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Attorney Grievance Commission v. Nicholas G. Karambelas, Misc. Docket AG No. 37, September Term, 2019 filed April 1, 2021. Opinion by Barbera, C.J.

https://mdcourts.gov/data/opinions/coa/2021/37a19ag.pdf

ATTORNEY MISCONDUCT – DISCIPLINE – DISBARMENT

Facts:

The Attorney Grievance Commission of Maryland, acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action with the Court of Appeals alleging that Nicholas G. Karambelas violated Maryland's Rules of Professional Conduct. The Petition alleged that Karambelas violated Rule 1.1 (Competence), Rule 1.4(a) and (b) (Communication), Rule 1.15(a) and (d) (Safekeeping Property), Rule 3.3(a) (Candor Toward the Tribunal), Rule 5.5(a) (Unauthorized Practice of Law), and Rule 8.4(a)–(d) (Misconduct). Bar Counsel further alleged that Karambelas violated Section 10-306 of the Business Occupations and Professions Article (Misuse of trust money) of the Maryland Code, as well as the District of Columbia's Rules of Professional Conduct Rule 1.15 (Safekeeping Property). The charges stemmed from Karambelas's representation of Ida Moss, Ms. Moss's daughter, Patricia Brandon, the Estate of Ida Moss following Ms. Moss's death, and Patricia Brandon in her capacity as the personal representative of the estate.

The hearing judge found that Karambelas failed to promptly open an estate and carry out Ms. Moss's testamentary wishes as set out in her will and the related trust agreement. Upon opening the estate, Karambelas knowingly misrepresented to the Orphans' Court for Montgomery County that Ms. Moss died intestate and that Ms. Brandon was the sole beneficiary of the estate. The hearing judge further found that Karambelas failed to provide competent representation to the estate and to Ms. Brandon as the estate's personal representative. He failed to appear at a show cause hearing, resulting in the temporary removal of Ms. Brandon as personal representative. Karambelas knowingly and intentionally failed to provide true and accurate information when he filed the First and Final Account with the Register of Wills. He also failed to advise Ms. Brandon of the need to pay federal and state estate taxes within nine months of Ms. Moss's death

and failed to advise Ms. Brandon about filing federal and state tax returns on behalf of the estate. These failures resulted in significant tax indebtedness for the estate.

Despite Karambelas's neglect of estate taxes, he used the necessity of paying estate taxes to justify the sale of a commercial property belonging to the estate. He then placed those sale proceeds into his trust account rather than an estate bank account. Once those funds were placed in his trust account, Karambelas began an extended course of misappropriation. The hearing judge found that Karambelas misappropriated over half a million dollars of estate funds, and he also failed to maintain any record to keep track of those funds entrusted to him as a fiduciary for the estate.

After fully depleting the sale proceeds, the hearing judge found that Karambelas knowingly misrepresented to Ms. Brandon that the funds were lost in the 2008 stock market crash. The hearing judge concluded that Karambelas "knowingly, stealthily, and repeatedly lied to and stole from his clients over the span of several years."

Based on these findings, the hearing judge found that Karambelas violated Rules 1.1, 1.4(a) and (b), 1.15(a) and (d), 3.3(a), and 8.4(a)–(d). The hearing judge further found that Karambelas violated Section 10-306 of the Business Occupations and Professions Article of the Maryland Code, as well as D.C. Rule 1.15. The hearing judge found that several aggravating factors existed, namely: (1) dishonest or selfish motive, (2) pattern of misconduct, (3) multiple Rules violations, (4) refusal to acknowledge wrongfulness of conduct, (5) substantial experience in the practice of law, and (6) illegal conduct. The hearing judge found mitigation only in that Karambelas had no prior disciplinary history.

Held: Disbarred

Given the severity of Karambelas's misconduct, this Court issued a per curiam order on October 6, 2020 disbarring Karambelas. The Court later filed an opinion in which it accepted the factual findings of the hearing judge and agreed with the recommended conclusions of law that Karambelas had violated the aforementioned Rules. The Court agreed with Bar Counsel that disbarment was the appropriate sanction for Karambelas's numerous Rule violations. Throughout the relevant period of representation, Karambelas made material misrepresentations to the Orphans' Court, his client, Patricia Brandon, failed to properly advise Ms. Brandon on the administration the Estate of Ida Moss, and misappropriated over half of a million dollars of estate funds.

Karambelas filed exceptions only to the mitigating factors, which the Court overruled. The Court found only one instance of mitigation, the absence of prior discipline. The Court found the same six aggravating factors that the hearing judge found applied.

Based upon those aggravating factors and the underlying misconduct, the Court concluded that disbarment was the appropriate sanction.

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Attorney Grievance Commission of Maryland v. Charles Allan Fineblum, Misc. Docket AG No. 3, September Term 2020, filed April 26, 2021. Opinion by Barbera, C.J.

https://mdcourts.gov/data/opinions/coa/2021/3a20ag.pdf

ATTORNEY DISCIPLINE – COMMUNICATION – SUPERVISION OF NON-ATTORNEY ASSISTANTS – FEE SHARING – ASSISTING IN THE UNAUTHORIZED PRACTICE OF LAW – ATTORNEY TRUST ACCOUNT RECORD-KEEPING – COMMINGLING OF FUNDS – SAFEKEEPING OF PROPERTY – SUSPENSION

Facts:

The Attorney Grievance Commission of Maryland, acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action with the Court of Appeals alleging that Respondent, Charles Allan Fineblum, violated Maryland's Rules of Professional Conduct. The Petition alleged that Fineblum violated Rules 1.1 (Competence), 1.4(a) and (b) (Communication), 1.15(a) and (b) (Safekeeping Property), 5.3(a), (b), and (c) (Responsibilities Regarding Non-Attorney Assistants), 5.4(a) (Professional Independence of an Attorney), 5.5(a) (Unauthorized Practice of Law), and 8.4(a), (c), and (d) (Misconduct), in addition to Maryland Rules 19-407(a)(3), (a)(4), and (b) (Attorney Trust Account Record-Keeping) and 19-408 (Commingling Funds). The charges stemmed from Fineblum's alleged failure to oversee the work of an independent paralegal firm, the improper sharing of legal fees with that firm, his lack of involvement in certain personal injury clients' cases, and the mishandling of his attorney trust account.

During the period from 2008 through 2018, Fineblum engaged the services of an off-site paralegal firm known as RT & Associates, Inc. ("RT & Associates"). Fineblum delegated various responsibilities in his personal injury client matters to the staff at RT & Associates, including with respect to client intake and pre-litigation case management. Clients would generally have contact with the staff at RT & Associates first, who would: (i) obtain information regarding the underlying accidents, (ii) coordinate medical treatment, (iii) handle property damage, repairs, and rental car needs, (iv) process the clients' personal injury protection claims, (v) work with the responsible insurance carriers, and (vi) prepare settlement demands. Fineblum authorized the staff at RT & Associates to use his letterhead and to sign his name to correspondence, including to letters he had not reviewed. Fineblum admitted that there were some clients for whom RT & Associates handled settlement without his involvement, and that there were "some" such clients of which he was not even aware at the time.

