Amicus Curiarum

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SUPREME COURT OF MARYLAND

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MD. CODE ANN., CRIMINAL PROCEDURE ARTICLE § 8-201 – POST-CONVICTION DNA TESTING – EVIDENCE PRESERVATION – ATTEMPTED MURDER

Facts:

Appellant Darrell Matthews ("Appellant") was tried and convicted in the Circuit Court for Montgomery County in 2011 for attempted first-degree murder and four other charges related to a shooting where the victim survived two gunshot wounds. The night of the shooting, a citizen turned in a glove to a patrol officer. The lead investigator testified that, at one point, the victim had stated that the shooter had a glove during the incident. However, the investigator explained that she did not order forensic testing of the glove because its exact origins were unclear and because the victim and an eyewitness could testify to the shooter's identity. At trial, the victim testified that he knew Appellant for several years prior to the shooting and that Appellant was his shooter. The victim also testified that he "[did not] remember seeing a glove." Appellant was convicted and sentenced to life imprisonment for the attempted murder charge and for 30 consecutive years for the other four charges.

In August 2022, Appellant filed a Petition for Post-Conviction DNA Testing ("Petition") arguing, under CP § 8-201, that several of his convictions entitled him to DNA testing, and that DNA evidence excluding him "would be exculpatory." Three months later, the circuit court held a hearing on the Petition. While the parties agreed that Petitioner was eligible to petition for DNA testing, the State argued that the court should deny the Petition because the results would not yield exculpatory or mitigating evidence. At the time of this hearing, it was unknown whether the glove still existed, so the court granted a continuance and ordered the State to determine the glove's status. In January 2023, the State filed an affidavit from the lead

investigator, which confirmed that the glove had been destroyed in 2019, in accordance with the police department's evidence retention policy.

In July 2023, the circuit court denied Appellant's Petition, stating that the preservation of evidence requirement under CP § 8-201 does not apply to an attempted murder conviction. Furthermore, the court stated that it must deny the Petition under Maryland Rule 4-710 because the glove no longer existed.

Appellant appealed the circuit court's order, and the Appellate Court of Maryland transferred the appeal to the Supreme Court of Maryland. CP § 8-201(k)(6).

Held: Affirmed.

The Supreme Court of Maryland held that the State's duty to preserve scientific identification evidence under CP § 8-201 applies only to those crimes enumerated in subsection (j) and does not extend to all the crimes for which a person is permitted to petition for testing. The Court also held that the evidence preservation requirement of CP § 8-201(j) does not extend the inchoate offenses of the crimes listed, including attempted murder.

In reviewing the statute, the Court determined that the statutory language clearly and unambiguously distinguishes between the list of crimes for which a person may petition for testing, CP § 8-201(b), and the list of crimes for which the State must preserve evidence throughout an individual's sentence, CP § 8-201(j)(1). The Court also reviewed the historical amendments to the statute, noting that in 2015, the General Assembly considered a bill that would have extended the evidence preservation requirement to a broad range of offenses, including attempted first-degree murder. However, the General Assembly ultimately amended the bill without modifying the evidence preservation requirement. From this, the Court concluded that the General Assembly considered, but ultimately rejected, a proposal to extend the evidence preservation requirement.

The Court also reasoned that its holding that the evidence preservation requirement of the offenses enumerated in CP § 8-201(j)(1)(ii) does not extend to their related inchoate offenses is consistent with the Court's decision in *Washington v. State*, 450 Md. 319 (2016) (declining to interpret the crimes of violence list to include the inchoate offense of conspiracy).

The Court rejected Appellant's argument that the rule of lenity should apply, observing that the rule of lenity only applies when there is an unresolvable ambiguity in a criminal statute, and that there is no such ambiguity in this statute.

Finally, the Court rejected Appellant's claim that because the State had willfully and intentionally destroyed the glove, the State was required to grant a post-conviction hearing. The Court stated that under CP § 8-201(j)(3), a court must hold a hearing to determine whether evidence was willfully and intentionally destroyed when the State is unable to produce evidence that it was required to preserve. However, because the State had no duty to preserve the glove

under CP § 8-201(j)(1), the circuit court was not required to hold a hearing to determine in what manner the evidence was destroyed. The Court therefore held that the circuit court correctly denied Appellant's Petition.

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Charles Riley, Jr. Revocable Trust, et al. v. Venice Beach Citizens Association, Inc., No. 5, September Term 2023, filed April 19, 2024. Opinion by Gould, J.

Hotten and Eaves, JJ., dissent.

https://www.mdcourts.gov/data/opinions/coa/2024/5a23.pdf

SUMMARY JUDGMENT – PRIOR GRANTING OF SUMMARY JUDGMENT – IMPLICATION

The Supreme Court of Maryland held that a circuit court abused its discretion in vacating a prior order granting partial summary judgment. A court's decision to vacate a prior order is reviewed for an abuse of discretion; reversal of the circuit court is appropriate if the court's decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 313 (1997) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)).

SUMMARY JUDGMENT – COMPLIANCE WITH MARYLAND RULE 2-501(g)

Maryland Rule 2-501(g) provides that an order that specifies "the issues or facts that are not in genuine dispute" is subject to modification by the circuit court only "to prevent manifest injustice." Appellate courts apply an abuse of discretion standard to the trial court's determination that the modification was necessary to prevent manifest injustice.

COUNTERCLAIM – PRESCRIPTIVE EASEMENT CLAIM – REQUIREMENT TO RAISE

A defendant's counterclaim that exists independently from the plaintiff's claim is not rendered moot if the defendant prevails on the plaintiff's claim. The defendant, therefore, is an aggrieved party if the counterclaim is dismissed. If the plaintiff appeals, the dismissal of the counterclaim is not before an appellate court and will ordinarily not be reviewed unless the defendant cross-appeals.

