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https://www.courts.state.md.us/data/opinions/coa/2025/7a24.pdf

RELEVANCY – EVIDENCE OF INTERNET SEARCHES PERTAINING TO ABORTION

RELEVANCY – EVIDENCE OF A WOMAN'S LACK OF PRENATAL CARE

Facts:

The State of Maryland charged Moira E. Akers in the Circuit Court for Howard County with murder and child abuse resulting in the death of her newborn. The charges arose in connection with Ms. Akers' at-home delivery of the baby without her husband's knowledge that she was pregnant at the time. Ms. Akers was the sole witness to the delivery. Although she initially disclosed her pregnancy to her husband, she later told him that the pregnancy was ectopic and that it had ended. Beyond her doctor, Ms. Akers did not tell anyone that she was pregnant.

Ms. Akers delivered the baby alone in her bathroom. When Mr. Akers found Ms. Akers in their bathroom bleeding profusely, he called 911. Ms. Akers did not tell Mr. Akers or the first responders that responded to the call why she was bleeding. The first responders transported Ms. Akers to Howard County General Hospital, where she admitted to delivering a baby and told the doctors that it was in a closet at home in a plastic bag. Hospital staff notified law enforcement and the first responders, who returned to the Akers' home to recover the baby. The first responders located the body of a male baby in a bag with bloody towels. In hospital interviews, Ms. Akers consistently maintained that the baby was stillborn.

At trial, Ms. Akers continued to maintain that the baby was stillborn, and the State contended that the baby died of asphyxiation at Ms. Akers' hands. The State presented Ms. Akers' internet searches about terminating a pregnancy as evidence of her intent to kill or harm the baby. The searches occurred during the period in which Ms. Akers could have lawfully terminated her

pregnancy. The prosecutor's narrative throughout the trial was that Ms. Akers' contemplation of abortion showed that she intended to kill the child at birth. Unlike the termination searches, which were prominently featured in the presentation of the State's case, there was very little evidence presented on Ms. Akers' lack of prenatal care.

A jury convicted Ms. Akers of second-degree murder and child abuse resulting in death. The trial court sentenced Ms. Akers to 30 years of imprisonment for murder and a concurrent 20 years of imprisonment for child abuse resulting in death. The Appellate Court of Maryland affirmed in an unreported decision, holding that both types of evidence—the internet searches related to abortion and Ms. Akers' lack of prenatal care—were relevant and that the trial court did not abuse its discretion in admitting the evidence.

Ms. Akers filed a petition for a writ of *certiorari*, which the Supreme Court of Maryland granted.

Held: Reversed and remanded with instructions for a new trial.

The Supreme Court of Maryland held that a woman's internet searches about terminating a pregnancy during a period in which she would be able to legally obtain an abortion were irrelevant as a matter of law to show her intent to kill or harm a newborn many months later at birth. Simply put, the predicate fact—lawfully contemplating the termination of a pregnancy—does not support the inferences advanced by the State—an intent, plan, or motive to kill or harm a person. The Court explained that the State's argument begs the question of how Ms. Akers' internet searches made it more likely that she had a homicidal intent toward a living newborn, unless one assumes that a person who researches abortion options is more likely to commit murder or harm a person.

The Supreme Court further held that, even if the termination searches were material to a general motive that Ms. Akers did not want a child and therefore would be more likely to kill or harm a child, or even simply to not have a plan for the child upon delivery, the State failed to establish a logical connection between Ms. Akers' early consideration of her reproductive right to terminate a pregnancy and the absence of a plan to care for a baby at birth. The Court further held that the chain of inferences that the State relied upon was too speculative, ambiguous, and equivocal to support an inference that Ms. Akers had a specific plan to kill or harm a live baby, or even generally that she did not have a plan if the baby was born alive, simply because she researched abortion options many months prior to delivery. Finally, the Court held that the termination searches were not relevant to the collateral issue of Ms. Aker's credibility. The Court explained that the fact that Ms. Akers searched for abortion options and elected not to have one did not make it less probable that she intended to deliver her child and turn the child over to a safe haven.

Turning to the evidence of Ms. Akers' lack of prenatal care, the Supreme Court held that a woman's decision to forgo prenatal care, by itself, was not probative of motive or intent to kill or harm a live child. The Court relied in part on *Kilmon v. State*, 394 Md. 168, 170 (2006), where it

had rejected the State's statutory interpretation of the reckless endangerment statute as applying to a woman who was accused of ingesting cocaine while pregnant. In doing so, the Court observed that the State's interpretation could quickly lead to the policing of pregnant women through the criminalization of a "whole host of intentional and conceivably reckless activity" that could be considered harmful or reckless behavior. *Id.* at 177–78. The Court explained that women forgo prenatal care for a variety of reasons, and a pregnant woman's failure to obtain such care is too speculative, ambiguous, and equivocal to support an inference that she would be more likely to harm a live child or prevent a live child's access to medical care if care was necessary.

To the extent that the State argued before the Supreme Court for the first time that a woman's disparate prenatal care is relevant, given the argument was not raised below, the Court declined to address it.

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In re M.Z., No. 8, September Term 2024, filed March 24, 2025. Opinion by Killough, J.

https://www.courts.state.md.us/data/opinions/coa/2025/8a24.pdf

APPEALABILITY

Facts:

In November 2022, then fifteen-year-old M.Z. was adjudicated as a child in need of assistance ("CINA") by the Circuit Court for Baltimore County, sitting as a juvenile court. After providing certain services, including an out-of-home placement in a therapeutic youth group home, the Respondent, the Baltimore County Department of Social Services ("Department"), sought to terminate the CINA case in July 2023. The Petitioner, M.Z.'s mother ("Mother"), opposed termination, arguing that M.Z.'s ongoing self-destructive behavior, which included suicidal ideations, demonstrated that additional services and continued oversight from the Department were required to keep M.Z. safe. After a hearing, the magistrate denied the Department's request to terminate the CINA case. In July 2023, the Department filed exceptions to the magistrate's findings, conclusions, and recommendations. In August 2023, following a hearing on the Department's exceptions, the juvenile court terminated the CINA proceeding over Mother's objection, finding that keeping the proceeding open was "contrary to the best interest of [M.Z.]." Mother filed a timely appeal.