According to Fineblum, he did not have a formal written agreement with RT & Associates. He also did not receive billing invoices. Instead, he would simply compensate the staff out of his attorney trust account with the proceeds of his clients' personal injury claims. Fineblum explained that, in calculating his payments to RT & Associates, he would take into account the nature of the case and the extent of the support which RT & Associates provided. He further

admitted that he would also take into account the outcome of the case. Fineblum produced to Bar Counsel a table of all of the personal injury client matters in which his clients recovered on their claims from 2014 through sometime in 2018. The table lists the client name, settlement amount, attorney's fee, and payment to RT & Associates. The table shows that in nearly every matter Fineblum paid the majority of the total attorney's fee to RT & Associates. In sum, Fineblum paid over 63% of the total earned attorney's fees to RT & Associates. Fineblum's tax returns also showed that between 2013 and 2017, he paid RT & Associates over $1 million dollars, while he netted only approximately $30,000 in total profits.

In December of 2017, Jeron Morris met with RT & Associates following a motor vehicle accident. He signed a retainer agreement listing Fineblum as his attorney, and RT & Associates began the process of reaching out to the relevant insurance companies. RT & Associates also helped arrange for his medical treatment. Approximately forty days later, Morris terminated his relationship with Fineblum and RT & Associates, and retained new counsel. Morris never had any direct contact with Fineblum during the course of his representation, but Morris also never attempted to contact him. After terminating his relationship with Fineblum, Morris filed a complaint with the Attorney Grievance Commission. The complaint was directed towards Ronald Tilghman, the principal of RT & Associates, and it identified him as Fineblum's paralegal. Although the complaint did not identify any misconduct on the part of Fineblum, it caused Bar Counsel to initiate its investigation.

Apart from his relationship with RT & Associates, Fineblum also admitted that he did not keep the proper records in relation to his attorney trust account or perform the requisite monthly reconciliations. Rather, his practice was to monitor his trust account via written check stubs from which he claimed to be able to discern which clients' fees were located in the account at any given time. He acknowledged, though, that he could not account for every cent in the trust account through this practice. Fineblum also admitted that he often left attorney's fees in his trust account for "a period of days or weeks" after earning them. He claims to have done so in order to avoid having an escrow check bounce, which he was advised to avoid early on in his career.

At the hearing, Bar Counsel did not call any witnesses and rested its case after submitting twenty-five exhibits. One of the exhibits was the complaint filed by Jeron Morris. As Morris did not appear at the hearing, the complaint was not offered or accepted for the truth of its contents, but solely as context for why Bar Counsel initiated its investigation into Fineblum and his ensuing responses to Bar Counsel. Fineblum also testified at the hearing and called three character witnesses who testified on his behalf.

Based on these findings, the hearing judge found that Fineblum violated Rules 1.4(b), 5.3(a)–(c), 5.4(a), 5.5(a), 8.4(a) and (d), 1.15(a) and (b), and Maryland Rules 19-407(a)(3), (a)(4), and (b), and 19-408, but that Bar Counsel had failed to meet its burden to establish that Fineblum violated Rules 1.1 and 8.4(c). The hearing judge then found that two aggravating factors applied, in that Fineblum engaged in multiple rule violations and had substantial experience in the practice of law at the time of the misconduct, as he had been practicing in Maryland since 1972. The hearing judge further found that the following seven mitigating factors applied: (1)

the absence of prior attorney discipline, (2) the absence of a dishonest or selfish motive, (3) full and free disclosure to Bar Counsel and a cooperative attitude toward the attorney discipline proceeding, (4) timely good faith efforts to rectify the misconduct's consequences, (5) good character and reputation, (6) remorse, and (7) unlikelihood of repetition of the misconduct.

Held: Suspended for a period of six months and one day.

The Court of Appeals concluded that Fineblum violated Rules 1.4(b), 5.3(a) and (b), 5.4(a), 5.5(a), 8.4(a) and (d), 1.15(a) and (b), and Maryland Rules 19-407(a)(3), (a)(4), and (b), and 19-408. The Court did not find that Fineblum violated Rule 5.3(c), as the conduct of the staff at RT & Associates would not have violated the rules of professional conduct had the staff been licensed attorneys. The Court also agreed with the hearing judge that Bar Counsel did not meet its burden with respect to Rules 1.1 and 8.4(c). The Court agreed with the hearing judge's findings in relation to aggravating and mitigating factors, and further found that Fineblum had engaged in a pattern of misconduct. The Court concluded that in light of the significant mitigating factors, the appropriate sanction for Fineblum's misconduct was a suspension for a period of six months and one day. At the expiration of that suspension, Fineblum may petition the Court for reinstatement in accordance with Maryland Rule 19-752. The Court further conditioned his reinstatement on the engagement, at his expense, of an attorney monitor suitable to Bar Counsel for a period of three months.

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Devon Jordan Taylor v. State of Maryland, No. 2, September Term 2020, filed April 23, 2021. Opinion by McDonald, J.
Biran, J., concurs.
Watts and Booth, JJ., dissent.

https://www.mdcourts.gov/data/opinions/coa/2021/2a20.pdf

APPEALS – PRESERVATION – SUBSTANTIAL COMPLIANCE

CRIMINAL PROCEDURE – JURY INSTRUCTIONS – ANTI-CSI EFFECT INSTRUCTION

CRIMINAL PROCEDURE – APPEALS – HARMLESS ERROR STANDARD

Facts:

The victim of a home invasion identified Petitioner Devon Taylor, an otherwise stranger, from a photo array as the perpetrator. No other evidence linked Mr. Taylor to the crime. He was subsequently indicted in the Circuit Court for Wicomico County on various charges related to the home invasion. Mr. Taylor was convicted following a trial at which the trial judge, on his own initiative, gave a version of an "anti-CSI effect" jury instruction — which advises the jury that the prosecution need not prove its case through forensic or scientific techniques often featured in police procedural television shows.

This appeal concerns whether Mr. Taylor preserved an objection to the anti-CSI effect jury instruction; if so, whether that instruction was appropriately given; and, if not, whether the instruction was harmless error.

The Court of Special Appeals held that Mr. Taylor's objection was preserved and that, under current law, the trial court abused its discretion when it gave the instruction. *See Atkins v. State*, 421 Md. 434 (2011); *Stabb v. State*, 423 Md. 454, 460 (2011); *Robinson v. State*, 436 Md. 560 (2014). Nevertheless, in a reported opinion the intermediate appellate court concluded that the error was harmless, and it affirmed Mr. Taylor's conviction. *Taylor v. State*, 236 Md.App. 397 (2018).

Held: Reversed and remanded for a new trial.

The Court of Appeals held Mr. Taylor's objection was adequately preserved, the anti-CSI effect jury instruction was erroneous, and the instruction was not a harmless error.

As a threshold matter, the Court determined that Mr. Taylor's objection to the instruction was adequately preserved for appellate review as it substantially complies with Md. Rule 4-325(e) — it was timely, the trial judge acknowledged the objection, and there was no other "scientific

evidence" instruction the objection could have been in reference to. *See Gore v. State*, 309 Md. 203, 208-09 (1987); *see also Watts v. State*, 457 Md. 419, 426 (2018).

Next, the Court determined the trial judge's instruction was erroneous under the Court of Appeals caselaw concerning similar instructions. Even if the Court were to consider the instruction only with respect to the caselaw as of the time of Mr. Taylor's 2008 trial — the Court of Special Appeals decision in *Evans v. State*, 174 Md.App. 549 (2007) — the instruction was still erroneous. The Court explained that *Evans* warned that an anti-CSI effect instruction may not be appropriate if it was not given in conjunction with the explication of the State's burden of proof, which did not occur in Mr. Taylor's case. Thus, the Court held the trial judge abused his discretion in giving the erroneous anti-CSI jury instruction.

