

Circuit Court for Prince George's County
Case No. CAL17-17615

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 59

September Term, 2019

BRITTNEE CROUELL

v.

DEMOLA TURNER, ET AL.

Berger,
Reed,
Friedman,

JJ.

Opinion by Berger, J.
Concurring Opinion by Friedman, J.

Filed: March 18, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from a motor vehicle accident. Appellant, Britnee Crouell (“Crouell”), was driving Westbound on Martin Luther King Jr. Highway, when Appellee, Demola Turner (“Turner”) crossed the center median strip and struck her vehicle head on. Crouell sustained serious injuries as a result of the accident. Turner was driving a commercial vehicle for his employer, Atlas Courier, Inc. at the time of the collision. The parties have stipulated that Turner was intoxicated at the time of the collision. Crouell filed suit against Turner, Atlas Express Courier, Inc. and Fred Scott, the owner of Atlas Express Courier, Inc. A jury awarded Crouell \$314,470.45 for medical expenses, \$2,500,000 in non-economic damages, and \$3,000,000.00 in punitive damages. Pursuant to Maryland’s statutory cap on non-economic damages, the trial court reduced the award of \$2,500,000 to \$830,000. Crouell appeals the constitutionality of the Maryland cap on non-economic damages.

Crouell presents three issues for our review, which we have rephrased slightly as follows:

1. Whether the Maryland cap on non-economic damages is an unconstitutional violation of the equal protection clause.
2. Whether the Maryland cap on non-economic damages is an unconstitutional violation of an individual’s right to a trial by jury contained in Articles 5 and 23 of the Maryland Declaration of Rights.
3. Whether the Maryland cap on non-economic damages is an unconstitutional violation of the separation of powers requirement contained in Article 8 of the Maryland Declaration of Rights.

For the reasons that follow, we hold, that the Maryland cap on non-economic damages is constitutional.

FACTS AND PROCEEDINGS

The parties have stipulated to the following facts:

Britnee Crouell, a 27 year old female, was catastrophically injured in a motor vehicle accident on May 9, 2017. She had just left her home in Lanham, Maryland and was driving westbound on Martin Luther King Jr. Highway. At the same time a commercial vehicle being driven by Demola Turner was heading eastbound on the same roadway, crossed the center median strip[,] and struck Ms. Crouell's vehicle.

Ms. Crouell's vehicle was overturned and came to rest on it[]s side. She was trapped inside the vehicle. Witnesses, including an off duty District of Columbia firefighter, secured the vehicle and Ms. Crouell[,] and called for immediate medical assistance. She was transported to Shock trauma where life saving measures were initiated.

Ms. Crouell's injuries included a near total amputation of her left upper arm. Multiple surgeries were performed and the doctors were able to save her life and her arm. However, Ms. Crouell thereafter began a significant, expensive[,] and life changing recovery process.

Ms. Crouell has undergone near continuous medical care since the time of the motor vehicle accident as doctors attempted to return function to her left upper extremity. Although her arm was salvaged through the heroic efforts of the physicians[,] she has virtually no use of her left arm or hand. She has also received significant and near continuous psychological treatment for the impact this accident and her injuries have had on her life.

The at fault driver, Demola Turner, was driving a commercial vehicle for his employer, Atlas Express Courier, Inc. His job generally involved making deliveries[,] and on the night in question[,] he had picked up a package at Dulles International

Airport and was heading back to the Atlas Express headquarters in Bowie, Maryland.

Mr. Turner had been drinking alcohol prior to making the delivery run on the evening of May 9, 2017. His employer was aware of this fact and was further aware, prior to hiring Mr. Turner, that he had a driving record which included charges for driving while intoxicated and having his license suspended. It was determined Mr. Turner was intoxicated at the time of the collision with Ms. Crouell.

Ms. Crouell filed suit against Mr. Turner, Atlas Express Courier, Inc. and Fred Scott, the owner of Atlas Express Courier, Inc. A jury trial was conducted and the jury found in favor of Ms. Crouell. The jury awarded [her] \$314,470.45 for medical expenses, \$2,500,000.00 for non-economic damages[,] and \$3,000,000.00 for punitive damages. The punitive damages award was only as to Atlas Express Courier, Inc.

