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SUPREME COURT OF MARYLAND

Mark Zukowski, et al. v. Anne Arundel County, No. 14, September Term 2024, filed April 24, 2025. Opinion by Eaves, J.

https://www.mdcourts.gov/data/opinions/coa/2025/14a24.pdf

MD. CODE ANN., LABOR AND EMPLOYMENT § 9-610(a)(1) – STATUTORY OFFSET OF BENEFITS – SUBSEQUENT ENTITLEMENT TO ATTORNEY'S FEES

Facts:

Mark Zukowski and Joshua Ruggiero ("Petitioners") were former Corporals in the Anne Arundel County Police Department. In 2018, both suffered injuries in the line of duty; those injuries eventually necessitated their retirement, resulting in Anne Arundel County ("the County") awarding each accidental disability retirement benefits ("ADR benefits").

Prior to the receipt of those ADR benefits, however, Petitioners sought benefits under the Workers' Compensation Act ("the Act")—Title 9 of the Labor and Employment Article ("L&E")—and they each hired the same attorney ("Counsel") to represent them before the State Workers' Compensation Commission ("the Commission"). Mr. Zukowski and Mr. Ruggiero each were awarded benefits under the Act, but both had their workers' compensation awards substantially reduced pursuant to L&E § 9-610(a)(1), the Act's offset provision, which precludes a claimant from receiving duplicative benefits. In this case, Petitioners' awards were reduced to only cover relatively small periods of time for which they *were not* receiving ADR benefits from the County. For the periods of time covered by both ADR benefits and workers' compensation benefits, the ADR benefits were greater than the workers' compensation benefits.

In requesting attorney's fees for representing the Petitioners, Counsel argued to the Commission that the plain language of L&E § 9-610 required that the attorney's fees should be calculated based on the Commission's first-level calculation (the figure before applying the Act's statutory offset). Counsel also argued that a contrary construction would be an unconstitutional deprivation of her time, which is an attorney's stock-in-trade. The Commission disagreed and awarded attorney's fees based on the amount of money actually payable to Mr. Zukowski and Mr. Ruggiero. The Commission's calculation resulted in Counsel receiving a lower fee than had been calculated based on the first-level calculation. Petitioners filed a petition for judicial review, and the Circuit Court for Anne Arundel County affirmed the Commission's application of L&E § 9-610. The Appellate Court of Maryland subsequently affirmed the circuit court.

Petitioners filed a petition for a writ of certiorari, which the Supreme Court of Maryland granted on June 17, 2024. *Zukowski v. Anne Arundel County*, 487 Md. 262 (2024).

Held: Affirmed.

The Supreme Court of Maryland affirmed the judgment of the Appellate Court. In assessing the plain language of the Act's relevant provisions, the Supreme Court noted that claimants are the sole party responsible for compensating their attorneys and that an attorney's fee is a lien on compensation awarded by the Commission. The Court, therefore, rejected Petitioners' interpretation of L&E § 9-610(a) because it would conflict with the definition of "compensation" in L&E § 9-101(e)(1) and the premise that an attorney's fee is a lien on compensation awarded under L&E § 9-731(a)(2). The Court also rejected Petitioners' interpretation of the statutory offset provision because it created multiple problems. First, Petitioners' interpretation would lead to "compensation" including two portions: one portion payable to the claimant and one portion not payable to the claimant. The plain language of the relevant provisions, the Court noted, rejected that proposition. Second, the Court noted that the Commission is not authorized to make a separate award (one to the claimant and one to the claimant's attorney). Third, even if the Commission had such authority, because claimants themselves are liable to pay their attorneys, Petitioners' interpretation runs the risk of an attorney's fee substantially depleting—if not entirely so—their clients' awards of compensation, as would have been the case for Petitioners. The Supreme Court confirmed its interpretation by relying on the Court's prior opinion in *Feissner v. Prince George's County*, 282 Md. 413 (1978) and the Appellate Court's opinion in *Brunson v. University of Maryland Medical System Corp*., 221 Md. App. 583 (2015).

The Supreme Court also held that L&E § 9-610(a) is constitutional. The Court noted that attorneys voluntarily choose to take on clients and are compensated in a variety of manners. The Commission's scheme for calculating an attorney's fee was not unconstitutional simply because Counsel misinterpreted how L&E § 9-731 operated in conjunction with the Act's offset provision under L&E § 9-610(a)(1).

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State of Maryland, Comptroller of Maryland v. Badlia Brothers, LLC d/b/a Southwest Check Cashing, No. 23, September Term 2024, filed March 28, 2025. Opinion by Fader, C.J.