Lastly, unlike the intermediate appellate court, the Court held the erroneous instruction was not a harmless error. The Court reasoned that, because the instruction lacked the requisite reference to the State's burden of proof, the Court could not say beyond a reasonable doubt that the instruction in no way influenced the verdict. In addition, the Court noted the jury was initially "evenly split," and only returned a guilty verdict after receiving a modified *Allen* charge and deliberating for an additional two hours.

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Effrem Antoine Connor v. State of Maryland, No. 26, September Term 2020, filed March 26, 2021. Opinion by Harrell, J.

https://mdcourts.gov/data/opinions/coa/2021/26a20.pdf

CRIMINAL PROCEDURE – DRUG COURT – RECUSAL OF DRUG COURT JUDGE IN VIOLATION OF PROBATION PROCEEDINGS

Facts:

Connor pleaded guilty in 2016 in the Circuit Court for Montgomery County to various crimes. His suspended sentence included, as a condition of probation, the obligation to complete successfully drug court. Over the course of the 19 months of his enrollment in drug court, there were 56 status hearings presided over by various judges of the Circuit Court, including Judge John Maloney. Connor was sanctioned over the course of his time in drug court on a number of occasions, culminating in July 2018 when he was charged with using an external device to provide a false urine sample. Following a hearing before Judge Maloney, Connor's bond was revoked, pending the State initiating a petition for violation of probation ("VOP").

The hearing on the VOP petition was set before Judge Maloney. Connor filed a motion to recuse Jude Maloney (and any other judge who served in drug court) from hearing the VOP petition. At a hearing on Connor's motion, Judge Maloney acknowledged his awareness that Md. Rule 16-207 (governing drug court matters) carried a Rules Committee note that commented that "the judge should be sensitive to any exposure to ex parte communications or inadmissible information that the judge may have received while the [defendant] participa[ted] in [drug court]." After considering Conner's allegation, Judge Maloney denied the recusal motion because he was not convinced that he had received ex parte communications or been exposed to inadmissible evidence such that he could not be fair and impartial in ruling on the State's VOP petition. In furtherance of that objective, the judge directed that the State would be required to present witnesses and other evidence of Conner's alleged violations at another hearing.

The State called witnesses and introduced documents concerning the allegations of Connor's violation of drug court rules, regulations, and agreements. None of the evidence was deemed inadmissible nor the product of ex parte communication with Judge Maloney. The judge found Connor in violation of his probation. Connor was sentenced to ten years of incarceration (with credit for time served) and terminated from drug court.

Conner's appeal to the Court of Special Appeals resulted in an affirmance by a 2-to-1 majority in an unreported opinion. The majority opinion concluded that Judge Maloney, in deciding the VOP petition, had not relied on personal knowledge of Conner's conduct during his service in drug court. The dissent concluded that Judge Maloney had not considered whether his impartiality might be questioned reasonably and, therefore, the matter should be remanded for further proceedings.

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The Court of Appeals granted Conner's petition for writ of certiorari to consider the following question: "Given that Drug Court is a non-adversarial, team-based treatment program in which participants are expected to openly discuss relapses and other setbacks in their recovery, should a judge who supervised a defendant in Drug Court generally recuse from the defendant's subsequent violation of probation proceeding when the conduct that allegedly violated the conditions of probation was the subject of Drug Court hearings, meetings, and correspondence?"

Held:

Affirmed, but the matter of whether Md. Rule 16-207 should be revised, in light of Conner's policy arguments regarding whether drug court judges should be recused as a "blanket" rule from sitting on a matter alleging the defendant had violated the conditions of his/her probation for conduct occurring while participating in drug court, was referred to the Rules Committee.

The record in Conner's case did not reveal that Judge Maloney relied in the VOP matter on any ex parte communication or inadmissible evidence obtained while presiding over any drug court proceeding involving Conner. The evidence adduced by the State at the merits hearing on the VOP petition was sufficient in and of itself to merit granting the petition. Judge Maloney demonstrated due circumspection with regard to the role he played in drug court vis-à-vis presiding over the VOP hearing.

That having been said, Conner's policy arguments, that the informal aspects and other opportunities of the drug court process whereby a judge may be exposed to facts that later may taint or color the judge's impartiality and further participation regarding allegations of violating a defendant's probation for conduct during his/her drug court participation, are not frivolous. The proper forum for consideration of whether a Rule change is necessary or desirable starts with the Court's Standing Committee on Rules of Practice and Procedure. Thus, this question is referred to that Committee for its consideration and recommendation to the Court.

Benjamin Caleb Trott v. State of Maryland, Misc. Docket No. 9, September Term 2020, filed April 23, 2021. Opinion by Booth, J.

https://www.mdcourts.gov/data/opinions/coa/2021/9a20m.pdf

CRIMINAL PROCEDURE – FOURTH AMENDMENT – SEARCH AND SEIZURE – ANONYMOUS 911 CALL REPORTING DRUNK DRIVING – REASONABLE SUSPICION

Facts:

At around 11:30 p.m. on the night of Friday, December 4, 2015, Corporal Michael Cooper received a report from a dispatcher of an intoxicated driver at a specific location in Anne Arundel County. The tip provided the color of the vehicle and the license plate number. Corporal Cooper arrived at the address within two to eight minutes. When he arrived, accompanied by another officer, he observed a silver Honda CR-V parked in front of Captain Kidd's liquor store, with the same Maryland license plate number that was provided to him by the dispatcher. The car was parked, but the keys were in the ignition, and the engine was running. Corporal Cooper pulled into the parking lot and parked his cruiser approximately ten to fifteen feet behind the vehicle, at which time he activated his emergency lights, but not his siren. Both officers approached the car, one to the passenger's side and one to the driver's side.

Corporal Cooper knocked on the driver's side window and asked Mr. Trott to roll down his window. Mr. Trott did not immediately do so because he appeared to be unfamiliar with the window controls. After Corporal Cooper asked Mr. Trott for his license and registration, Mr. Trott admitted that his license was suspended, and his driver's license was revoked. During the conversation, Corporal Cooper could smell a "strong odor" of alcohol on Mr. Trott's breath. Mr. Trott acknowledged that he had consumed two beers and a shot, explaining that he was more sober than his girlfriend, who was also in the car. Corporal Cooper asked Mr. Trott to step out of the vehicle. After an unsuccessful field sobriety test, Mr. Trott was arrested.

After his arrest, Mr. Trott entered a plea of not guilty on all charges and filed a motion to suppress, arguing that Corporal Cooper lacked a reasonable, articulable suspicion to justify the stop because it was based solely on a dispatcher's account of an anonymous tip, and that the totality of the circumstances as alleged did not support the investigative stop. The circuit court denied Mr. Trott's motion to suppress, concluding "the circumstances were sufficient to support the stop conducted by Officer Cooper[.]" Shortly thereafter, the circuit court convicted Mr. Trott of driving while impaired by alcohol.

Mr. Trott timely appealed the circuit court's decision to the Court of Special Appeals. Citing the "important question of public policy" raised by Mr. Trott's appeal, the Court of Special Appeals filed a certification with the Court of Appeals pursuant to Maryland Rule 8-304. The Court of Appeals granted the certification, pursuant to Maryland Rule 8-304(c)(3), and issued a writ of *certiorari* that included the entire action.

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Held: Affirmed.