Mother presented one question to the Appellate Court of Maryland: "[d]id the trial court commit error when it terminated jurisdiction over M.Z.?" *In re M.Z.*, No. 1412, Sept. Term, 2023, 2024 WL 833367, at *1 (Md. App. Ct. Feb. 28, 2024). The Appellate Court of Maryland dismissed Mother's appeal, however, holding that "Mother's rights were not aggrieved in a way that entitle[d] her to appeal." *Id*. at *6. It reasoned that by closing the CINA case, Mother's unfettered right to raise M.Z. was restored, and she was therefore not entitled to an appeal despite her request to keep the proceeding open. *Id*. at *5.

Held: Vacated and Remanded.

The Supreme Court held that a parent is entitled to appeal the termination of a CINA case involving their child when the parent objects to the termination on the basis that closure of the case is not in the child's best interest. The Supreme Court vacated the judgment of the Appellate Court and remanded the matter to the Appellate Court for further proceedings consistent with the opinion.

Generally, a party cannot appeal from a wholly favorable judgment because the party is not aggrieved by that judgment. *See Paolino v. McCormick & Co.*, 314 Md. 575, 579 (1989).

However, a party is not prevented "from challenging an aspect of a lower court judgment or order that results in the party receiving less than the full relief [they] sought below[.]" *Thompson v. State*, 395 Md. 240, 249 (2006).

Furthermore, the purpose of the CINA subtitle is not limited to reunification. "The broad policy of the CINA subtitle is to ensure that juvenile courts (and local departments of social services) exercise authority to protect and advance a child's best interests when court intervention is required." *In re Najasha B.*, 409 Md. 20, 33 (2009). Sometimes acting in a child's best interest in a CINA proceeding involves keeping the proceeding open for continued oversight. *See In re O.P.*, 470 Md. 225, 271 (2020).

In this case, even if Mother can be characterized as having "prevailed" in the juvenile court in the sense that she was granted full custodial rights over M.Z., she is nevertheless an "aggrieved party" entitled to appeal under established Maryland case law because she did not obtain the full relief she sought—namely, keeping the CINA proceeding open so M.Z. could receive additional services and oversight. A determination that a parent cannot appeal the closure of a CINA case simply because the parent has been reunited with their child also undermines a core purpose of the CINA statute to keep children safe. Whether the juvenile court erred in this case when it terminated M.Z.'s CINA case is an issue that Mother challenged in the juvenile court and an issue she is entitled to challenge on appeal.

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APPELLATE COURT OF MARYLAND

Douglas A. Brasse v. State of Maryland., No. 1070, September Term 2023, filed March 24, 2025. Opinion by Graeff, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1070s23.pdf

FIRST AMENDMENT – FACIAL OVERBREADTH – CHILD PORNOGRAPHY

Facts:

Douglas Brasse entered a plea of not guilty, based on an agreed statement of facts, to one count of possession of child pornography in the Circuit Court for Howard County. Prior to entering this plea, he filed a Motion to Dismiss for Prosecution Based on Facially Unconstitutional Statute, arguing that Md. Code Ann., Crim. Law ("CR") § 11-208 (2021 Repl. Vol.) violates the First Amendment to the United States Constitution. The court denied the motion, finding CR § 11-208 constitutional.

Held: Affirmed.

CR § 11-208 prohibits "knowingly possess[ing]" a "film, videotape, photograph, or other visual representation" that shows an "actual child or a computer-generated image that is indistinguishable from an actual and identifiable child under the age of 16 years" engaging in certain types of sexual behavior or appearing in a state of sexual excitement. The statute provides that the term "indistinguishable from an actual and identifiable child" means that "an ordinary person would conclude that the image is of an actual and identifiable minor." § 11-208(a)(1). The statute "includes a computer-generated image that has been created, adapted, or modified to appear as an actual and identifiable child," § 11-208(a)(2), and it "does not include images or items depicting minors that are (i) drawings; (ii) cartoons; (iii) sculptures; or (iv) paintings." § 11-208(a)(3).

There is no dispute that child pornography produced with an actual minor is a category of speech that is not protected under the First Amendment. Appellant argues, however, that CR § 11-208 is overbroad and unconstitutional because it encompasses pornography that was created without involving any real child. Based on the plain language of CR § 11-208 and the legislative history,

however, the statute was drafted to exclude images that did not implicate real children; it prohibits only the possession of pornography depicting an actual child or a computer-generated image that is indistinguishable from an actual and identifiable child under the age of 16 years old. This includes morphed child pornography, virtual images altering innocent pictures of real children to appear to be engaged in sexual activity, and "deepfakes," which use artificial intelligence to generate photorealistic virtual images. To the extent that the images use an actual child's face and are indistinguishable from an actual and identifiable child, they subject an actual child to reputational and emotional harm, and therefore, are not protected speech under the First Amendment. Appellant failed to show that CR § 11-208 is facially overbroad, in violation of the First Amendment right to freedom of speech.

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State of Maryland v. Maxim Smith, No. 1708, September Term 2024, filed March 28, 2025. Opinion by Graeff, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1708s24.pdf

FOURTH AMENDMENT – *TERRY* FRISK – INITIATION OF FRISK

Facts:

Maxim Smith filed a motion to suppress evidence recovered by the Montgomery County Police Department during a traffic stop. During the stop, the police recovered cocaine on his person, as well as a loaded gun, with an obliterated serial number, in his vehicle. The Circuit Court for Montgomery County granted the motion to suppress, finding that Officer Antonio Ruiz, who conducted the stop, violated Mr. Smith's Fourth Amendment rights when, without reasonable suspicion to conduct a *Terry* pat-down, he questioned Mr. Smith about weapons, asked whether he could pat Mr. Smith down, and when Mr. Smith denied having weapons, asked Mr. Smith what else he had, "which led to [Mr. Smith's] admission that he had drugs on him."

Held: Reversed.

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. The Supreme Court has held that a *Terry* stop, a brief detention of a person, is reasonable when the officer has reasonable suspicion that a person has committed or is about to commit a crime. A *Terry* frisk, a protective pat-down, is reasonable to protect the officer when the officer reasonably believes that the person stopped is armed and dangerous.

During a traffic stop, the police may ask questions unrelated to the justification for a stop, so long as those inquiries do not measurably extend the duration of the stop. The suspect is not obligated to respond to those questions, and unless the answers given provide the officer with probable cause to arrest the suspect, the suspect must then be released.

A typical frisk, often described as a pat-down of the outer clothing, is a physical intrusion on an individual's person, and in that situation, there is no question that a search has begun. Although there can be situations where a search occurs without physical contact, that did not occur here. A frisk occurs only if a police officer commits a physical trespass on a constitutionally protected area or otherwise violates the person's reasonable expectation of privacy.