Watts, J., dissents.

https://www.courts.state.md.us/data/opinions/coa/2025/23a24.pdf

SOVEREIGN IMMUNITY – STATE GOVERNMENT § 12-201(a) – WRITTEN CONTRACT – FORMAL CONTRACT

FORMAL CONTRACT – NEGOTIABLE INSTRUMENTS – CHECKS – HOLDER IN DUE COURSE

Facts:

The State of Maryland issued 15 checks to various payees. The payees, in turn, transferred the checks to Badlia Brothers, LLC d/b/a Southwest Check Cashing ("Badlia"). Badlia is a business that cashes checks. When a check is transferred for value—otherwise known as "negotiated"—to Badlia, the company becomes the "holder in due course" of the check, enjoying the right of enforcement free from many contract defenses.

Some of the original payees had deposited checks using a mobile app which produced "substitute checks," and then either fraudulently or negligently presented those checks to Badlia. In other instances, the original payees reported checks lost or stolen, causing the State to issue stop payment orders on the original checks and then issue and pay replacement checks. The original payees then cashed the supposedly lost checks with Badlia. Badlia accepted the checks without knowing that the State had already made payment and then presented them to the State's bank for payment. The State refused to honor the checks.

Badlia brought actions against the State in the District Court of Maryland, arguing that it had the right to enforce the checks as a holder in due course. The State conceded that the checks it issues are contracts between the State and the original payees but asserted that enforcement of checks by subsequent holders are not contract actions for which the State has waived sovereign immunity. The District Court consolidated the cases regarding the 10 checks still at issue, ruled that the State enjoyed sovereign immunity, and dismissed the case. The Circuit Court for Baltimore City reversed, holding that a check is a contract, and thus, the State had waived sovereign immunity under § 12-201(a) of the State Government Article. On remand, the District Court found that Badlia was a holder in due course entitled to enforce the checks, and the circuit court affirmed. The Supreme Court of Maryland granted certiorari to decide whether the State had waived sovereign immunity as to the claims of a holder of State-issued checks who paid money for the checks in good faith.

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Held: Affirmed.

The Court first acknowledged that the State of Maryland possesses inherent sovereign immunity that precludes the maintenance of any suit against the State or its entities absent a specific waiver by the General Assembly. Section 12-201(a) of the State Government Article is one such waiver, as it prohibits the State from raising a sovereign immunity defense in a "contract action" that is "based on a written contract" executed by a State official acting with proper authority.

Next, the Court addressed whether a check is a contract for purposes of the waiver of sovereign immunity in SG § 12-201(a). A negotiable instrument is "an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it: (1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder; (2) Is payable on demand or at a definite time;" and (3) With certain exceptions not relevant here, does not contain undertakings or instructions. The Court determined that a check is a species of negotiable instrument that is freely transferable and payable on demand when presented to the issuer. When a holder transfers a check for value to another person who receives it in good faith without notice of defects or defenses, the transferee becomes a holder in due course.

The Court then concluded that a check, like other negotiable instruments, is a formal contract created by the observance of prescribed formalities rather than through satisfying the elements of traditional bilateral contracts, and that formal contracts fall within the scope of § 12-201(a). A check is a contract both at common law and as codified in the Maryland Uniform Commercial Code ("MUCC") and its predecessor, the Negotiable Instruments Act. Under the common law and the MUCC, the maker of a negotiable instrument undertakes a contractual obligation to pay the instrument. That obligation is enforceable by both the original payee and a bona fide holder in due course, irrespective of certain defenses the issuer may have against enforcement by a prior holder. Thus, the action of a holder in due course to enforce payment of a check is a contract action for which the State has waived sovereign immunity under § 12-201(a).

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Homer Walton, et al. v. Premier Soccer Club, Inc., et al., No. 11, September Term 2024, filed April 24, 2025. Opinion by Gould, J.

Watts, J., dissents.

https://www.mdcourts.gov/data/opinions/coa/2025/11a24.pdf

NEGLIGENCE BASED ON A VIOLATION OF A STATUTE OR ORDINANCE – ELEMENTS

NEGLIGENCE BASED ON A VIOLATION OF A STATUTE OR ORDINANCE – PROXIMATE CAUSE

Facts:

In 2017, Sydney Walton, then age fourteen, was injured during her soccer team's practice at a recreational facility owned by Baltimore County. While practicing, Sydney collided with another player, fell, and struck her head against a wooden boundary wall. As a result, she sustained a concussion and other serious, permanent injuries.