The Court of Appeals held that the investigatory stop in this case did not run afoul of the Fourth Amendment. Under the Fourth Amendment, an investigatory stop is constitutional where an officer has reasonable suspicion—which requires a particularized and objective basis for suspecting the particular person stopped of criminal activity—to conduct a stop. Because there is no bright-line rule available to determine when an officer has a particularized and objective basis for believing criminal activity is afoot, courts consider the totality of the circumstances—the whole picture—to determine when reasonable suspicion justifies a particular traffic stop. Importantly, reasonable suspicion need not be founded on information observed first-hand by law enforcement and may be based on information gathered from reliable anonymous tips.

Considering the totality of the circumstances, the Court of Appeals held that Corporal Cooper had reasonable suspicion to suspect Mr. Trott was engaged in drunk driving. The anonymous 911 call had sufficient indicia of reliability—the tipster alleging the drunk driving provided the make, model, and license plate of the vehicle, as well as its location, and the police arrived within minutes of receiving the call and observed the vehicle parked at a liquor store around 11:30 p.m. with the engine running. The Court concluded that the reliable 911 call, coupled with Corporal Cooper's independent observations, provided an objectively reasonable basis for believing the driver of the vehicle may have been consuming alcohol. The Court noted its decision was also informed by the nature of the criminal activity—drunk driving, with its attendant imminent danger to the public—as well as the minimal and non-intrusive nature of Corporal Cooper's stop.

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Whitney Wheeling, et al. v. Selene Finance LP, et al., No. 27, September Term 2020, filed April 30, 2021. Opinion by Booth, J.

Hotten and Getty, JJ., concur and dissent.

https://www.courts.state.md.us/data/opinions/coa/2021/27a20.pdf

PLEADING A CAUSE OF ACTION UNDER REAL PROPERTY ARTICLE § 7-113

PLEADING A PRIVATE CAUSE OF ACTION UNDER THE MARYLAND CONSUMER PROTECTION ACT, COMMERCIAL LAW ARTICLE § 13-101 ET SEQ. ("MCPA")

ATTORNEY'S FEES ALLEGED AS DAMAGES

Facts:

After the owners of two separate properties defaulted on their respective mortgage obligations, Selene Finance LP ("Selene") and its agent attempted to gain possession of the properties through self-help measures by posting eviction notices without a court order. The properties were occupied at the time that the notices were posted, and the residents of the properties sought legal advice to understand their rights. After consulting counsel, neither property owner vacated the property as a result of the eviction notice. Thereafter, the residents filed a complaint in the circuit court alleging violations of two statutes—Real Property Article ("RP") § 7-113, and the Maryland Consumer Protection Act ("MCPA"), alleging that Selene failed to comply with the statutory provisions for self-help evictions. As damages, the residents claimed non-economic damages with physical manifestations, and attorney's fees arising from their need to consult an attorney to understand their rights.

Selene filed a motion to dismiss for failure to state a claim upon which relief could be granted. The circuit court granted the motion to dismiss, concluding that the eviction notices conformed with the provisions of RP § 7-113 and that, because the parties were not actually evicted or otherwise deprived of possession of their homes, they did not suffer an objectively identifiable actual injury affording them relief under RP § 7-113 or the MCPA. The Court of Special Appeals affirmed the circuit court judgment. The intermediate appellate court held that, although Selene violated RP § 7-113(b) by failing to undertake an inquiry into the occupancy status of the property prior to posting the notice, subsection (d) of that provision did not provide for damages for parties where the unlawful conduct does not result in the plaintiffs vacating the properties. The Court of Special Appeals further held that the MCPA has a heightened pleading standard to survive a motion to dismiss and, under that standard, the plaintiffs' claims could not survive.

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Held: Affirmed in part and reversed in part.

The Court of Appeals held that, under the plain language of RP § 7-113, the statute creates a private cause of action where a party claiming possession violates the statute and where the resident suffers damages. The statute, which was enacted in 2013, only permits self-help evictions in limited circumstances where the party seeking possession has a reasonable belief that the property is abandoned, after undertaking a reasonable inquiry into the occupancy status of the property. The Court determined that the complaint adequately pleaded a private cause of action under RP § 7-113. The complaint alleged that Selene failed to undertake an inquiry into the occupancy status of the properties, and that they were occupied at the time when Selene posted the notices. The complaint alleged that, as a result of the statutory violations, the plaintiffs suffered damages. The Court also determined that the plaintiffs adequately pleaded a private cause of action under the MCPA, and that the general rule of pleading set forth in Maryland Rule 2-303(b) applies. Under Maryland law, damages for emotional injuries are only recoverable if they are accompanied by physical manifestations capable of objective determination. Reading the complaint in the light most favorable to the plaintiffs, the Court found they met the pleading burden by alleging "emotional damages with physical manifestations."

This Court affirmed the Court of Special Appeals' decision that plaintiffs are not entitled to recover attorney's fees for consulting attorneys to "know their rights" as separate compensable damages. The Court declined to expand the collateral litigation exception to the American Rule to permit the recovery of attorney's fees as damages where the fees were not incurred in collateral litigation with a party other than the defendant, nor otherwise incurred to protect an interest *vis-à-vis* a third party.

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Travelocity.com LP n/k/a TVL LP v. Comptroller of Maryland, No. 14, September Term 2020, filed April 30, 2021. Opinion by Hotten, J.
Barbera, C.J., McDonald and Watts, JJ., dissent.

https://www.courts.state.md.us/data/opinions/coa/2021/14a20.pdf

TAXATION – SALES AND USE TAX – ONLINE TRAVEL COMPANIES – HOTEL ROOMS AND CAR RENTALS – PRIOR TO THE 2015 AMENDMENT – SALE OF TANGIBLE PERSONAL PROPERTY.

TAXATION – SALES AND USE TAX – ONLINE TRAVEL COMPANIES – PRIOR TO THE 2015 AMENDMENT – VENDORS.

Facts:

During an audit period between March 1, 2003 and April 30, 2011, Petitioner, Travelocity, operated as an online travel company that provided an independent platform to review and request reservations from third-party airlines, hotels, and rental car agencies. In November 2011, Respondent, the Maryland Comptroller, assessed a sales and use tax on Travelocity's business during the audit period. Travelocity appealed the assessment to the Maryland Tax Court, which determined that Travelocity was liable for the tax, since its business of facilitating vehicle rentals and hotel room reservations was included in the sale of tangible personal property in Maryland. The Tax Court also determined that Travelocity was not negligent in failing to pay the tax during the audit period, as there was "a good faith dispute" regarding its liability.

The parties filed cross-petitions for judicial review of the Tax Court decision in the Circuit Court for Anne Arundel County, which affirmed. Thereafter, the parties appealed to the Court of Special Appeals. Prior to the consideration by the Court of Special Appeals, the parties petitioned for *certiorari* in the Court of Appeals, which granted the petition to determine, in pertinent part, "[w]hether the Tax Court erred by holding Travelocity liable for the sales and use tax during the audit period."

Held: Reversed.

The Court examined the applicable sales and use tax statute, Md. Code (2010 Repl. Vol. and 2014 Supp.) § 11-102(a) of the Tax–General Article ["Tax Code"], and held that Travelocity was not liable for the tax during the relevant audit period. The sales and use tax imposed liability on "a retail sale in the State; and a use, in the State, of tangible personal property or a taxable service." Tax Code § 11–102(a). Under a plain language analysis, Travelocity's facilitation of hotel room and rental vehicle reservations did not meet the statutory definition of "vendors" who "sold" or "delivered" tangible personal property, for purposes of paying the tax.