Officer Ruiz's questions to appellee, asking if appellee had any weapons or if he minded if Officer Ruiz patted him down, did not amount to a physical intrusion, and they did not violate appellee's reasonable expectation of privacy by requiring him to expose a part of his body or his effects that were not otherwise exposed. The circuit court erred in granting appellee's motion to

suppress on the ground that Officer Ruiz did not have the requisite suspicion to support a *Terry* frisk.

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Jefferey Joel Reyes v. State of Maryland, No. 1543 September Term 2023, filed March 3, 2025. Opinion by Sharer, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1543s23.pdf

SENTENCING AND PUNISHMENT – RECONSIDERATION AND MODIFICATION OF SENTENCE – PROCEEDINGS – IN GENERAL – TIME – EXECUTION OR SERVICE OF SENTENCE

Facts:

A jury in the Circuit Court for Prince George's County convicted Jefferey Reyes, appellant, of second-degree assault. At sentencing, the court initially announced a sentence of one year's imprisonment, with all but nine months suspended; but the court, during the same proceeding, later changed that sentence to a term of five years' imprisonment, with all but nine months suspended.

The State recommended that Reyes be sentenced to either a total term of five years' imprisonment, with all but ninety days suspended, or nine months of home detention. The defense recommended a total term of one year's imprisonment, all suspended. After hearing from Reyes, the court commented about the parties' recommendations and announced its intent to impose a substantial period of supervised probation to keep Reyes on a "short, tight leash." The court then said "So we are going to do the nine months of home detention, and we are going to follow that . . . with three years of supervised probation[.]" "All right, so with that then it is going to be 1 year, suspend all but 9 months, to be served on home detention with credit for two days, and followed by three years of supervised probation[.]" The State pointed out to the court that, in that sentence, the maximum period of probation would be nine months. Whereupon, the court recognized its miscalculation and imposed the five-year sentence, all suspended but ninety days and three years of probation. The hearing was then concluded.

Reyes argued that the circuit court illegally increased his sentence from one year to five years, contending that, once the sentence was announced, the court's authority to increase the sentence was circumscribed by Maryland Rule 4-345, which permits such an increase only if the original sentence was illegal, if there was some fraud, mistake, or irregularity, or if the court made a mistake in announcing the original sentence. He argued that, because none of those exceptions was applicable in his case, his increased sentence is illegal.

The State responded that Rule 4-345 was inapplicable because Reyes's original sentence had not been "imposed" before the court made the decision to "increase" the sentence. The State argued that a sentencing court may increase or otherwise alter an announced sentence at its discretion before the sentence is imposed, which, the State posits, in Reyes's case did not happen until after the court announced the increased sentence. The State concludes, therefore, that Reyes's sentence of five years' imprisonment was not illegal. The State posited that, even if Reyes's

sentence was "imposed" when it was initially announced by the court, the record shows the court, in increasing Reyes's sentence, was correcting an evident mistake in its initial announcement of the intended sentence.

Held: Affirmed.

Generally, a sentencing court may not increase a defendant's sentence after it is imposed. *Parker v. State*, 193 Md. App. 469, 487 (2010); *see also* Md. Rule 4-345 (outlining a court's revisory power over an imposed sentence). An unauthorized increase of a sentence is illegal. *Tolson v. State*, 201 Md. App. 512, 519 (2011). Maryland Rule 4-345 sets forth a court's revisory power over a defendant's sentence. As amended in 2004, Rule 4-345 provides, in relevant part:

> (a) **Illegal sentence.** — The court may correct an illegal sentence at any time.
> (b) **Fraud, mistake, or irregularity.** — The court has revisory power over a sentence in case of fraud, mistake, or irregularity.
> (c) **Correction of mistake in announcement.** — The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

Upon review of the relatively few cases decided under the pre-2004 iteration of Rule 4-345 and the amended version of the Rule, the Appellate Court concluded that Reyes's sentence had not been illegally increased.

The Court pointed out that the limits on a sentencing court's power to increase a sentence, as set forth in Rule 4-345, are not triggered until the sentence has been "imposed." For a sentence to be "imposed," the sentencing phase of the criminal trial must be concluded, which typically occurs "when 'the court indicates that the particular case before it is terminated, as by calling, or directing the clerk to call, the next case.'" *Simpkins v. State*, 88 Md. App. 607, 624 (1991) (quoting *State v. Sayre*, 314 Md. 559, 565 (1989)). In other words, a sentence is not considered "imposed" simply because it has been announced by the sentencing court. If a sentence has yet to be imposed, a court is generally free to change the sentence, including increasing it. Here, there is nothing in the sentencing transcript to indicate that the sentencing proceeding concluded between the court's announcement of its intent to impose a one-year sentence and when the court imposed the five-year sentence.

The Appellate Court recognized that, to adopt Reyes's position on the conduct of sentencing hearings, would constrict a sentencing court's ability to engage in colloquy with counsel and/or the defendant and could limit the fluid and unscripted nature of many sentencing hearings where contrasting suggestions or recommendations are put forth on the record. In so finding, the Court held that the circuit court, on the record before us, did not improperly increase Reyes's sentence from one year to five years. Because Reyes's one-year sentence had not been "imposed" before

the court recognized and corrected an evident mistake in construing the applicable sentencing guidelines, the court was free to alter the sentence without implicating the strictures of Rule 4-345.

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State of Maryland v. Brand, No. 2441, September Term 2023, filed March 31, 2024. Opinion by Eyler, James R., J.

https://www.mdcourts.gov/data/opinions/cosa/2025/2441s23.pdf

CRIMINAL LAW – POST CONVICTION – INEFFECTIVE ASSISTANCE

Facts:

In 2018, Tavon Brand, appellee, pleaded not criminally responsible ("NCR") in the Circuit Court for Baltimore City to charges of murder in the first degree and related handgun offenses. The case was scheduled for trial on June 19, 2019. Trial counsel was unable to obtain an expert's report supporting Mr. Brand's NCR defense in time to satisfy a discovery deadline. On the day of trial, the trial court denied trial counsel's request for a postponement. At that time, without evidence to support his NCR defense and following the advice of trial counsel, Mr. Brand waived his right to a jury trial, believing that he could not plead guilty and also preserve a right to have a jury trial at a later time on his NCR defense. Thereafter, the circuit court held a bifurcated bench trial.

At a bench trial, the court found Mr. Brand guilty of the actus rei of two counts of first degree murder; two counts of use of a firearm in the commission of a felony or crime of violence; possession of a firearm after having been convicted previously of a disqualifying offense; and wearing, carrying, or transporting a handgun on his person.

