suspicion to believe Bost had committed a felony when they crossed into Maryland.

Karsenty v. Schoukroun, No. 2, September Term, filed 12 November 2008. Opinion by Judge Harrell.

<http://mdcourts.gov/opinions/coa/2008/2a08.pdf>

ESTATES AND TRUSTS - ELECTIVE SHARE - A DECEDENT SPOUSE'S RETAINED CONTROL OVER AN ASSET DURING LIFE, FOLLOWING INTER VIVOS TRANSFER OF THE ASSET, DOES NOT CONSTITUTE NECESSARILY AN UNLAWFUL FRUSTRATION OF THE SURVIVING SPOUSE'S STATUTORY RIGHT TO AN ELECTIVE SHARE OF THE DECEDENT'S NET ESTATE.

ESTATES AND TRUSTS - ELECTIVE SHARE - A COURT CONSIDERING WHETHER AN INTER VIVOS TRANSFER SHOULD BE SET ASIDE AS AN UNLAWFUL FRUSTRATION OF A SURVIVING SPOUSE'S STATUTORY RIGHT TO AN ELECTIVE SHARE MUST DETERMINE WHETHER THE DECEDENT INTENDED THAT THE ASSAILED TRANSFER BE A MERE DEVICE OR CONTRIVANCE AND MUST MAKE ITS DETERMINATION ON A CASE-BY-CASE BASIS.

Facts: This case arose out of a decedent's distribution of his assets through the use of both probate and non-probate estate planning arrangements. Gilles H. Schoukroun ("Gilles" or "Decedent") and his first wife, Bernadette, had a daughter, Lauren. When Gilles and Bernadette divorced, they entered into a separation agreement whereby they each agreed to maintain a life insurance policy in the amount of at least \$150,000, naming Lauren as the beneficiary. Gilles, however, did not purchase such a policy.

Sometime in 1999, Gilles met Kathleen Sexton ("Kathleen"), to become his second wife. Before they married, Gilles and Kathleen took out life insurance policies from Zurich Kemper. Gilles made his policy benefits payable to Kathleen, in the amount of \$200,000. Kathleen made hers payable to her estate in the amount of \$200,000, with her son from her prior marriage as the beneficiary of her estate. Gilles and Kathleen were married in 2000.

In 2004, Gilles learned that he had lymphoma. He died in October 2004 at the age of 44. He had been married to Kathleen for four years. Lauren, his and Bernadette's child, was 14 years old.

Before he died, however, Gilles created a revocable *inter vivos* trust for Lauren's benefit. Gilles retained a life estate in the trust. He transferred three financial accounts into the trust and named the trust as the beneficiary of two transfer-on-death ("TOD") accounts. The largest account was managed by Fidelity Investments. Gilles also prepared and executed his last

will and testament in which he named his sister, Maryse Karsenty ("Maryse"), the Personal Representative of his estate and bequeathed all of his tangible property to Kathleen. Gilles bequeathed the "rest, residue and remainder" of the estate to the trust.

When Gilles died, Lauren became the sole beneficiary of the Trust. Kathleen received the \$200,000 proceeds from Gilles's Zurich Kemper life insurance policy. In accordance with Gilles's will, Kathleen also received his 2003 Toyota Highlander, the outstanding loan balance for which he had paid off just before his death. The vehicle was valued at approximately \$22,000. Gilles also paid off the \$17,000 balance due on Kathleen's vehicle.

Kathleen renounced Gilles's will and filed an election to take a statutory share of Gilles's estate under Section 3-203 of the Estates and Trusts Article of the Maryland Code. Shortly thereafter, Kathleen filed a complaint in the Circuit Court for Anne Arundel County against Maryse, as trustee of the Trust, and Bernadette, as Lauren's guardian, claiming fraud on her marital rights and constructive fraud. Kathleen principally relied on *Knell v. Price*, 318 Md. 501, 569 A.2d 636 (1990). *Knell* applied the doctrine, heretofore referred to as fraud on marital rights, to invalidate a decedent's *inter vivos* property transfer to his live-in companion because the decedent retained possession and absolute control of the property during his life. Kathleen argued that *Knell* seemingly established a bright-line rule that absolute control of transferred property by a decedent spouse is a *per se* fraud on a surviving spouse's marital right to an elective share of the decedent's estate. Alternatively, she argued that, absent the *per se* rule, the factual circumstances of this case necessitated the conclusion that the trust and the TOD accounts should be set aside as frauds on her marital rights. Kathleen sought to have the Court impose a constructive trust on the funds in the trust.