After the jury rendered its verdict[,] the trial court, in accordance with Maryland law, applied the cap on non-economic damages[,] reducing the non-economic damage award from \$2,500,000 to \$830,000. Appellant’s counsel fully and completely preserved any objection to the constitutionality of the cap.

On appeal, Crouell solely challenges the constitutionality of Maryland’s statutory cap on non-economic damages.

STANDARD OF REVIEW

The Court of Appeals has articulated that “[e]valuating the constitutionality of an act of the Maryland General Assembly is a question of law.” *DRD Pool Serv., Inc. v. Freed*, 416 Md. 46, 62 (2010). Additionally, “the interpretation of the Constitution and the Maryland Declaration of Rights is a question of law. *Id.* We, therefore, “review the

issues *de novo* to determine if the trial court was legally correct in its rulings on these matters.” *Davis v. Slater*, 383 Md. 599, 604 (2004).

DISCUSSION

The General Assembly has enacted a cap on non-economic damages related to personal injury or wrongful death. Md. Code (2006, 2013 Repl. Vol.) § 11-108 of the Courts and Judicial Proceedings Article (“CJ”). Non-economic damages in a personal injury action include damages for “pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury.” CJ § 11-108(a)(2)(i)(1). In an action for wrongful death, non-economic damages include “mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, care, marital care, parental care, filial care, attention, advice, counsel, training, guidance, or education, or other noneconomic damages authorized under Title 3, Subtitle 9 of this article.” CJ § 11-108(a)(2)(i)(2). A jury may not be informed of the limitation on damages. CJ § 11-108(d)(1). Pursuant to the statute, damages arising out of an action after October 1, 1994 may not exceed \$500,000. CJ § 11-108(b)(2)(i). The cap increases by \$15,000 on October 1 of each year. CJ § 11-108(b)(2)(ii). If the jury awards an amount in excess of the cap, the court must reduce the amount to conform to the cap. CJ § 11-108(d)(2)(i).

Crouell challenges the constitutionality of the cap on three grounds. She first argues that the cap is unconstitutional because it violates the equal protection clause. Crouell urges us to ignore the precedent set in *Murphy v. Edmonds*, 325 Md. 342, 362 (1992) because the factual assumptions about the insurance industry which the Court relied upon

have proven to be untrue. Second, Crouell asserts that the cap is an unconstitutional violation of an individual’s right to a trial by jury, protected by Articles 5 and 23 of the Maryland Declaration of Rights. She argues that the Court of Appeals, in *Murphy*, improperly equated the jury determination of damage awards to an issue of law, rather than an issue of fact. She, therefore, urges us to reconsider this improper conclusion. Third, Crouell argues that the determination of whether or not a verdict is excessive is inherently a judicial, not a legislative function. The cap, therefore, violates the separation of powers doctrine. Demola Turner, in response, asserts that Maryland Courts have consistently upheld the constitutionality of the cap and that *stare decisis* controls this Court’s decision. We agree.

The Court of Appeals has expressly rejected Crouell’s first two constitutional arguments. In *Murphy, supra*, 325 Md. at 355, the injured appellant argued that the cap violated the equal protection clause because it created “a classification between less seriously injured tort plaintiffs who are entitled to keep everything which the jury awards and more seriously injured tort plaintiffs[,]” who’s award of damages are subject to the cap.”¹ A heightened degree of scrutiny, therefore, should be applied. *Id.* In rejecting this argument, the Court of Appeals held that a legislative cap “upon the amount of noneconomic damages which can be awarded to a tort plaintiff does not implicate such an

¹ “Although the Maryland Constitution contains no express equal protection clause, it is settled that the Due Process Clause of the Maryland Constitution, contained in Article 24 of the Declaration of Rights, embodies the concept of equal protection of the laws to the same extent as the Equal Protection Clause of the Fourteenth Amendment.” *Murphy, supra*, 325 Md. at 353.