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The Court relied on a subsequent legislative amendment to the Tax Code—which specifically included "accommodations intermediary" into the category of "vendor" liable for the tax—to support its analysis that prior to the amendment, online travel companies such as Travelocity were not liable for the tax. The Court reasoned that the Tax Code was ambiguous as to Travelocity's liability, but recognized that "any ambiguity within the statutory language must be interpreted in favor of the taxpayer."

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Adcor Industries, Inc., et al. v. Beretta USA Corp., No. 118, September Term 2019, filed April 1, 2021. Opinion by Gould, J.

https://mdcourts.gov/data/opinions/cosa/2021/0118s19.pdf

CONTRACTS – NONDISCLOSURE AGREEMENTS - DAMAGES

Facts:

Adcor Industries, Inc. and Adcor Defense, Inc. (together, "Adcor") are Baltimore-based Maryland corporations in the business of designing and manufacturing bottling components, aerospace parts, and firearms. Adcor spent several years, and incurred $12 million in research and development costs, building an AR-15 platform rifle known as the "Adcor B.E.A.R." In 2012, Beretta U.S.A. Corporation ("Beretta"), a Maryland company that designs, manufactures, and sells firearms, shooting gear, accessories, bags, luggage, holsters, optics, and apparel in the United States, decided to combine Adcor's technical and manufacturing know-how with Beretta's marketing expertise to roll out a Beretta-branded but jointly-developed product that would be called the BRX-15.

To explore the potential for such a venture and to protect its proprietary information, Adcor required Berretta to sign a nondisclosure agreement (the "NDA"). During the two-year period in which the parties explored a possible joint venture, Adcor disclosed to Beretta substantial confidential or proprietary information. In addition to sharing its confidential and proprietary information, Adcor manufactured prototypes for the BRX-15 in 2014.

In October 2014, Beretta sent a letter to Adcor stating that it was terminating the relationship. Adcor demanded that Beretta return its confidential and proprietary information as required by the NDA. Beretta made efforts to comply with Adcor's demands, but Beretta admitted that it retained at least one copy of Adcor's proprietary information. Beretta admitted that "not all Beretta employees followed the collection protocol fully or recalled being instructed to destroy Adcor information."

In 2015, Adcor filed a 17-count complaint against Beretta, which it later amended, and ultimately, the operative complaint contained 16 counts, including breach of contract,

detrimental reliance, quantum meriut, breach of agreement, breach of duty, unfair competition, fraud, unjust enrichment, and violation of the NDA.

After the court granted summary judgment and Beretta's motion for judgment on some of the counts, one count remained -- breach of the NDA. The jury returned a verdict in favor of Adcor on its claim for breach of the NDA, and awarded Adcor $20 million in compensatory damages. In a consolidated filing, Beretta moved for judgment notwithstanding the verdict. The court found that even if Adcor had proven a breach, Adcor nevertheless failed to adduce evidence of actual damages resulting from the breach. The court vacated the jury's award of damages and ordered entry of a new judgment in favor of Adcor for nominal damages in the amount of one dollar. Adcor filed a timely notice of appeal.

Held:

The circuit court did not misinterpret the NDA between the parties. The settled measure of contract damages under Maryland law serves its function for NDAs as much as it does for other contracts. Accordingly, the benefit conferred approach does not apply to a claim of the NDA.

Adcor advanced two principal arguments on appeal. First, Adcor contended that the circuit court erroneously interpreted and applied the NDA. Second, Adcor contended that the circuit court erroneously found that the jury's damages award was not supported by the evidence.

At no time did the court find that the NDA was ambiguous or limit Adcor to the remedies provided under the NDA's remedies clauses. Adcor got the benefit of both worlds—the trial court methodically considered each remedy allowed under the NDA as well as under Maryland law, and found the evidence wanting under each measure.

The measure of damages under Maryland law is well settled. "In a breach of contract action, upon proof of liability, the non-breaching party may recover damages for 1) the losses proximately caused by the breach, 2) that were reasonably foreseeable, and 3) that have been proven with reasonable certainty." *Hoang v. Hewitt Ave. Assocs*., LLC, 177 Md. App. 562, 594 (2007) (citations omitted).

Adcor failed to adduce evidence of damages proximately caused by Beretta's breach of the NDA. Adcor urged us to adopt the "benefit conferred" approach to measuring damages, suggesting that "Maryland caselaw is silent on measuring damages caused by a breach of NDA" under this theory. However, Maryland law is well-settled that the benefit conferred approach applies to claims for quasi-contract and unjust enrichment, in which the aim is not to compensate the plaintiff for damages sustained but rather to require an undeserving defendant to disgorge benefits that would be unjust to keep. *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 296 (2007) (quoting *Mass Transit Admin. v. Granite Constr. Co*., 57 Md. App. 766, 775 (1984)). Thus, a claim for unjust enrichment is not available when "the subject matter of the claim is

covered by an express contract between the parties." Id. at 96 (quoting *FLF, Inc. v. World Publ'ns, Inc*., 999 F. Supp. 640, 642 (D. Md. 1998)).

Although Adcor invited us to create an exception when the broken contract happens to be an NDA, it provided no cogent reason for doing so. The allocation of risk reflected in NDAs is just as important and central to the expectations of the parties of an NDA as it is with respect to other types of contracts. In sum, the settled measure of contract damages under Maryland law serves its function for NDAs as much as it does for other contracts.

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Marcos Daniel Sequiera v. State of Maryland, No. 2148, September Term 2019, filed April 1, 2021. Opinion by Eyler, D., J.

https://mdcourts.gov/data/opinions/cosa/2021/2148s19.pdf

USE OF A FIREARM IN THE COMMISSION OF A FELONY OR CRIME OF VIOLENCE – MULTICOUNT INDICTMENT CHARGING PREDICATE CRIMES – UNITY OF OPERATION OF MULTICOUNT INDICTMENT – CONVICTION BASED ON UNCHARGED PREDICATE CRIMES – CONSPIRACY TO USE A FIREARM IN THE COMMISSION OF A FELONY OR CRIME OF VIOLENCE.

Facts:

After an altercation with one of three security guards working at a restaurant, during which the defendant claimed to resolve disputes by shooting, the defendant rounded up two accomplices, made threats against the security guards, waited in his car in the surface parking lot outside the restaurant for the guards to come outside, and then drove his car forward and through the lot while an accomplice shot a gun out of the window. At the same time, two restaurant patrons were walking to their car in the parking lot. One of the security guards fired back. No one was injured.

In a multicount indictment, the defendant was charged with several counts of first-degree assault (felonies/crimes of violence), each of which named a security guard as a victim, and with use of a firearm in the commission of a felony or crime of violence and conspiracy to do the same, neither of which named a victim. The State's original theory of prosecution was that the defendant committed first-degree assaults (as an accomplice) against the security guards. During trial, when there was conflicting evidence about the direction in which the shots were fired, the State took the position that the defendant could be convicted of the charged first-degree assaults against the security guards, or uncharged first-degree assaults against the two restaurant patrons. The court approved a verdict sheet and jury instructions that would permit both theories of prosecution to go to the jury. Ultimately, the defendant was acquitted of all first-degree assaults against the security guards but was convicted of use of a firearm in the commission of a felony or crime of violence (first-degree assault) and conspiracy to commit that crime.

Held: Reversed.