During a two-day bench trial, Kathleen testified that, during Gilles's illness, she frequently took him to his medical appointments and assisted him in other respects. She claimed that she did not know that Gilles had a prior obligation to maintain a life insurance policy for Lauren's benefit and that, although she was aware that Gilles created a will and a trust, she did not know the details of either. Kathleen explained that, during their marriage, the couple lived in her home in Crofton, Maryland, and that Gilles paid her \$1,200 dollars per month to assist her with her mortgage. In addition to the \$200,000 life insurance policy proceeds and the Toyota Highlander that she

received under Gilles's will, Kathleen testified that she also received \$12,680.91 as a death benefit from a thrift savings plan. Furthermore, Kathleen acknowledged that, before Gilles died, he paid off the balance due on her car loan. Besides the arrangements that Gilles made for her, Kathleen described her general financial and employment status.

In addition to becoming the beneficiary of the Trust, which the trial court valued at approximately \$422,000 at the time of Gilles's death, testimony revealed that Lauren receives a survivor benefit from Gilles's U.S. Air Force pension as well as Social Security.

At the conclusion of the receipt of evidence, the trial judge resolved Kathleen's claims against her. The trial judge held that *Knell* did not require that he invalidate the trust and the TOD accounts, and he found, as a matter of fact, that Gilles did not intend to defraud Kathleen.

Kathleen appealed to the Court of Special Appeals, which reversed the trial court and held that, although the trial court was not clearly erroneous in finding that Gilles did not intend to defraud Kathleen, *Knell* created a *per se* rule requiring that the trust and TOD accounts be set aside. The Court of Appeals granted Maryse's Petition for a Writ of Certiorari to determine whether the intermediate appellate court erred in holding that a decedent's *inter vivos* property transfer is a *per se* fraud on her or his surviving spouse's marital rights where the decedent retained dominion and control over the transferred property during her or his lifetime. *Karsenty v. Schoukroun*, 404 Md. 152, 945 A.2d 1270 (2008). The Court also granted Kathleen's Conditional Cross-Petition for a Writ of Certiorari to determine whether the intermediate appellate court erred as a matter of law in holding that the trial court was not clearly erroneous in finding that Gilles did not intend to perpetrate a fraud on Kathleen's marital rights. *Id.*

Held: Reversed and remanded with instructions. In Part I of its opinion, the Court analyzed the State's elective share statute, Maryland Code (1974, 2001 Repl. Vol., 2008 Cum. Supp.), Estates and Trusts Article, § 3-203, which allows a surviving spouse to take a percentage of the decedent spouse's "net estate." The Court observed that the statute's language was clear and unambiguous, and, thus, the "net estate" did not include the trust or the TOD accounts at issue because both passed by operation of law when Gilles died, not by testate succession. The Court noted that other states have adopted an "augmented estate" that permits a surviving spouse to include,

for the purpose of the elective share, assets over which the decedent retained lifetime control. The Court concluded that if it adopted Kathleen's argument - that retained control will cause a non-probate asset's disposition to be set aside - it would be adopting, in effect, an augmented estate model, contrary to the net estate model chosen by the General Assembly.

The court recognized that, on occasion, it has set aside *inter vivos* transfers that frustrate a surviving spouse's right to an elective share, under a doctrine previously referred to as "fraud on marital rights." The Court surveyed those cases, as well as similar cases from other courts, and concluded that a decedent's retained control over an asset during her or his lifetime does not mean necessarily that the asset's non-probate disposition is ineffective against the decedent's surviving spouse. It is but one, albeit important, factor in the analysis. Indeed, the Court pointed out that the relevant case-law requires a fact-specific inquiry. The Court also considered its decision in *Knell v. Price*, 318 Md. 501, 569 A.2d 636 (1990), which Kathleen asserted established a bright-line rule that retained control renders an *inter vivos* transfer invalid as to a surviving spouse; however, the Court concluded that *Knell* was limited to its facts and did not break with the Court's earlier precedents.

In Part II, the Court held that fraud is not the proper focus of a court's inquiry into whether an *inter vivos* transfer should be invalidated as to a surviving spouse. Accordingly, the Court abandoned the term "fraud on marital rights." The Court looked to the doctrine's purpose and concluded that it was designed "to balance the social and practical undesirability of restricting the free alienation of personal property against the desire to protect the legal share of the spouse." The Court surveyed the history of relevant Maryland cases and observed that the proper focus should be on the substantive completeness of the assailed transfer. If the decedent intended to structure a transfer that was a "mere device or contrivance," the surviving spouse may set it aside as an improper frustration of her or his right to an elective share.