important ‘right’ as to trigger any enhanced scrutiny.” *Id.* at 362. Moreover, the cap represented “the type of economic regulation which has regularly been reviewed under the traditional rational basis test by this Court and by the Supreme Court.” *Id.* Analyzing the cap under a rational basis standard, the Court concluded the following:

The General Assembly's objective in enacting the cap was to assure the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injuries to members of the public. This is obviously a legitimate legislative objective. A cap on noneconomic damages may lead to greater ease in calculating premiums, thus making the market more attractive to insurers, and ultimately may lead to reduced premiums, making insurance more affordable for individuals and organizations performing needed services. The cap, therefore, is reasonably related to a legitimate legislative objective.²

Id. at 369-70.

The *Murphy* Court additionally rejected the argument that the cap violates the right to a jury trial, protected by Articles 5 and 23 of the Declaration of Rights.³ *Id.* at 370. The injured appellant argued that the provision of CJ § 11-108 requiring that the jury not be

² In considering the cap under a rational basis test, the Court of Appeals discussed the General Assembly’s purpose for enacting the cap. The Court cited to several task force reports as well as letters by members of the medical profession and interest groups on the liability and medical insurance industries. Ms. Crouell dedicates much of her brief to explaining why the factual justifications provided by the *Murphy* Court to overcome a rational basis test, were improper or no longer true. In light of our holding, however, we need not address these contentions.

³ Article 5 of the Maryland Declaration of Rights states [t]hat the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law Article 23 of the Maryland Declaration of Rights states that “[t]he right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of \$15,000, shall be inviolably preserved

informed of the cap, interfered with the jury’s ability to properly determine damages. *Id.* The appellant further argued that a mandatory reduction of a jury award “interferes with the jury’s exclusive province in determining factual issues.” *Id.* at 370-71. The Court of Appeals explained that the constitutional right to a “jury trial right in civil cases relates to “issues of fact” in legal actions. *Id.* at 371. It does not extend to issues of law, equitable issues, or matters which historically were resolved by the judge rather than by the jury.” *Id.* “Moreover, the constitutional right to a jury trial is concerned with whether the court or the jury shall decide those issues which are to be resolved in a judicial proceeding.” *Id.* at 371. The Court in *Murphy* further explained:

Where, however, the General Assembly has provided that a matter shall not be resolved in a judicial proceeding, by legislatively abrogating or modifying a cause of action, no question concerning the right to a jury trial arises. Since, under such circumstances, the matter will not be resolved in a judicial proceeding, the question as to whether a judge or a jury shall resolve the matter simply does not arise.

* * *

[T]he General Assembly abrogated any cause of action for noneconomic tort damages in excess of \$350,000; it removed the issue from the judicial arena. No question exists concerning the role of the judge versus the jury with respect to noneconomic tort damages in excess of \$350,000. Therefore, no question concerning the constitutional right to a jury trial is presented.

Id. at 372-73. Thus, the Court concluded that neither the limit on recovery nor the provision that the jury not be informed of the limit interfere with the jury’s role and its ability to resolve factual issues. *Id.* at 373.

The Court of Appeals expressly reaffirmed the constitutionality of the cap in *Oaks v. Connors*, 339 Md. 24, 37 (1995). The appellants in *Oaks* similarly argued that the cap violated the equal protection clause and the right to a jury trial. *Id.* The Court declined to reconsider these arguments and stated that it “expressly rejected these constitutional arguments in *Murphy v. Edmonds*, 325 Md. 342, 601 A.2d 102 (1992), and we reaffirm that decision today.” *Id.* (citations omitted).