In September 2019, the court held a separate trial to determine criminal responsibility. After hearing testimony from, among others, the defense psychiatric expert whose tardy report had precipitated Mr. Brand's waiver of jury trial, the court found him criminally responsible for the offenses and imposed sentences. We affirmed the judgments on direct appeal. *Brand v. State*, No. 2048, Sept. Term, 2019 (filed Dec. 15, 2020) (per curiam).

In 2023, Mr. Brand filed a postconviction petition asserting ineffective assistance of counsel by, *inter alia*, failing to file timely the defense expert's opinion and report on criminal responsibility and failing to advise Mr. Brand that he could plead guilty and then receive an NCR jury trial. The postconviction court granted Mr. Brand's petition.

On appeal, Mr. Brand argued that we should presume prejudice based on the lost opportunity to have his case decided by a jury.

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Held:

Assuming that there was ineffective assistance, we hold that, in a post-conviction context based on ineffective assistance, prejudice is not presumed, the *Strickland v. Washington*, 466 U.S. 668 (1984), standard applies, and Mr. Brand made no attempt to show actual prejudice.

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Katelyn McMorrow v. Vernon King, III, No. 875, September Term 2024, filed March 5, 2025. Opinion by Hotten, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0875s24.pdf

CIVIL PROCEDURE – RES JUDICATA – EFFECT OF DEFENDANT'S POST-JUDGMENT OBJECTION TO ADOPTION

FAMILY LAW – CHILD SUPPORT – DE FACTO PARENTHOOD – OBLIGATION OF DE FACTO PARENT TO SUPPORT CHILD

Facts:

Vernon King, III, and his now-deceased wife sued Katelyn McMorrow in the Circuit Court for Montgomery County in 2018 for custody of, or in the alternative, for visitation with McMorrow's minor child, asserting de facto parent status.

The minor child was born to McMorrow and Troy King in 2011, and lived with her paternal grandparents, the Kings, while Troy and McMorrow were in college. Following Troy's death in 2013, the minor child continued to reside with her paternal grandparents until 2018, when the child transitioned primarily into McMorrow's care. The circuit court found that the Kings were de facto parents of the minor child and awarded them liberal visitation. McMorrow did not seek appellate review of that decision.

In 2022, McMorrow sued in the Circuit Court for Washington County to terminate the Kings' de facto parent rights, arguing that their de facto parent status had limited her constitutional right to direct the upbringing of the minor child. Shortly after the 2022 complaint was filed, King's wife passed away, leaving him as the remaining de facto parent. The circuit court dismissed McMorrow's complaint, and she again did not seek appellate review.

Then, in 2023, McMorrow filed another complaint against King in the Circuit Court for Washington County, seeking to terminate his de facto parent rights, or alternatively, for modification of custody and for child support. The court dismissed McMorrow's request to terminate de facto parent rights on res judicata grounds, ordered a slight modification of custody, and denied McMorrow's request for child support on the ground that de facto parents were not obligated to pay child support. McMorrow appealed this decision.

Held: Affirmed in part and reversed in part; remanded

The Appellate Court of Maryland held that McMorrow's request to terminate de facto parent rights was barred by res judicata. The Court explained that King's de facto parent status was already litigated to a final judgment on the merits in a prior case. The fact that King exercised his

de facto parent rights in 2022 in a different way than he did in 2018 does not result in a new harm. Rather, both are part of one continuing harm that McMorrow alleges has existed since King secured de facto parent status, and its accompanying rights, in 2019. Thus, McMorrow's constitutional claims regarding de facto parenthood were barred by res judicata.

Even if McMorrow's constitutional claim was properly before the Court, it could not grant the relief she seeks. The Supreme Court of Maryland's decision in *Conover v. Conover*, 450 Md. 51 (2016), adopted a four-factor test for determining de facto parent status. Although McMorrow urged the Court to overturn the test adopted in *Conover* and replace it with a stricter test, the Court declined to do so, holding that it is bound by *Conover*.

Next, the Court considered McMorrow's claim for child support from King. The Court explained that de facto parents have equal rights to custody and visitation as legal parents, as well as equal rights to attorney's fees and costs in such proceedings. Relying on precedent from other states concerning third party child support, the Court held that it would be both illogical and inequitable for a de facto parent to reap the benefits of de facto parent status without incurring any of the costs. Thus, the Court held that a de facto parent who exercises rights to custody and visitation with a minor child must shoulder a corresponding duty to support that child, subject to a best interest of the child analysis.

Finally, the Court considered King's request for attorney's fees. The Court held that the circuit court did not abuse its discretion in denying the request because, as the circuit court pointed out, McMorrow's complaint in this case raised novel questions about an emerging area of the law in Maryland. Thus, the circuit court's discretion was not exercised arbitrarily, and its decision to deny an award of attorney's fees was not clearly wrong.

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Dorothy Mergner v. Estate of John G. Mergner, Sr., No. 390, September Term 2022, filed January 31, 2025. Opinion by Kehoe, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0390s22.pdf

FAMILY LAW – MARITAL PROPERTY AGREEMENTS – ESTOPPEL – RECEIPT OF BENEFITS BY A PARTY CAN BAR A SUBSEQUENT CHALLENGE TO THE ENFORCEABILITY OF THE AGREEMENT – INTERPRETATION OF CONTRACTS – EVIDENCE OF A PARTY'S SUBJECTIVE BELIEF AS TO THE MEANING OF A CONTRACT IS NOT RELEVANT TO THE PROPER INTERPRETATION OF THE AGREEMENT

In 2016, Dorothy Mergner ("Dorothy") and her spouse, John G. Mergner, Sr. ("John"), signed a marital property agreement which provided, among other things, that:

> (1) John would establish an irrevocable trust for the benefit of Dorothy during her life. Income generated by the trust would be payable to Dorothy. Upon her death, the principal of the trust would be distributed to members of his family from a previous marriage; and
> (2) Dorothy would waive her right to all claims against property owned by John including her right to claim a share of his estate as his surviving spouse.

John established and funded the trust. Shortly thereafter, Dorothy began to receive distributions of income from the trust on a monthly basis.

In 2021, Dorothy filed the current action, in which she sought a declaratory judgment that the marital property agreement was unenforceable. Dorothy did not challenge the validity of the irrevocable trust. By that time, Dorothy had received approximately $450,000 in income from the trust and continued to receive income from the trust thereafter.

In his answer to Dorothy's complaint, John alleged that her claim against him was "barred based upon [her] failure to surrender all the benefits she [had] received" from the trust. John asserted that Dorothy was estopped from challenging the validity and enforceability of the marital property agreement because she continued to accept the income generated by the trust.