In the Circuit Court for Baltimore County, the Waltons alleged two theories of negligence. The Waltons' first theory, which was not before the Supreme Court of Maryland on appeal, involved allegations of inadequate lighting on the field and improper use of another team's permit for the practice. The jury found in favor of the defendants on this theory.

The Waltons' second theory, which was the theory relevant on appeal, was based on the Statute or Ordinance Rule. They contended that the defendants "breached the standard of care by intentionally and recklessly directing and allowing Sydney Walton and her . . . team to practice at the [rec center] . . . without first receiving the information about concussions and head injuries required by law" in violation of section 14-501 of the Health-General ("HG") Article of the Maryland Annotated Code.

The circuit court dismissed this theory of negligence on summary judgment, finding that the Waltons did not sufficiently establish the elements of negligence as required under the Statute or Ordinance Rule. The court determined that to show proximate cause, the Waltons needed to present evidence establishing that the defendants' failure to comply with HG § 14-501 was the cause-in-fact of Sydney's injuries. Because the court concluded that the Waltons presented no such evidence, it granted the motions for summary judgment on this issue. The circuit court also barred the Waltons from introducing evidence at trial to support their theory under HG § 14-501.

The Waltons timely appealed to the Appellate Court of Maryland, which affirmed the judgment of the circuit court in a reported opinion. *Walton v. Premier Soccer Club, Inc.*, 261 Md. App. 53 (2024). The court concluded that, even assuming the defendants violated HG § 14-501, those violations were merely evidence of a breach of duty. The court agreed with the circuit court that

the Waltons failed to come forward with evidence establishing the cause-in-fact component of proximate cause. The court further concluded that even if judicial notice had been taken of the materials to be distributed pursuant to HG § 14-501, such evidence would not have been sufficient to satisfy the Waltons' burden.

The Supreme Court of Maryland granted the Waltons' petition for writ of certiorari. *Walton v. Premier Soccer Club, Inc.*, 487 Md. 212 (2024).

Held: Affirmed.

The Supreme Court of Maryland held that, for the negligence claim brought under the Statute or Ordinance Rule, to survive a summary judgment motion, the Waltons needed to do more than show that Sydney was within the class of people that HG § 14-501 was enacted to protect and that the harm suffered by Sydney was the type of harm the drafters of HG § 14-501 meant to prevent. The Waltons also had to present evidence demonstrating a cause-and-effect relationship between the alleged statutory violations and Sydney's injuries. Because they did not, the Supreme Court held that the Waltons could not establish that the defendants' violations of the statute were the cause-in-fact of Sydney's injuries.

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APPELLATE COURT OF MARYLAND

Sayed A. v. Susan A., No. 1365, September Term 2024, filed March 28, 2025. Opinion by Leahy, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1365s24.pdf

FAMILY LAW – CHILD CUSTODY – ENFORCEMENT – CONTEMPT

CONTEMPT – P0OWER TO PUNISH, AND PROCEEDINGS THEREFOR – APPEAL OR ERROR – REVIEW

CONTEMPT – PUNISHMENT – NATURE AND GROUND IN GENERAL

Facts:

Sayed A. ("Father") and Susan A. ("Mother") have been involved in a contested divorce case in the Circuit Court for Montgomery County for multiple years. During the pendency of the divorce case, Mother has resided at the marital home, while Father has resided at his parents' home. In 2022, the parties' minor child, A., left the marital home and began residing with Father at Father's parents' home. On June 13, 2024, the circuit court entered a custody order granting Mother sole legal and primary physical custody of the parties' minor daughter, A., and restricting Father's contact with A. to three hours of supervised visitation every other Saturday. The custody order required Father to bring A. to the marital home the following day, along with all of her belongings. Although Father took A. to the marital home on several occasions, A. simply walked the quarter mile back to Father's parents' home each time. These unsuccessful transfers prompted Mother to file three separate motions against Father for constructive civil contempt of the custody order.

The circuit court held hearings on the three motions on August 9 and September 6, 2024. At the conclusion of the September 6 hearing, the court found Father in constructive civil contempt of the custody order. The court concluded that Father had "failed to meet his burden of proving that he could do more than he did to comply with" the custody order, and entered an order finding him in contempt of that order (the "Contempt Order"). In the Contempt Order, the court imposed a sanction of 30 days' imprisonment, suspended until September 10, and included a provision providing that Father could purge the contempt by bringing A., along with all her belongings, to the marital home at 4:00 p.m. on September 9. The order also prohibited Father from contacting A. or permitting A. to enter his parents' home for 60 days from entry of the order. Further, the Contempt Order further provided that if Father made contact with A. during

the 60 day period, Mother's counsel or the BIA for A. could file a line with the court and immediately have Father incarcerated. Finally, the Contempt Order awarded Mother $8,000 in compensatory damages for costs she incurred in hiring private assistance to facilitate the transfer of A. to her custody and awarded Mother's counsel $9,600 in attorneys' fees for the cost of filing the three contempt motions. Father subsequently filed a timely notice of appeal.