The Court concluded that the trial court did not apply the proper standard when it found as a matter of fact that Gilles did not intend to defraud Kathleen, and it remanded the case with a list of inclusive factors for the trial court to consider in its assessment of whether the trust or TOD accounts should be set aside: (1) the extent of control retained by the decedent; (2) the motives of the decedent and/or those who benefit from the assailed transfer; (3) the degree to which the assailed transfer depletes the estate that otherwise would be available to the

surviving spouse; (4) whether and to what extent the decedent actually exercised her or his retained control over the property; and (5) the particular familial circumstances involved.

Charles Marcantonio, Personal Representative of The Estate of Sherri Schaefer, et al. v. Melissa Moen, M.D., et al., No.4, September Term, 2008. Opinion filed on November 5, 2008, by Greene, J.

<http://mdcourts.gov/opinions/coa/2008/4a08.pdf>

MEDICAL MALPRACTICE - SUMMARY JUDGMENT - MARYLAND RULE 2-501(e),
CONTRADICTORY AFFIDAVITS OR STATEMENTS

Facts: In August of 2000, Sherri Schaefer visited her gynecologist, Melissa Moen, M.D., and informed Dr. Moen that she was experiencing abnormal vaginal bleeding. It is alleged that Dr. Moen ordered a transabdominal and transvaginal pelvic ultrasound to aid her in determining the cause of the bleeding, but failed to perform an endometrial biopsy at that time. The ultrasound was performed on September 11, 2000, and subsequently interpreted by radiologist, Paula DeCandido, M.D. When interpreting the ultrasound, Dr. DeCandido failed to report a 1.5 centimeter mass located on Ms. Schaefer's right ovary. Ms. Schaefer was later diagnosed with cancer and ultimately died from this disease.

Prior to her death, Ms. Schaefer and her husband, Charles Marcantonio ("Marcantonio"), filed a cause of action for medical negligence against Dr. Moen, Dr. Decandido, and others ("The Medical Providers") alleging that they negligently failed to diagnose and treat Ms. Schaefer's endometrial and ovarian cancer in August and September of 2000. After Ms. Schaefer's death, Marcantonio amended the complaint to add wrongful death and survivorship claims against The Medical Providers. Marcantonio submitted affidavits from two expert witnesses that opined that The Medical Providers' negligence proximately caused Ms. Schaefer's death. During their prior depositions, however, one of these experts indicated that they would not be rendering an opinion as to Ms. Schaefer's cause of death and the other indicated that he would not be going into her staging or prognosis at the time her cancer was diagnosed.

The Circuit Court for Anne Arundel County granted The Medical Providers' motions to strike the experts' affidavits pursuant to Md. Rule 2-501(e), **Contradictory Affidavits or Statements**. Upon striking the affidavits, the Circuit Court granted The Medical Providers' motion for summary judgment, concluding that Marcantonio had failed to provide sufficient evidence that The Medical Providers' negligence proximately caused Ms. Schaefer's death. The Court of Special Appeals affirmed the judgment of the Circuit Court concluding that the

experts' affidavits contained material contradictions in violation of Rule 2-501(e).

Held: Judgment of the Court of Special Appeals reversed. The experts' affidavits do not contain material contradictions in violation of Md. Rule 2-501(e). Rule 2-501(e) does not define "material contradiction," and thus, we interpret the terms as they are ordinarily and popularly understood in the English language. Accordingly, a material contradiction under 2-501(e) is a factual assertion that is significantly irreconcilable with, or contradictory to, the affiant's previous sworn statement.

Interpreting the term "material contradiction" to apply to irreconcilable statements of material fact comports with and furthers the purpose of the Maryland summary judgment procedure. Such an interpretation ensures that subsection (e) is utilized to strike affidavits that contain factual assertions that are not genuine. Because we determine that the Circuit Court incorrectly struck the affidavits of Drs. Shmookler and Hutchins, we hold that the court erroneously entered summary judgment on the basis that the Marcantonios failed to establish sufficient evidence of proximate cause.

COURT OF SPECIAL APPEALS

Hillsmere Shores Improvement Association, Inc. v. D. Gregory Singleton, et al., No. 1373, September Term, 2007, filed October 30, 2008. Opinion by Hollander, J.

<http://mdcourts.gov/opinions/cosa/2008/1373s07.pdf>

REAL PROPERTY - ADVERSE POSSESSION - COMMUNITY PROPERTY -
SUBDIVISION - RIPARIAN RIGHTS - SPECIAL COMMUNITY BENEFIT
DISTRICT - TAX SALE - SOVEREIGN IMMUNITY - DEDICATION.