Judgment of conviction for use of a firearm in the commission of a felony or crime of violence reversed. When the State charges a defendant by multicount indictment with lead felonies/crimes of violence and with use of a firearm in the commission of a felony/crime of violence and it is not facially evident that the use of a firearm stemmed from an entirely separate incident, the indictment operates as a whole and the predicate crime that is an element of the compound crime

of use of a firearm takes its meaning from the lead counts of the indictment. Because the defendant was charged with predicate crimes against specific victims, he could not be convicted of use of a firearm based on uncharged predicate crimes against other possible victims. The trial court erred by allowing jurors to be instructed in such a way that they could base convictions for use of a firearm and conspiracy to use a firearm on uncharged first-degree assaults. Because the defendant was acquitted of the first-degree assaults against the security guards, the only predicate crimes that could have supported his use of a firearm conviction, he cannot be retried on the use of a firearm count.

With respect to the conspiracy to use a firearm count, the acquittals of the charged predicate crimes do not have the same effect, as the essence of the crime is the agreement to commit the predicate crime(s). The evidence was legally sufficient to support a conviction of conspiracy to use a firearm to commit the charged crimes of first-degree assault against the security guards. It was not legally sufficient to support a conviction of conspiracy to use a firearm to commit the uncharged crimes of first-degree assault against the restaurant patrons walking through the parking lot, however. Because of the trial court error, we cannot tell whether the conspiracy was based on the former or the latter. For that reason, the judgment of conviction is vacated and the conspiracy count is remanded for further proceedings.

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In re D.D., No. 2616, September Term 2019, filed April 28, 2021. Opinion by Graeff, J.

https://mdcourts.gov/data/opinions/cosa/2021/2616s19.pdf

FOURTH AMENDMENT – SEARCHES AND SEIZURES – INVESTIGATORY DETENTIONS – REASONABLE SUSPICION

Facts:

On November 15, 2019, officers with the Montgomery County Police Department responded to a call for service at an apartment building for loud music and smoking CDS. Upon entering the building, the officers observed D.D., appellant, and four other individuals coming up the steps from the basement, smelled the odor of marijuana, and advised D.D. and the other individuals to sit down. After a pat-down of one of the individuals revealed a B.B. gun, one of the officers searched D.D. and found a handgun in his waistband.

D.D. was charged in the Circuit Court for Prince George's County, sitting as a juvenile court, with weapons related offenses. He moved to suppress the handgun as the fruit of an unlawful stop and unlawful search. The circuit court denied D.D.'s motion, and subsequently found him involved with respect to all three counts.

Held: Reversed.

The stop was unreasonable because the odor of marijuana, standing alone, does not provide reasonable suspicion of criminality. The odor, by itself, does not indicate the quantity, if any, of marijuana in a person's possession, and therefore, the odor does not indicate that a person is in possession of a criminal amount of marijuana.

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Maryland Small MS4 Coalition, et al. v Maryland Department of the Environment, No. 1865, September Term 2019, filed April 29, 2021. Opinion by Harrell, J.

https://mdcourts.gov/data/opinions/cosa/2021/1865s19.pdf

ENFIRONMENTAL LAW – MUNICIPAL STORM WATER SEWER SYSTEM – DISCHARGE PERMIT – GEORGRAPHICAL SCOPE OF PERMIT BEYOND URBANIZED AREA OF COUNTY – MDE FAILED TO SPECIFY (PRIOR TO THE PUBLIC COMMENT PERIOD AND PUBLIC HEARING) THE EVALUATIVE CRITERIA FOR SUCH EXTENSION AND HOW IT WAS TO BE APPLIED, UNTIL IT ANNOUNCED ITS FINAL DETERMINATION ON THE PERMIT

Facts:

Pursuant to federal and Maryland statutes and regulations, Queen Anne's County ("the County") applied to the Maryland Department of the Environment ("MDE") for a general permit to discharge stormwater into the State's waterways, subject to effluent limitations to be determined. Ordinarily, such a permit for a small jurisdiction, such as Queen Anne's County, would apply only to discharges from systems in the urbanized area or areas of the County (as determined by reference to the prevailing federal census criteria). Less than 4% of Queen Anne's County's area is deemed an urbanized area by census criteria. The permitting authority, however, may expand the geographical scope of the permit area beyond the urbanized area where other municipal systems in the County are found to have discharges that "result in, or have potential to result in, exceedance of water quality standards." In order to determine whether a permit is required to embrace more than a system or systems within the urbanized area, evaluative criteria must be developed by the permitting authority and applied in the permitting process.

In December 2016, the County was notified of a tentative determination by the MDE that the permit in question would require that MS4 systems serving areas outside the relatively small urbanized area of the County would be subjected also to the permit requirements. The justification given by the MDE for its expansive application of which MS4s would be subject to the proposed permit was that the County, as a whole, was deemed an urbanized area.

In addition, two conditions (relevant to this appeal) were proposed: (1) 20% of the impervious surfaces in the permit area must be returned to a natural state; and (2) the County would be given until 2025 to develop plans and funding to accomplish the impervious area restoration requirement, as well as perform watershed assessments, water quality improvement opportunities, and mapping of MS4 outfalls throughout the County.

A required public comment period and public hearing were held by the MDE in early 2017. The County opposed the tentative permit determinations. Among its points, the County asserted that the tentative permit determinations were overbroad in scope, i.e., the permit and its conditions should be applied only to the defined urbanized area.

In April 2018, the MDE rendered its final determination on the permit, which continued the proposed scope of the permit and its requirements to MS4s outside the census-determined urbanized area. Appearing to supplement its relatively spare explanation in its tentative determination for why this was justified, the MDE included information regarding its process and criteria used to include MS4s outside the urbanized area. The agency contended it had evaluated MS4s outside the urbanized area, concluding that the discharges from the external MS4s "resulted in, or had the potential to result in, exceedances of water quality standards or other significant water quality impacts."

The County sought judicial review in the Circuit Court for Queen Anne's County. The circuit court affirmed MDE's action. The County's appeal to the Court of Special Appeals posed three questions:

1. Has [the Department] acted unlawfully by designating geographic areas outside of the urbanized area for regulation under the General Permit?
2. Has [the Department] unlawfully made the County responsible for discharges from independent third parties and nonpoint source runoff that does not flow into or discharge from the County's MS4?
3. Has [the Department] unlawfully imposed requirements beyond the maximum extent practicable in the General Permit?

Held:

Judgment of the circuit court as to the geographical scope of the permit vacated and case remanded for further proceedings not inconsistent with the opinion of the appellate court; judgment affirmed otherwise.

The appellate court concluded that the MDE failed to disclose, before or during the public comment/hearing process, the evaluative criteria and application thereof it intended to utilize as to the inclusion of non-urbanized area MS4s. Accordingly, the County was deprived of the opportunity to respond to that justification until after final MDE action on the permit. A remand for a supplemental public comment/hearing was necessary.

As to the challenged permit conditions, the appellate court found that there was substantial evidence in the record to support their imposition and/or the conditions were themselves reasonable. Thus, the conditions would be applicable to whatever part of the County as may be determined ultimately to be subject to the permit after the supplemental public comment/hearing process is concluded.