John died while this case was pending in the circuit court. Dorothy filed a notice of intent to claim an elective share of John's estate (the "Estate") pursuant to Md. Code, Est. & Trusts §§ 3-401–413.

The circuit court entered judgment in the Estate's favor as to the enforceability of the marital property agreement but concluded that there was a possible factual dispute as to title of specific marital assets. The court scheduled an evidentiary hearing on this issue. At the conclusion of that hearing, the court entered judgment in the Estate's favor as to all claims.

Facts:

Dorothy and John were married in 1996. Both had been married before. Dorothy has a high school diploma. For much of her adult life, she was employed by a labor organization in Baltimore. She did not work in the years that she and John were married. John was a wealth manager and financial advisor for Morgan Stanley. John and Dorothy did not have a prenuptial agreement.

In 2011, John and Dorothy consulted with Bonnie J. Lawless, Esquire regarding estate planning matters. Based on her discussions with her clients, Ms. Lawless prepared a revocable trust agreement for each of them. Among its terms, John's revocable trust agreement provided that, if he predeceased Dorothy, she would be the beneficiary for the remainder of her life of a trust consisting of 50% of the trust assets at the time of his death or $5,000,000, whichever was greater. After Dorothy's death, the balance of the trust was to be paid to John's descendants after payment of estate taxes. Pursuant to the marital trust agreement, John transferred all of his securities and similar assets to the trust.

In 2013, John began to experience a series of health problems that eventually forced him to retire. In 2015, Dorothy approached Ms. Lawless and asked her for assistance in increasing her income. In her deposition, Ms. Lawless testified that John was initially reluctant to do so but, after discussing the matter with her, he agreed to establish an irrevocable trust with an initial value of $2,000,000 to provide additional income to Dorothy during her life. His willingness to establish the trust was subject to conditions. One of them was that Dorothy would have to give up her rights to assert additional claims against his assets in the event of his death or their divorce. After further consultations with her clients, Ms. Lawless prepared a marital property agreement and an irrevocable trust agreement for the benefit of Dorothy.

The marital property agreement stated in pertinent part that Dorothy and John would each "be free to dispose of our respective Separate Property during life, or at death, free and clear of any claim or right" of the other party. The agreement also obligated John to "establish the Dorothy C. Mergner Irrevocable Trust, and [to] transfer Two Million Dollars . . . to the Trust" and that Dorothy was "the sole beneficiary of this Trust during her life." The marital property agreement also contained a "Schedule of Assets" that appears to have been intended to identify each party's tangible and intangible assets. However, this part of the agreement was never completed. Dorothy's signature was notarized by a lawyer in Ms. Lawless's law firm. Shortly thereafter, John signed the marital property agreement and an irrevocable trust for Dorothy's benefit during her lifetime. His signatures were notarized by the same lawyer. Dorothy and Ms. Lawless opened a trust account into which the securities were deposited.

In 2020, Dorothy filed suit against John. She sought a declaratory judgment that "the purported marital property agreement" was void. Dorothy was deposed. She testified that her signature appears on the marital property agreement but asserted that she had no recollection of signing the document.

John died while the lawsuit was pending and the Estate was substituted as the defendant in the litigation. The Estate asserted that the irrevocable trust was fully funded and that by August 2021, Dorothy had received approximately $450,000 in income distributions from that trust. Additionally, the Estate contended that Dorothy continued to receive monthly distributions from the trust while the litigation was pending. Dorothy does not contest either of these assertions.

After the close of discovery, the Estate filed a motion for summary judgment. Among other contentions, it asserted that Dorothy was estopped from challenging the validity of the marital property agreement because she had received, and continued to receive, income from the irrevocable trust established by the agreement. The circuit court agreed with the Estate's estoppel argument and ruled that the marital property agreement was valid and enforceable. However, the court also concluded that there might be disputes between the parties as to ownership of marital assets. A separate proceeding was scheduled for the court to receive evidence as to this issue. At the conclusion of that hearing the court entered judgment in the Estate's favor as to all claims asserted by Dorothy.

Held:

A. Summary Judgment

The circuit court did not err in granting the Estate's motion for summary judgment. The Appellate Court concluded that Dorothy was estopped from challenging the validity of the marital property agreement because she continued to accept benefits from the irrevocable trust. Among other authorities, the Court cited *Faller v. Faller*, 247 Md. 631, 638 (1967) (holding that a spouse was estopped from challenging the validity of a marital separation agreement because the spouse not only accepted the benefits of the separation agreement but consistently treated the contract as an existing one until after the death of her husband); *Saggese v. Saggese*, 15 Md. App. 378 (1972) (holding that a spouse waived her right to rescind a marital separation agreement on the basis of "duress, undue influence, oppression and other inequitable conduct" because the spouse waited for approximately two years before challenging the validity of the agreement); *Adamstown Canning & Supply Co. v. Baltimore & Ohio R.R. Co.*, 137 Md. 199, 209 (1920) (stating that "where one having the right to accept or reject a transaction takes and retains benefits thereunder, he becomes bound by the transaction and cannot avoid its obligation or effect by taking a position inconsistent therewith"); *Honeycutt v. Honeycutt*, 208 N.C. App. 70, 82–84 (2010) (holding that a spouse's acceptance of payments paid under the terms of a separation agreement for approximately one year after challenging the validity of the agreement precluded her from challenging the validity of the agreement); and *In re Marriage of Burkle*, 139 Cal. App. 4th 712, 751–54 (2006) (holding that a spouse waived her right to challenge the provisions of a property settlement agreement by "willingly accepting all of the substantial financial benefits to which she was entitled under the Agreement for more than five years").

B. The "Separate Property" Issue

As previously noted, the circuit court did not grant summary judgment as to all issues and an evidentiary hearing was scheduled to resolve any disputes between the parties as to ownership of specific marital assets. However, at that hearing Dorothy did not contend that there was property titled in John's name that was actually owned by her. Instead, she argued that the court's earlier decision to grant partial summary judgment was based on the unarticulated premise that the marital property agreement was ambiguous. As to that issue, she asserted:

> [T]here were only two parties to the marital property agreement, John and [Dorothy]. Their subjective intent, proof of their subjective intent is determinative of this issue. [Dorothy] will testify that she did not have any subjective intent for John to retain any specific assets as a separate property under the agreement or to release any elective share in those assets.