Facts: The Singletons, the Hertzes, and Dr. Sahandy, appellees, are residents of a subdivision in Anne Arundel County. The Singletons purchased Lot 9 in 1977. The Hertzes acquired their lot in 1979. Dr. Sahandy purchased Lot 17 in 1966. More than 20 years later, they brought quiet title actions against their community association, the appellant, seeking a declaration that, by adverse possession, they had gained title to portions of the community beach sitting between their respective lots and the water. Each of the appellees had made improvements to the disputed areas.

The Subdivision was created in phases between 1952 and 1959 by a corporate developer, Hillsmere Estates, Inc. (the "Developer"). Appellees own three noncontiguous lots in the Subdivision. In June 1965, the Subdivision was designated as the Hillsmere Estates Special Benefit District (the "District").

By a "Deed and Agreement" executed on July 9, 1965, the Developer conveyed to the Association certain "parks, playgrounds, wharves, piers, [and] community beaches" in the Subdivision, including the Community Beach, for "the purpose of promoting . . . recreational, beneficial and civic interests of its members, and in general for the purpose of promoting and improving the welfare of said community." Further, the Deed and Agreement stated that the Community Beach was conveyed to the Association "for the purpose of holding and maintaining the same for the use of bona fide lot owners in Hillsmere Estates for recreation, play, sports and in general, as a beach area and boat park[.]"

The Circuit Court for Anne Arundel County issued a "Memorandum Opinion and Order," in which it determined that appellees were entitled to the disputed portions of the Community Beach, based on the doctrine of adverse possession.

Held: Affirmed. The hostility element of adverse possession was not defeated by appellees' request to the Association for permission to construct bulkheads on their respective properties; the Association's covenants required permission for construction on the landowners' own properties. One of the appellees also filed real property tax assessment appeals. But, those appeals did not constitute the renunciation of a claim of adverse possession. Nor did his purchase at a tax sale of another property in the subdivision, not adjacent to the water, defeat his claim of adverse possession.

Appellant, as administrator of a special community benefit district that consisted of the subdivision, was not a State agency and did not enjoy protection from adverse possession based on sovereign immunity. Nor was the developer's conveyance of the community beach to the Association a dedication to the public, so as to bar adverse possession.

Lester Rivers v. Hagner Management Corporation, et al., No. 516 & No. 1870, September Term, 2007, filed October 29, 2008. Opinion by Hollander, J.

<http://mdcourts.gov/opinions/cosa/2008/516s07.pdf>

REAL PROPERTY - LANDLORD-TENANT - NEGLIGENCE - PREMISES
LIABILITY - ARSON - DUTY OF CARE - FORESEEABILITY - STATUTORY
COMPLIANCE.

Facts: A tenant brought a negligence action against his landlord for injuries he sustained while attempting to escape from a fire set by an arsonist in the entry area of the apartment building. The owner conceded, for purposes of the motion, that it did not provide the egress that was required by a local fire safety code. The Circuit Court for Prince George's County granted summary judgment in favor of the owner of the building, based on its conclusion that the landlord had no duty to protect against arson.

Held: Reversed and remanded. The circuit court erred in granting summary judgment. The landlord had a duty to comply with the fire safety code, so as to minimize danger to its tenants from fires that might occur, *regardless of their cause*. The risk of fire is foreseeable.

ATTORNEY DISCIPLINE

By an Order of the Court of Appeals of Maryland dated October 31, 2008, the following attorney has been suspended for eighteen (18) months, effective May 6, 2008, from the further practice of law in this State:

CARY BARTLOW HALL

*

By an Order of the Court of Appeals of Maryland dated November 10, 2008, the following attorney has been disbarred by consent from the further practice of law in this State:

HOWARD YENG-HAI MEI

*

JUDICIAL APPOINTMENTS

On September 26, 2008 the Governor announced the appointment of STEVEN G. SALANT to the Circuit Court for Montgomery County. Judge Salant was sworn in on October 20, 2008 and fills the vacancy created by the retirement of the Hon. DeLawrence Beard.

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On September 26, 2008 the Governor announced the appointment of SHARON V. BURRELL to the Circuit Court for Montgomery County. Judge Burrell was sworn in on October 21, 2008 and fills the vacancy created by the retirement of the Hon. Ann Newman Sundt.

*

On October 15, 2008 the Governor announced the appointment of LEONARD J. EISWERT to the District Court of Garrett County. Judge Eiswert was sworn in on November 14, 2008 and fills the vacancy created by the death of the Hon. Ralph M. Burnett.

*