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J.A.B. v. J.E.D.B., Case No. 519, September Term 2020, filed April 27, 2021. Opinion by Berger, J.

https://mdcourts.gov/data/opinions/cosa/2021/0519s20.pdf

CHILD CUSTODY – GROUNDS AND FACTORS IN GENERAL – FACTORS RELATING TO PARTIES SEEKING CUSTODY – ABUSE OF PERSON OTHER THAN CHILD – COMMISSION OF CRIME – WELFARE AND BEST INTERESTS OF CHILD – FACTORS RELATING TO CHILD – EVIDENCE – ADMISSIBILITY – IN GENERAL – WITNESSES – PROCEEDINGS – CREDIBILITY AND IMPEACHMENT – MANNER OF TESTIFYING

Facts:

The divorce claim giving rise to this case was filed by J.A.B. ("Father") against J.E.D.B. ("Mother"). The parties had two children as a result of their marriage, A. and W. Throughout the marriage, there were accusations of abuse against both parties. Specifically, Father verbally, physically, and sexually abused Mother on multiple occasions. Mother reacted to Father's abuse both physically and verbally. Both parties were referred by the trial court to obtain a psychological evaluation, a custody evaluation, and an intimate partner violence assessment. The trial court held proceedings solely on custody-related issues. During the trial, Father attempted to call a rebuttal witness, the parties' former neighbor, Nicole Snyder ("Snyder"). Father requested that Snyder be allowed to testify telephonically due to health issues, but the trial court denied the motion.

In its Memorandum Opinion, the trial court expressly found that Father was abusive to Mother throughout the course of their marriage. Further, the trial court found that any abuse by Mother was reactive to Father's abuse and coercive control over her. Citing the parties' inability to communicate effectively and Mother's genuine fear of Father, the trial court awarded sole legal custody to Mother. Regarding physical custody, the trial court awarded Mother primary physical custody with Father having unsupervised visitation with the minor children every other weekend and during the week. In its determination, the trial court analyzed the *Taylor* and *Sanders* factors used in custody determinations. Further, the trial court considered the impact of Family Law § 9-101.1(c) due to the abuse of Mother by Father. This factor required the trial court to best protect both the minor children and the victim of abuse, Mother. Father noted a timely appeal.

Held: Affirmed.

The Court of Special Appeals held that the trial court did not improperly prioritize the protection of Mother over the best interests of the child. The Court explained that Family Law § 9-101.1(c) requires that if a court finds that a party has committed violence against the other parent of the party's child, the court must make arrangements for custody and visitation which best protect

both the minor children and the victim of the abuse. The Court noted that the trial court expressly found that Father verbally, physically, and sexually abused Mother throughout the marriage. The Court disagreed with Father's argument that the trial court's consideration of Family Law § 9-101.1(c) equated to an improper prioritization of Mother's protection over the best interests of the minor children. Rather, the Court noted that the trial court considered Family Law § 9-101.1(c) as the last factor in its Memorandum Opinion. Further, the Court explained that this provision contains the word "shall," which means that compliance with the statute is mandatory. The Court therefore held that the trial court did not improperly prioritize any one factor over another.

The Court of Special Appeals also disagreed with Father's argument that the trial court inappropriately limited his time with the minor children and ignored the minor children's best interest. The Court explained that a trial court's findings related to a custody determination and the best interest factors are within the trial court's discretion and will not be disturbed unless clearly erroneous. Here, the Court explained that the trial court explained its analysis of each factor in detail and took each one into account in its custody determination, creating an arrangement that best served the best interests of the minor children. The Court reasoned that Mother needed to have frequent contact with the children to ensure their safety due to the Father's history of abuse and coercive control. Therefore, the Court held that the trial court did not commit an abuse of discretion or err in its custody determination.

The final issue the Court of Special Appeals considered was whether the trial court abused its discretion by refusing to allow the parties' former neighbor testify telephonically. The Court concluded that the contents of the neighbor's testimony did not meet the requirements of Maryland Rule 2-803. The Court explained that the neighbor was not an essential participant to the proceeding because her testimony was cumulative to other testimony the trial court found to be not credible. Further, the Court held that the neighbor's demeanor and credibility would be important to the trial court as she was going to testify as to disparaging incidents and traits of Mother. The lack of means to assess credibility and conduct cross-examination via the telephone would have substantially prejudiced Mother. Accordingly, the Court held that the trial court did not abuse its discretion by denying Father's motion to allow the neighbor to testify telephonically.

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Gregory Haines v. Gretchen Vogel, No.1789, September Term 2019, filed April 7, 2021. Opinion by Wells, J.

https://mdcourts.gov/data/opinions/cosa/2021/1789s19.pdf

CIVIL PROCEDURE – INTENTIONAL INTERFERENCE WITH PARENTAL RELATIONS – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS – REQUIRED ELEMENTS OF THE COMPLAINT

Facts:

Appellant Gregory Haines sued appellee Gretchen Vogel, his former spouse and mother of their two children, claiming that her behavior towards him amounted to intentional interference with his visitation and sued her for money damages. Mr. Haines also claimed that Ms. Vogel's conduct intentionally inflicted emotional distress upon him. The circuit court ultimately dismissed his complaint concluding that a required element of a claim for intentional interference with parental relations is an allegation of the physical removal of the children. The court concluded that Ms. Vogel's conduct did not amount to an allegation of intentional infliction of emotional distress either.

Held: Affirmed.

Mr. Haines contended that Ms. Vogel's conduct was so extreme that it amounted to both an intentional inference with his relationship with his children and that it was emotionally distressing. Ms. Vogel argued that under the precedent of this Court in *Lapides v. Trabbic*, 134 Md. App. 51 (2000), and the precedent established by the Court of Appeals in *Hixon v. Buchberger*, 306 Md. 72 (1986) and *Khalifa v. Shannon*, 404 Md. 107 (2008), Mr. Haines must allege the spatial removal of the children so that his visitation could not reasonably occur. And, she argued that her conduct did not meet the four-part test of intentional infliction of emotional distress.

The Court reviewed the three cited cases and the history of intentional interference with parental relations cases in Maryland and other jurisdictions, from the last century to the present, and concluded that the tort is ground in the torts of the abduction and harboring of a child from one parent by another. From this precedent and the holdings in *Hixon*, *Lapides* and *Khalifa*, the Court determined that to properly allege the tort of intentional interference with parental relations a parent's conduct must be (1) intentional, (2) outrageous, and (3) involve the physical removal and harboring of the child from the parent. Here, although Mr. Haines alleged that Ms. Vogel's conduct was intentional, he did not allege sufficient facts to show that Ms. Vogel's conduct was "outrageous," nor, more importantly, did he allege that Ms. Vogel had physically removed the children. The Court concluded that other remedies, such as a contempt proceeding

or a motion to modify custody and/or visitation were available to Mr. Haines and were more appropriate remedies with which to seek redress.

The Court held that an allegation of intentional infliction of emotional distress must meet the following four requirements: (1) the conduct at issue was intentional or reckless; (2) the conduct was extreme and outrageous; (3) there was causal connection between the extreme and outrageous conduct and the resultant distress; and (4) the emotional distress was severe. *Batson v. Shiflett*, 325 Md. 684, 734 (1992). Here, while Ms. Vogel's alleged conduct might be intentional, Mr. Haines failed to allege that the conduct was outrageous or that he was so debilitated by that conduct as to be unable "to tend to necessary matters." *Leese v. Balt. Cnty.*, 64 Md. App. 442, 472 (1985). As two of the elements were not met, the Court declined to consider the quality of the causal connection.