The Appellate Court concluded that evidence of Dorothy's subjective beliefs was not relevant as to the proper interpretation of the marital property agreement, citing *Impac Mortgage Holdings, Inc. v. Timm*, 474 Md. 495, 507–08 (2021). For this reason, the court did not err when it entered judgment in favor of the Estate.

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SG Maryland, LLC v. PMIG 1024, LLC, No. 137, September Term 2023, filed December 31, 2024. Opinion by Albright, J.

https://www.courts.state.md.us/data/opinions/cosa/2024/0137s23.pdf

COURTS – CONCURRENT AND CONFLICTING JURISDICTION – COURTS OF THE SAME STATE – IN GENERAL – EXCLUSIVE OR CONCURRENT JURISDICTION

LANDLORD AND TENANT – REENTRY AND RECOVERY OF POSSESSION BY LANDLORD – ACTIONS FOR UNLAWFUL DETAINER – STATUTORY PROVISIONS

LIMITATION OF ACTIONS – COMPUTATION OF PERIOD OF LIMITATION – PENDENCY OF LEGAL PROCEEDINGS, INJUNCTION, STAY, OR WAR – SUSPENSION OR STAY IN GENERAL; EQUITABLE TOLLING

Facts:

SG Maryland, LLC ("Landlord") brought claims of tenant holding over and breach of contract relative to three commercial leases that expired on July 31, 2016. PMIG 1024, LLC ("Tenant") operated the three properties as gas stations. A previous appeal to this Court concerned Tenant's claim that it had a purchase option on the properties under the leases. The circuit court disagreed and we affirmed in an unreported opinion in 2018. While the previous case was ongoing, Tenant was allowed to remain in possession of the three properties by virtue of a preliminary injunction. Tenant continued to pay rent to Landlord as ordered by the circuit court. Following this Court's Mandate issued on July 10, 2018, Tenant was required to return possession of the properties to Landlord. In order to fully vacate under the parties' leases, Tenant was required to secure a Final Closure Letter ("FCL") from the Maryland Department of the Environment for each property after removal of the gas stations' large underground storage tanks. Tenant provided the respective FCLs to Landlord in December 2018, July 2019, and June 2020.

Seeking damages for Tenant's prior holding over and breach of contract, Landlord filed its Complaint on July 6, 2021. Landlord's tenant-holding-over and breach of contract claims were pled in the alternative. The time period alleged in both sets of claims started with Tenant's alleged failure to vacate (either at the end of the lease or the issuance of this Court's Mandate) and ended when Landlord received the FCL for each property.

The circuit court dismissed all of Landlord's claims. The circuit court concluded that the district court had exclusive jurisdiction over Landlord's tenant-holding-over claims and that Landlord's breach of contract claims were time-barred.

Held: Reversed in part and affirmed in part.

First, the Appellate Court of Maryland held that the circuit court should not have dismissed Landlord's tenant-holding-over claims for lack of subject matter jurisdiction. Although the district court has exclusive jurisdiction under Section 4-401(4) of the Courts and Judicial Proceedings Article in actions "involving landlord and tenant, distraint, or wrongful detainer, *regardless of the amount involved*[,]" an action to recover damages for tenant holdovers under Section 8-402 of the Real Property Article "may be brought by suit separate from the eviction or removal proceeding or in the same action and *in any court having jurisdiction over the amount in issue.*"

This opinion builds upon *Greenbelt Consumer Services., Inc. v. Acme Markets, Inc.*, 272 Md. 222 (1974) and *Williams v. Housing Authority of Baltimore City*, 361 Md. 143 (2000). *Greenbelt* and *Williams* explained that the actions "involving landlord and tenant" referred to in CJP Section 4 401(4) are limited to "only those possessory in rem or quasi in rem actions that provided a means by which a landlord might rapidly and inexpensively *obtain repossession* of his premises situated in this State or seek security for rent due from personalty located on the leasehold."

Here, the Court clarified that when a tenant has already vacated the premises, the district court does not have exclusive jurisdiction over landlord-tenant actions under CJP Section 4 401(4) because the tenant is no longer in possession. While possessory actions brought under the tenant-holding-over statute are within the exclusive jurisdiction of the district court under CJP Section 4 401(4), claims for damages from a prior holdover are not.

Second, the Court affirmed the circuit court's dismissal of Landlord's breach of contract claims on the basis of limitations. The Court explained that the injunction did not affect Landlord's ability to bring a suit for damages stemming from Tenant's failure to vacate under the terms of the parties' leases. Landlord's allegations demonstrated that its cause of action accrued when the parties' leases expired by their own terms and Tenant breached by not fully vacating. This accrual date means that the filing deadline was about two years before Landlord filed its Complaint. There were no applicable statutory or judicially recognized exceptions to the statute of limitations, and the Court declined to adopt such an exception in this case.

State of Maryland, et al v. Michael Young, Case No. 1885, Sept. Term 2023, filed March 27, 2025. Opinion by Berger, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1885s23.pdf

UNCONSTITUTIONAL PATTERN OR PRACTICE CLAIM – VIABILITY AGAINST THE STATE – TORT – NEGLIEGENCE – FORSEEABILITY OF HARM – THE MARYLAND TORT CLAIMS ACT – DAMAGES LIMIT – SINGLE INCIDENT OR OCCURRENCE

Facts:

Michael Young was an inmate housed at the Maryland Correctional Training Center ("MCTC") when he was attacked by other inmates in his cell and in the recreation hall. In a letter that had previously been delivered to the Warden of MCTC, Young expressed fear for his safety due to a prior attack by an inmate. An investigation into Young's claims in the letter was never conducted and no steps were taken to address Young's safety concerns.

On the day of the attack, Young opted to remain in his cell during scheduled recreation time. His cell door was to remain locked. The Sergeant who was the tier officer assigned at the time of the attack was the only individual with the ability to unlock the cell doors on the tier. While five inmates were standing outside of Young's cell, the door was remotely unlocked, and several inmates rushed into Young's cell, attacking him with weapons including a homemade metal knife. Young managed to escape from his cell, and walked towards the recreation hall, past the control panel booth where the Sergeant was located. Observing Young covered in blood, the Sergeant called for backup. Young was not followed to the recreation hall. Once in the recreation hall, a separate group of inmates dragged Young into the bathroom area of the hall and began beating him, albeit without weapons. Young suffered 17 stab wounds and two skull fractures.

Young filed suit against the State, the Maryland Department of Public Safety and Correctional Services, the Sergeant, and the Warden. Young asserted constitutional claims and common law negligence claims against the individuals. Young also brought an unconstitutional pattern or practice claim against the State under *Prince George's County v. Longtin*, 419 Md. 450 (2011), asserting that the State had engaged in a pattern or practice of failing to protect incarcerated individuals from harm by other inmates and officers.