More recently, the Court of Appeals reaffirmed both *Murphy* and *Oaks* in *DRD*, *supra*, 416 Md. at 58-59. In *DRD*, the Court recognized two circumstances where it is appropriate to overrule its own precedent. *Id.* at 64. First, it may strike down a prior decision when a decision is “clearly wrong and contrary to established principles,” and second, when a decision “is plainly seen that a glaring injustice has been done or some egregious blunder committed.” *Id.* The Court held that the case before them did not fall under either exception to *stare decisis*. *Id.* at 69. The appellants had presented no evidence or arguments that the decisions in *Murphy* and *Oaks* were clearly wrong and contrary to established principles. *Id.* They had also not shown a significant change in the underlying facts and circumstances. *Id.* The Court was therefore, bound by its prior decisions upholding the constitutionality of the cap. *Id.*

Indeed, this Court has expressly declined to revisit the constitutionality of the cap, noting that the Court of Appeals has repeatedly addressed the issue. We recently explained:

It is not within this Court's purview to revisit the constitutionality of the cap, which the Court of Appeals repeatedly has upheld in the face of challenges premised on the same arguments. *See Murphy v. Edmonds*, 325 Md. 342, 367-

70, 601 A.2d 102 (1992) (holding that the constitutionality of the cap is scrutinized under the deferential rational basis test and that the “legislative classification drawn ... between tort claimants whose noneconomic damages are less than [the cap] and tort claimants whose noneconomic damages are greater than [the cap], and who are thus subject to the cap, is not irrational or arbitrary”); *DRD Pool Serv., Inc. v. Freed*, 416 Md. 46, 66-67, 5 A.3d 45 (2010)(holding that the cap “does not create a classification between affected parties, and certainly not a classification subject to heightened scrutiny”); *Dixon v. Ford Motor Co.*, 433 Md. 137, 169, 70 A.3d 328 (2013) (holding that by capping the total gross award in wrongful death actions, the legislature did not “create irrational classifications among the claimants”); *Martinez v. The John Hopkins Hospital*, 212 Md. App. 634, 656 n.19, 70 A.3d 397 (2013) (“it is well settled that the [c]ap is constitutional. The Court of Appeals has consistently upheld the constitutionality of the [c]ap, explaining that it has become ‘embedded in the bedrock of Maryland law.’ ”) (quoting *DRD Pool*, 416 Md. at 68, 5 A.3d 45). We are bound by the direct precedent governing this issue and decline to further address it.

Burks v. Allen, 238 Md. App. 418, 475 (2018). Accordingly, we hold that CJ § 11-108, which provides a cap on non-economic damages in personal injuries and wrongful death actions, does not violate the equal protection clause or the right to a jury trial.

Crouell’s third challenge to the cap is that it violates the separation of powers clause in Article 8 of the Maryland Declaration of Rights.⁴ This Court previously addressed the issue in *Owens-Corning v. Walatka*, 125 Md. App. 313, 725 (1999), *abrogated on other grounds by John Crane, Inc. v. Scribner*, 369 Md. 369 (2002); *see also Univ. of Maryland*

⁴ Article 8 of the Maryland Declaration of Rights states “[t]hat the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.”

Med. Sys. Corp. v. Malory, 143 Md. App. 327, 355 (2001). The appellants in *Walatka* argued that the cap “interferes with the classical constitutional function of the Judicial Branch, through jury trial” and thereby violates the separation of powers doctrine found in Article 8 of the Maryland Declaration of Rights.” *Id.* at 335. We rejected this argument for several reasons.

In *Walatka*, we first relied on the *Murphy* Court’s reasoning as to why the cap does not violate the right to a jury trial. *Walakta, supra*, 125 Md. App. at 335-36. Although *Murphy* did not expressly address the argument that the cap violates the separation of powers doctrine, it was implicitly rejected in the course of its ruling on the right to a jury trial. *Id.* We concluded that in *Murphy*, the “Court of Appeals made it clear that the legislative power to create, modify, and abolish causes of action did not interfere with a litigant's right to a jury trial or infringe upon the judiciary's control over court proceedings.” *Id.* at 337. We further explained that to hold that the “legislature usurped the judicial power to reduce excessive jury awards, would be a rejection of the Court of Appeals's reasoning in *Murphy*.” *Id.*