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Andrew Wasyluszko v. Lisa Wasyluszko, No. 2220, September Term 2019, filed April 28, 2021. Opinion by Beachley, J.

https://mdcourts.gov/data/opinions/cosa/2021/2220s19.pdf

DIVORCE – MONETARY AWARD – NON-MARITAL PROPERTY – TRACEABLE FUNDS

DIVORCE – MONETARY AWARD – MANDATORY FACTORS – COURT EXPLANATION

Facts:

The parties were married on August 22, 1998, and at the time of divorce Mr. Wasyluszko owned several retirement and non-retirement accounts. Relevant to this appeal are the following four accounts: Fidelity 403(b), Janus Henderson, DWS Equity Fund, and Fidelity IRA # 3342.

For purposes of its monetary award analysis, the trial court determined that the four accounts listed above constituted marital property and would therefore be considered for equitable distribution as part of the court's monetary award. Mr. Wasyluszko appealed, arguing that the accounts were non-marital because the evidence showed that they were directly traceable to his pre-marital contributions.

Mr. Wasyluszko also argued that the court erred in issuing its monetary award by failing to explain how its consideration of factors in Md. Code (1984, 2019 Repl. Vol.), § 8-205(b) of the Family Law Article ("FL") led to its ultimate decision to award $840,000.

Held:

Monetary award and attorney's fees vacated.

The trial court erred in treating three out of the four accounts as exclusively marital property. Although there was insufficient evidence to show that the Fidelity IRA # 3342 account was non-marital property, there was sufficient evidence concerning the remaining three accounts to show that at least some of the funds were non-marital.

Regarding the Fidelity 403(b) account, the evidence showed that, although the value of the shares fluctuated during the course of the marriage, the number of shares did not decrease. Accordingly, the shares that were accounted for prior to the marriage still existed at the time of the divorce and should have been treated as non-marital property.

Similarly, the shares in the Janus Henderson account never decreased during the marriage, although the value of those shares fluctuated. As with the Fidelity 403(b) account, the shares that were shown to exist prior to the marriage should have been treated as non-marital property.

Lastly on this point, regarding the DWS Equity fund shares, the evidence showed what the balance of the account was prior to the marriage, and the parties stipulated that Mr. Wasyluszko made five $200.00 contributions during the marriage. Because the evidence showed that Mr. Wasyluszko never made any withdrawals from the account during the marriage, his pre-marital interest in the account (82.9%) survived and should have been treated as non-marital property.

Additionally, the trial court was not required to explain how its consideration of the FL § 8-205(b) factors resulted in its monetary award. To be sure, consideration of these factors is mandatory, but we are aware of no cases holding that a court must explain its calculation of the monetary award based on its treatment of the FL § 8-205(b) factors. A court is not required to articulate every step in its thought process, and judges are presumed to know the law and apply it correctly. Rather, a court commits reversible error when its distribution of marital property yields a substantial disparity, and its consideration of the FL § 8-205(b) factors fails to justify that disparity.

Finally, because a court's monetary award and award of attorney's fees are so closely interrelated, we must vacate the court's award of attorney's fees in addition to its monetary award. *Turner v. Turner*, 147 Md. App. 350, 400 (2002).

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Thomas F. Burke, M.D. v. Maryland Board of Physicians, No. 513, September Term 2020, filed April 28, 2021. Opinion by Wells, J.

https://mdcourts.gov/data/opinions/cosa/2021/0513s20.pdf

ADMINISTRATIVE LAW – HEALTH – PROFESSIONAL REGULATION – DISCIPLINE, REVOCATION, AND SUSPENSION – MORAL TURPITUDE

Facts:

Doctor Thomas F. Burke entered guilty pleas to five counts of prescribing controlled dangerous substances, in violation of Md. Code Ann., Crim. Law ("CR") § 5-902(c), to his long-term girlfriend, his brother, and a neighbor, none of whom were Dr. Burke's patients. The Maryland State Board of Physicians (the "Board") found that his conduct constituted crimes of moral turpitude and revoked his medical license under Md. Code Ann., Health Occupations ("HO") § 14-404(b) without holding a hearing. Dr. Burke claimed that he had been denied due process. The Circuit Court for Baltimore City affirmed the Board's decision. Dr. Burke appealed.

Held: Affirmed.

The Maryland Board of Physicians is an adjudicative administrative body in the Executive Branch of the Maryland state government and "its decisions are subject to the same standards of judicial review as adjudicatory decisions of other administrative agencies." *NIHC, Inc. v. Comptroller of Treasury*, 439 Md. 668, 683 (2014). The entire record is reviewed to determine whether the final order is supported by substantial evidence and correct conclusions of law. Dr. Burke contended that the Board's decision to revoke his license was not based on substantial evidence. He claimed the Board failed to analyze the specific facts and circumstances of his case before concluding that he pleaded guilty to crimes of moral turpitude. Therefore, in his opinion, the Board had no grounds to revoke his medical license.

The Court of Special Appeals disagreed. The Court distinguished between moral turpitude in the criminal context, where the focus is primarily on truthfulness, whereas in the administrative law context it is a more fluid concept. "For the business of professional licensing and public appointments, the expression [moral turpitude] strikes the broader chord of public confidence in the administration of government." *Stidwell v. Md. State Bd. of Chiropractic Exam'rs*, 144 Md. App. 613, 619 (2002). Here, Dr. Burke's admission in a criminal prosecution of writing scripts for individuals who were not his patients, one of whom, his girlfriend, was arrested for selling the prescribed drugs, negatively impact "public confidence" in the medical profession and cast an "unsavory . . . shadow" over the field. *Stidwell*, 144 Md. at 618.

Further, the Board did not act in an arbitrary or capricious manner, nor did the Board deny Dr. Burke due process by revoking his medical license without holding a hearing because the statute at issue, HO § 14-404(b)(2), does not require one. Although Dr. Burke had also been charged under HO § 14-404(a), which does allow for a hearing, the Board was within its discretion to choose under which statute it wished to discipline Dr. Burke. "The fact that a charge also might lie under §14-404(a) based on the conduct underlying a conviction for a crime involving moral turpitude does not preclude the board from proceeding under § 14-404(b)." *Md. Bd. of Physician Quality Assurance v. Felsenberg*, 351 Md. 288, 306 (1998). Proceeding under HO § 14-404(b)(2), the Board was only required to review the petition filed by the Office of the Attorney General, the documents associated with Dr. Burke's plea in the criminal case, including the transcript of the plea taking, all of which it did before summarily determining that Dr. Burke's conduct was morally opprobrious and merited revocation of his medical license.

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ATTORNEY DISCIPLINE

*

By an Order of the Court of Appeals dated April 7, 2021, the following attorney has been indefinitely suspended by consent:

CRAIG W. STEWART

*

By an Opinion and Order of the Court of Appeals dated March 16, 2021, the following attorney has been indefinitely suspended, effective April 15, 2021:

CHAUNCEY BAYARCULUS JOHNSON

*

By an Order of the Court of Appeals dated April 22, 2021, the following attorney has been indefinitely suspended by consent:

TROY ALFRED-WILEY PRIEST

*

By an Order of the Court of Appeals dated February 23, 2021, the following attorney has been indefinitely suspended by consent, effective April 26, 2021:

SANTIAGO RICARDO NARVAIZ

*

This is to certify that the name of

RONALD HOWARD COOPER

has been replaced upon the register of attorneys in this State as of April 27, 2021.

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RULES ORDERS AND REPORTS

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An erratum to the Rules Order pertaining to the 206th Report of the Standing Committee on Rules of Practice and Procedure was filed on April 26, 2021.

http://mdcourts.gov/sites/default/files/rules/supporting/206threporterratum.pdf

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UNREPORTED OPINIONS

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

https://mdcourts.gov/appellate/unreportedopinions

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