Young sought to establish the *Longtin* claim by eliciting testimony from a State designee who would testify regarding other cases and settlements, demonstrating that the State engaged in a pattern or practice of unconstitutional behavior by failing to protect inmates. Young issued a subpoena for the State to produce such a designee approximately a month before trial was set to begin. Several days prior to trial, the State indicated that it would file a motion to quash the

subpoena because a designee had not been named or deposed. Young offered to depose any designee the State provided, but the State refused. The State's designee was produced and testified regarding similar failure to protect incidents. The Sergeant, the Warden, and other MCTC staff members testified that the State was aware that inmates made metal weapons out of the lockers in their cells. Young also elicited testimony that there was a 94-to-one ratio of inmates to tier officers when he was harmed, and that the staffing policy was set by the State. Young argued that these State practices resulted in a constitutional violation against Young.

The jury found that both the Sergeant and the Warden were negligent and awarded Young $1,000,000 against each. Nevertheless, the jury did not find that either individual violated Young's constitutional rights. The jury found the State maintained an unconstitutional pattern or practice of failing to protect incarcerated individuals under *Longtin* and awarded Young $2,000,000. The State filed motions for a new trial, judgment notwithstanding the verdict, and for reduction of the judgment against the State. Young conceded that under the Maryland Tort Claims Act ("MTCA"), the judgments against the individuals should be reduced to $800,000, as the MTCA caps damages at $400,000 per incident or occurrence and Young was attacked twice. The court denied the motions. The State timely appealed.

Held: Affirmed in part and reversed in part.

The Appellate Court of Maryland considered three primary issues on appeal. First, the court considered whether a *Longtin* pattern or practice claim is viable against the State, and if so, whether Young proved that the State maintained an unconstitutional pattern or practice that resulted in his injury. The Court discussed *Longtin*, in which a local government was held liable for engaging in a pattern or practice of constitutional deprivations. The Court noted that the *Longtin* analysis was based on the *respondeat superior* liability of local governments established in *DiPino v. Davis*, 354 Md. 18 (1999), which in turn was based on a New York case, *Brown v. State*, 89 N.Y.2d 172 (1996), which held that the State was vicariously liable for the constitutional torts committed by its employees. *Longtin*, citing *DiPino*, noted that "if Maryland imposes on local governments an obligation to prevent unconstitutional conduct by its employees, those same governments may not, with impunity, cause such conduct by unconstitutional polices or practices." The Court reasoned that *DiPino* would have extended *respondeat superior* liability to the State, and logically, *Longtin* would apply to the State as well. The Court, therefore, held that *Longtin* applies to the State for any constitutional deprivations that are caused by either its own actions or that of its employees.

The Court then considered whether the State's designee was properly subpoenaed for trial and whether her testimony about other cases and settlements was admissible. In light of the Court's ultimate conclusion that Young did not establish a pattern or practice claim against the State, the Court declined to address the purported impropriety of the subpoena process. Regarding the designee's testimony, the Court held that the circuit court appropriately permitted the State designee to testify regarding the previous cases that concerned factual similarities of inmate-on-inmate violence and failure to protect. In light of the Court's conclusion that the evidence was

not sufficient to support a *Longtin* claim, the Court declined to address whether testimony regarding the settlements was admissible. The Court then held that the circuit court erred in denying the motion for judgment notwithstanding the verdict on the *Longtin* claim because (1) Young did not provide sufficient evidence to establish a pattern or practice related to the State's policies on staffing or providing metal lockers, and (2) he did not offer evidence connecting the injuries he received to the State's alleged unlawful pattern or practice.

The Court next considered whether Young presented sufficient evidence to support the jury's findings of negligence by both the Sergeant and the Warden. The Court noted that a special relationship exists between inmates and correctional officers such that correctional officers have a duty to protect inmates from harm that is reasonable or foreseeable under the circumstances. *State v. Johnson*, 108 Md. App. 54, 64 (1996); *Beckwith v. Hart*, 263 F. Supp. 2d 1018, 1022-23 (D. Md. 2003). The Court held that it was not "speculation, hypothesis, [or] conjecture" for the jury to determine that Sergeant Wright should have reasonably foreseen that when there was a group of inmates standing outside of Young's cell, opening the cell door could result in harm to Young. The Court similarly held that it was reasonable for the jury to find that Warden Dovey was negligent in failing to properly investigate after Young expressed in a letter that he feared for his life after being previously attacked. As such, the Court held that the circuit court properly denied the motion for judgment notwithstanding the verdict on the negligence verdicts.

Finally, the Court analyzed whether Young was attacked multiple times for the purpose of applying the damages cap of the MTCA. The MTCA waives immunity for the State and provides that "[t]he liability of the State and its units may not exceed $400,000 to a single claimant for injuries arising from a single incident or occurrence." S.G. § 12-104(a)(2). The Court noted that the attacks took place in two separate locations, were carried out by two different groups of inmates, and one set of attackers used weapons while the other did not. The Court rejected the State's contention that this constituted one attack and held that Young experienced two distinct "incidents or occurrences" and is entitled to recover $400,000 for each incident or occurrence.

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Fatou Jabbi, et al. v. Adventist Healthcare, Inc., et al., No. 2071, September Term 2023, filed March 5, 2025. Opinion by Beachley, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/2071s23.pdf

MEDICAL MALPRACTICE – EXPERT TESTIMONY – SUFFICIENT FACTUAL BASIS – RELIANCE ON EDUCATION AND EXPERIENCE

Facts:

Appellants Fatou Jabbi and Lamin Kanteh, Individually and as Parents and Next Friends of their child T.R., sued defendants/appellees Adventist Healthcare, Inc., Tamara Pottillo, and Lisa Godette for injuries suffered by T.R. related to Ms. Jabbi's care prior to T.R.'s birth.

Ms. Jabbi, then 24 weeks and 5 days pregnant, presented to Washington Adventist Healthcare ("WAH") complaining of back and abdominal pain. Nurse Pottillo took Ms. Jabbi's vitals, which were reviewed by Dr. Godette. Dr. Godette determined that Ms. Jabbi's vitals were within normal limits and sent her home with a prescription for Tylenol. Defendants did not test Ms. Jabbi's urine for signs of preeclampsia. Fourteen hours later, Ms. Jabbi went to a different hospital, was diagnosed with preeclampsia, and received one dose of Betamethasone, a steroid that helps a fetus's lungs mature quickly in preparation for early delivery. Ms. Jabbi's condition deteriorated, requiring a cesarean section before a second dose of Betamethasone (the full course of the medicine) could be administered. T.R. was born with severe medical problems associated with prematurity.