In *Walatka*, we also relied upon *Franklin v. Mazda Motor Corp.*, 704 F.Supp. 1325, 1331 (D.Md.1989).⁵ *Id.* at 338-39. Indeed, *Mazda* expressly rejected the argument that the cap violated the separation of powers doctrine:

The power of the legislature to abolish the common law necessarily includes the power to set reasonable limits on recoverable damages in causes of action the legislature chooses

⁵ The *Murphy* Court relied upon *Mazda* in its explanation of the jury trial issue. *Murphy, supra*, 325 Md. at 373.

to recognize. The Court therefore agrees ... that if the legislature can, without violating separation of powers principles, establish statutes of limitations, establish statutes of repose, create presumptions, create new causes of action and abolish old ones, then it also can limit noneconomic damages without violating the separations of powers doctrine.

Walatka, supra, 125 Md. App. at 339 (quoting *Mazda, supra*, 704 F.Supp. at 1331). We see no reason to depart from the holding in *Walatka*, and therefore hold that the cap does not violate the separation of powers doctrine.

In sum, we decline to revisit well-established precedent that Maryland's statutory cap on non-economic damages is constitutional. We, therefore, hold that CJ § 11-108 is not an unconstitutional violation of the equal protection clause, the right to a trial by jury, or the separation of powers requirement, and affirm the judgment of the Circuit Court for Prince George's County.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

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I agree with my colleagues that the issue of the constitutionality of the cap on noneconomic damages has been recently, repeatedly, and conclusively decided by this Court and the Court of Appeals. As a result, we are bound to affirm its application to the verdict in this case.

In the event that the Court of Appeals grants certiorari in this case, however, and reconsiders *Murphy v. Edmonds*, 325 Md. 342 (1992), and the cases that follow, I write separately to state my view that Article 19 of the Maryland Declaration of Rights provides the proper analytic framework to assess the constitutionality of enactments by the Maryland General Assembly that modify common law tort remedies.⁶ Article 19 provides:

That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

MD. CONST., DECL. OF RTS., ART. 19. This language is derived from the *Magna Carta* and has been part of our Declaration of Rights since the Revolutionary War-era. Dan Friedman, *Tracing the Lineage: Textual and Conceptual Similarities in the Revolutionary-Era State Declarations of Rights of Virginia, Maryland, and Delaware*, 33 RUTGERS L.J. 929, 967

⁶ In *Murphy*, the Court of Appeals rejected arguments that the cap on noneconomic damages violated, among others, Articles 8, 19, and 24 of the Maryland Declaration of Rights. Crouell has grounded her arguments to us exclusively on Articles 8 and 24. Given the posture of the case, I don't think it is necessary for me to opine on whether she has sufficiently preserved the right to argue to the Court of Appeals that the cap violates Article 19.

(2002); Dan Friedman, *The History, Development, and Interpretation of the Maryland Declaration of Rights*, 71 *TEMPLE L. REV.* 637, 658, 694 n.304-13 (1998); *see also* Dan Friedman, *Who Was First?: The Revolutionary-Era Declarations of Rights of Virginia, Pennsylvania, Maryland, and Delaware*, 97 *MD. HIST. MAG.* 476 (Winter 2002).

I have been critical of the Court of Appeals’s jurisprudence applying Article 19 as both too deferential to the legislature and not deferential enough. Dan Friedman, *Jackson v. Dackman Co.: The Legislative Modification of Common Law Tort Remedies Under Article 19 of the Maryland Declaration of Rights*, 77 *MD. L. REV.* 949, 956-57 (2018). I have no doubt, however, that if properly applied, Article 19 provides the right lens through which to assess legislative modifications of common law tort remedies.⁷

⁷ I have proposed my own test:

A legislative modification (or elimination) of a common law remedy (including immunities, damage caps, statutes of limitations and repose, and alternative compensation systems) is constitutional *unless* (1) it fails to provide an alternative remedy that is reasonable to the class to which the victim belongs (including all persons harmed or who will be harmed by the defendant’s conduct (including the defendant(s) and other parties contributing to similar harm)); or (2) it is not reasonably related to an important state objective.

77 *MD. L. REV.* at 956-57.