Held: Vacated in part and affirmed in part.

The Appellate Court of Maryland determined that the circuit court applied an incorrect legal standard in finding Father in contempt of the custody order. To find an alleged contemnor in constructive civil contempt of a court order, the court must find, by a preponderance of the evidence, that the alleged contemnor willfully violated the order. *Dodson v. Dodson*, 380 Md. 438, 452 (2004). Although the court need not expressly state that noncompliance with an order was "willful" in making a contempt finding, the court's ruling, "when read as a whole," must imply that the court found the alleged contemnor's conduct willful. *Bahena v. Foster*, 164 Md. App. 275, 288 (2005). The record contained abundant evidence that Father's noncompliance with the custody order had been willful, but the circuit court's application of an incorrect legal standard – that the alleged contemnor must show they "could not have done more than [they] did to comply" – undermined the presumption that the court knew the law and applied it correctly. *Id*.

The court further erred by: (1) imposing a determinate sanction of 30 days' imprisonment for constructive civil contempt, without providing an avenue for Father to purge the contempt after the sentence had begun; (2) providing that Father could be incarcerated immediately upon the filing of a line by Mother's counsel or the BIA for A., without a judicial determination as to whether Father was still in contempt; and (3) improperly modifying the custody order's assignment of custody by prohibiting Father from having any contact with A. for 60 days.

When incarceration is imposed as a sanction for constructive civil contempt, the contempt order must contain a purge provision that permits the alleged contemnor to immediately end the incarceration at any time by purging. Jones v. State, 351 Md. 264, 282 (1998). Furthermore, the court must determine that an alleged contemnor is still in contempt at the time of incarceration. *Arrington v. Dep't of Human Resources*, 402 Md. 79, 101 (2007). "[B]oth the form and substance of due process and proper judicial procedure must be observed" before an alleged contemnor is incarcerated, given that incarceration clearly impinges upon an alleged contemnor's constitutional liberty interest. *Thrower v. State ex rel. Bureau of Support Enf't,* 358 Md. 146, 161 (2000). Finally, the court may only modify a custody determination in a contempt proceeding after assessing (1) whether there has been a material change in circumstance and (2) the child's best interests. *Kowalczyk v. Bresler*, 231 Md. App. 203, 213 (2016). In the case sub judice, the court did not make this assessment before overriding Father's biweekly supervised visitation right by prohibiting him from contacting A. for 60 days.

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The court also erred in awarding Mother compensatory damages, because the custody order allocated the costs of hiring private assistance to facilitate the custody transfer to her, and compensatory damages may only be awarded in a constructive civil contempt proceeding where "exceptional circumstances" warrant it. *Royal Investment Group, LLC v. Wang*, 183 Md. App. 406, 455 (2008). However, the court did not err in awarding Mother's counsel attorneys' fees, because Maryland Code (1984, 2019 Repl. Vol.), Family Law Article ("FL") § 12-103 permitted the awarding of attorneys' fees in this case, and the court applied the statutory factors required to award attorneys' fees under FL § 12-103(b).

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County Council of Wicomico County, Maryland v. Julie Giordano, No. 2146, September Term 2023, filed March 5, 2025. Opinion by Eyler, J., J.

https://www.mdcourts.gov/data/opinions/cosa/2025/2146s23.pdf

CHARTER INTERPRETATION

MOOTNESS

Facts:

This appeal arose from a dispute between Julie Giordano, the County Executive for Wicomico County ("the County Executive"), appellee, and the County Council of Wicomico County ("the Council"), appellant, over the meaning of § 315(A) of the Wicomico County Charter ("the Charter"), governing the confirmation of executive appointments. In the Circuit Court for Wicomico County, the County Executive filed suit seeking declaratory and injunctive relief relative to her contested appointment of a candidate to the position of Assistant Director of Administration and the Council's subsequent vote to reject that candidate and the passage of legislation defunding that position. The County Executive and the Council filed cross-motions for summary judgment. The circuit court granted judgment in favor of the County Executive, ruling that the candidate was properly appointed, confirmed by inaction of the Council under § 315(A), and that the Council was without authority to defund the candidate's position.