Appellants retained experts who opined that (1) had WAH complied with the standard of care, the pregnancy could have been extended long enough to administer the full course of Betamethasone, and (2) the full course of Betamethasone would have mitigated T.R.'s injuries. The experts based their opinions on scientific literature that supported their conclusions.

The defendants/appellees moved to preclude testimony from Ms. Jabbi's causation experts and for summary judgment. The circuit court granted the motions, finding that the experts were relying on their "education and experience without specifying how that education and experience actually supports" their opinions, and that the opinions were not supported by scientific literature or the facts of the case. Appellants appealed.

Held: Reversed and remanded.

The Appellate Court examined Rule 5-702's "sufficient factual basis" requirement for expert testimony. Noting that the only expert testimony was that produced by appellants, the Court concluded that appellants' causation experts relied on their medical experience as well as scientific literature in forming their opinions. The Court therefore concluded that the experts had

a sufficient factual basis for their opinions pursuant to Rule 5-702. Thus, the circuit court abused its discretion in precluding appellants' experts' testimony.

Relying on federal precedent, the Court noted that, in the application of Rule 5-702 and *Daubert-Rochkind*, courts may consider a medical expert's experience because the human body is complex, double-blind studies needed for "statistical proof" may not be possible, and medical decision-making often requires reliance on experience and judgment.

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Matthew Skipper, et al. v. CareFirst BlueChoice, Inc., No. 2479, September Term 2023, filed March 3, 2025. Opinion by Hotten, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/2479s23.pdf

PRE-JUDGMENT INTEREST – EFFECT OF DEFENDANT'S PRE-TRIAL TENDER OF COMPENSATORY RELIEF

CIVIL PROCEDURE – CLASS ACTIONS – CERTIFICATION OF CLASS ACTION – MOOTNESS

Facts:

Following a diagnosis of female infertility, Jamie Skipper and her husband Matthew sought fertility treatment. They initially made several attempts at intrauterine insemination, followed by several egg retrieval cycles and attempted fresh embryo transfers, albeit unsuccessfully. After their physician explained that pregnancy was extremely unlikely to result from a fresh embryo transfer, the Skippers created and froze four embryos. Soon thereafter, the Skippers transferred two of the frozen embryos, resulting in a successful pregnancy. As they were uninsured at the time, the Skippers paid for this procedure out of pocket.

At some point thereafter, Mr. Skipper entered into an Individual Enrollment Agreement with CareFirst BlueChoice, Inc. Ms. Skipper was also covered under the policy as a dependent spouse. The Agreement provided for coverage of "Medically Necessary, non-Experimental/Investigational artificial insemination, intrauterine insemination and in-vitro fertilization." The Agreement went on to state that benefits were limited to "Assisted reproductive technologies as described and limited below," with one of those limitations being for "Ovum transplants and gamete intra-fallopian tube transfer, zygote intra-fallopian transfer, or cryogenic or other preservation techniques used in these or similar procedures."

When the Skippers requested coverage for IVF treatment using the remaining frozen embryos, CareFirst denied coverage for the embryo thawing, but otherwise approved coverage for the embryo transfer. Despite the denial of coverage, the Skippers proceeded with the IVF process and covered the cost of embryo thawing out of pocket.

The Skippers unsuccessfully appealed the denial of coverage through CareFirst's internal appeals process. They then filed a complaint with the Maryland Insurance Administration and, while that action was pending, also filed a putative class action lawsuit against CareFirst in federal court. While these cases were pending, CareFirst chose to pay the $900 embryo thawing charge directly to the IVF provider. Citing this payment, the MIA closed the Skippers' file. Almost two years later, the federal court dismissed the Skippers' complaint, without prejudice, for lack of federal subject matter jurisdiction.

The Skippers then sued CareFirst in the Circuit Court for Prince George's County on March 24, 2023, alleging both breach of contract and negligent misrepresentation. The circuit court dismissed the complaint for lack of standing, explaining that the Skippers could not use the temporary loss of payment as a basis for damages. The Skippers appealed that decision.

Held: Reversed and remanded

The Appellate Court of Maryland held that the Skippers adequately pleaded pre-judgment interest as an element of their damages. The Court explained that pre-judgment interest as a measure of damages is in addition to any economic damages awarded for the initial breach. Since CareFirst's $900 payment did not include any interest accrued in the nearly three years since the payment was originally due, nor address the Skippers' claims for injunctive or declaratory relief, the Court held that the Skippers retained standing to seek pre-judgment interest.

The Court further held that the Skippers retained standing even though they may not be entitled to pre-judgment interest. The Court explained that plaintiffs who appropriately demand pre-judgment interest in contract cases have standing to seek such interest, even where pre-judgment interest is a matter of discretion and not a matter of right.

Next, the Court held that even if the tender of compensatory damages provided complete relief, a class action claim is not moot until the putative class representative is afforded a reasonable opportunity to seek class certification, including any necessary discovery addressed to the merits of class certification.

Finally, the Court held that factual issues existed at the pleading stage as to whether IVF was a similar procedure to excluded transplants and transfers, and whether embryo thawing was a medically necessary component of IVF. Thus, the Court declined to affirm the circuit court's dismissal of the Skippers' complaint on alternative grounds.

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ATTORNEY DISCIPLINE

REINSTATEMENTS

By Order of the Supreme Court of Maryland

FRANCIS H. KOH

has been replaced on the register of attorneys permitted to practice law in this State as of March 27, 2025.

*

DISBARMENTS/SUSPENSIONS

By a Per Curiam Order of the Supreme Court of Maryland dated March 5, 2025, the following attorney has been disbarred:

GARY PISNER

*

By an Order of the Supreme Court of Maryland dated March 21, 2025, the following attorney has been suspended:

FERRIAL HUSSEIN LANTON

*

By an Order of the Supreme Court of Maryland dated March 21, 2025, the following attorney has been disbarred by consent:

PATRICK LEWIS WOJAHN

*

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RESIGNATIONS

By its March 31, 2025 order the Supreme Court of Maryland has accepted the resignation of the following attorney from the practice of law in this state:

JAMES FLEMING DRUMMOND, JR.

*

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UNREPORTED OPINIONS

The full text of Appellate Court unreported opinions can be found online:

https://mdcourts.gov/appellate/unreportedopinions

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