Appellant argued that the circuit erred in not holding a hearing on post-judgment motions. The circuit court's opinion and declaratory judgment was dated November 15, 2023. Because the circuit court relied upon a superseded version of § 315(A) in its opinion and declaratory judgment, on November 17, 2023, the County Executive filed a motion to revise and did not request a hearing. On November 20, 2023, the Council filed a motion to alter or amend and requested a hearing. On November 23, 2023, the circuit court stayed the declaratory judgment "pending further court proceedings." On December 13, 2023, the circuit court issued a corrected supplemental opinion and declaratory judgment. It denied the County Executive's motion to revise and the Council's motion to alter or amend as "moot."

The Council argued that, in fact, the court granted the County Executive's motion to revise, constituting reversible error because the change in the opinion was not the correction of a clerical error. The Council also argued that the court denied the Council's motion to alter or amend, constituting reversible error because it was done without a hearing.

The County Executive argued that the court's changes were an exercise of the court's revisory power over its nonfinal rulings.

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Held:

Under § 315(A) of the Charter, the County Executive must formally name a candidate for any position requiring Council confirmation and request action by the Council on that candidate at a legislative session. Because the County Executive failed to do so with respect to the Assistant Director of Administration, the candidate was not approved by inaction of the Council.

Consequently, the Council acted within its authority when it deleted the budget item for that position until a candidate was formally submitted and approved consistent with the Charter. We thus vacate the grant of declaratory relief in favor of the County Executive, remand for the entry of a new declaratory judgment in favor of the Council, and dissolve the injunction suspending the effect of the bill defunding that position as of the date of the filing of our mandate.

With regard to mootness, the Court held that he reasonable inference to be drawn from the record is that the changes were not a *sua sponte* exercise of revisory power in the absence of post judgment motions, as in *Maryland Bd. of Nursing v. Nechay*, 347 Md. 396, 399 (1997) but rather were in response to either or both of the parties' motions. The motions were not moot. In effect, the court granted the County Executive's motion to revise and denied the Council's motion to alter or amend. Thus, the post judgment Rules applied.

Rule 2-311(e) provides that a motion to alter or amend under Rule 2-534 may not be *granted* without a hearing. Even if we regard the court's action as a ruling on the Rule 2-534 motion, the ruling was effectively a denial of that motion. There was no substantive change in the ruling. Thus, no hearing was required.

With respect to the County Executive's motion to revise, no hearing was requested, and thus, none was required. Rule 2-311(f).

Finally, any error in failing to hold a hearing would be harmless because we have decided the issues *de novo*, as a matter of law.

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Brij Bhargava v. Prince George's County Planning Board, No. 659, September Term 2023, filed April 1, 2025. Opinion by Kehoe, S., J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0659s23.pdf

NATURAL RESOURCES – STANDING – WOODS & FORESTS

Facts:

The Prince George's County Planning Department of the Maryland National Capital Park and Planning Commission approved of an application for a variance from the County's tree conservation ordinance to permit the Prince George's County Public Schools to remove eleven specimen trees to allow for the construction of new school. Citizen Appellants filed an appeal to the Prince George's County Planning Board of the Maryland-National Capital Park and Planning Commission, which affirmed the variance. Appellants filed a petition for writ of administrative mandamus to the Circuit Court for Prince George's County, which dismissed the petition because the issue was moot and because the Appellants had failed to show any right in the continued existence of the specimen trees.

Held:

The Appellate Court has jurisdiction to consider an appeal of dismissal of a petition for writ of administrative mandamus because it was an appeal of the exercise of original jurisdiction by a circuit court.

Variances from forest conservation ordinances, which are authorized by Md. Code Ann., Nat. Res. ("NR") § 5-1611 et seq. (2023 Repl.), are qualitatively different from zoning variances, which are authorized by Md. Code Ann., Land Use § 4-305.

The Appellants lacked standing to bring the appeal because they could not demonstrate a cognizable right in the trees that were subject to removal.

The matter was moot because the trees had been removed and the Appellants took no action to prevent their removal.

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ATTORNEY DISCIPLINE

REINSTATEMENTS

By Order of the Supreme Court of Maryland

ANTONIO AQUIA

has been replaced on the register of attorneys permitted to practice law in this State as of April 24, 2025.

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JUDICIAL APPOINTMENTS

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On March 21, 2025, the Governor announced the appointment of **Denise Winston** to the District Court for Cecil County. Judge Winston was sworn in on April 18, 2025, and fills the vacancy created by the retirement of the Hon. Bonnie G. Schneider.

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On March 21, 2025, the Governor announced the appointment of **Robert Elliott Sentman** to the Circuit Court for Cecil County. Judge Sentman was sworn in on April 28, 2025, and fills the vacancy created by the retirement of the Hon. Keith A. Baynes.

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