Facts:

Petitioner Charles Riley, Jr. bought a residential property ("home lot") in the Venice Beach community in Anne Arundel County in 1987. A 4,443 square foot, undeveloped parcel of land ("Subject Property") lies southeast of the home lot. When Riley bought the home lot, the Subject Property was bisected by a block wall that severed the Subject Property into two sections: a 228 square foot parcel on the north side of the wall ("Small Section"), and a 4,215 square foot parcel on the south side of the wall ("Large Section").

The Subject Property was part of an undeveloped tract of land ("Venice Beach property") acquired in 1919. The Venice Beach property was then subdivided and developed into a residential community. In June 2019, the only known title holders of the Subject Property were

Petitioner Bay Pride, LLC ("Bay Pride"), a limited liability company formed and owned by Riley, and Respondent, Venice Beach Citizens Association, Inc. ("Association").

Riley and Bay Pride sued the Association, seeking adverse possession and quiet title of the Small Section for Riley and adverse possession and quiet title to the Large Section for Bay Pride. In the alternative, they asked for a sale in lieu of partition ("Trustee Sale"). The Association countersued Riley and Bay Pride, claiming that it had a prescriptive easement over the Subject Property.

Riley moved for partial summary judgment on the Small Section claim. The circuit court issued a Memorandum Opinion and accompanying order granting Riley's motion. As the court observed, since 1994, Riley "treated the [Small Section] as his own property through landscaping it[,]" which was "visible and obvious, making the possession open" to any observer. Rejecting the Association's argument that Riley did not establish the element of hostile use, the court noted that Bay Pride acquired its interest in 2019, and by then, Riley already owned the Small Section by adverse possession.

Riley and Bay Pride separately moved for summary judgment on the Association's counterclaim for a prescriptive easement. The circuit court determined that letters that the Association sent seeking permission to use the Subject Property "defeats the required adversity or hostility element for a prescriptive easement" and thus granted summary judgment against the Association on its amended counterclaim.

Bay Pride moved for summary judgment on its Large Section claim. The court denied the motion four days before the start of trial.

Only Bay Pride's Large Section and Trustee Sale claims remained when a bench trial began. The Association moved for judgment at the end of Bay Pride's case-in-chief. The court ultimately granted the Association's motion on all counts in Riley's and Bay Pride's amended complaint, including Riley's Small Section claim. The court also denied Bay Pride's request for a ruling on the Trustee Sale claim, explaining that "[y]ou have to have clean hands to come into a court of equity." At no point during the argument did the parties or the trial court discuss the basis for Riley's Small Section claim.

The court entered a final judgment six days later. Riley and Bay Pride then moved to alter or amend the judgment, which the trial court denied. Riley and Bay Pride timely appealed to the Appellate Court of Maryland.

In an unreported opinion, the Appellate Court found that the trial court did not abuse its discretion when it implicitly vacated the summary judgment order and granted judgment against Riley on his Small Section claim. *Charles Riley, Jr. Revocable Tr. v. Venice Beach Citizens Ass'n, Inc.*, Sept. Term 2021, No. 1064, 2023 WL 369752 (Md. App. Ct. Jan. 24, 2023). It also found that the circuit court's denial of Bay Pride's Large Section claim was not clearly erroneous. As to the trial court's refusal to consider Bay Pride's Trustee Sale claim, the Appellate Court determined that the evidence did not support a finding that Bay Pride had

unclean hands and thus remanded that claim for full consideration. Finally, based on its perception that the Association's "counterclaim for a prescriptive easement [was] tied" to the Trustee Sale claim, the Appellate Court instructed the circuit court to reconsider the Association's prescriptive easement claim if, upon full consideration, it grants the Trustee Sale claim.

We granted Riley's and Bay Pride's petition for certiorari. *Charles Riley, Jr. Revocable Tr. v. Venice Beach Citizens Ass'n, Inc.*, 483 Md. 571 (2023).

Held:

The circuit court abused its discretion in vacating the summary judgment order and entering judgment against Riley on his Small Section claim; thus, we reversed the Appellate Court's judgment affirming the circuit court as to that claim. The Appellate Court erred in conditionally reinstating the Association's counterclaim for a prescriptive easement.

The court's discretion to modify a partial summary judgment order is informed by Maryland Rule 2-501 and its animating principles. By its terms, 2-501(g) applies to an order that specifies "the issues or facts that are not in genuine dispute." The summary judgment order qualifies as such. The Memorandum Opinion recited the specific undisputed material facts supporting the ruling. Thus, under subsection (g), the summary judgment order should have controlled the subsequent proceedings and was subject to modification only "to prevent manifest injustice."

The circuit court's decision to modify an order is inherently a judgment call based on the circumstances. If the circuit court finds that modifying a prior order is necessary to prevent manifest injustice, appellate courts review *that* determination for an abuse of discretion. In any event, even if the summary judgment order were modifiable under a less onerous standard, the trial court still abused its discretion.

Here, Riley relied on the summary judgment order, so he had no reason to think that he would have to prove his Small Section claim again at trial, and neither the Association nor the trial judge should have expected him to do so. The Association first raised the issue during argument on its motion for judgment on the Large Section claim—and only when it was *replying* to Bay Pride's opposition to that motion.

Although the circuit court has discretion under Rule 2-602 to revise or vacate an order granting partial summary judgment before final judgment is entered, the trial court abused that discretion here.

Further, the Association's prescriptive easement claim did not depend entirely on Bay Pride's success in its Trustee Sale claim. The Association sought recognition of a prescriptive easement no matter who held title to the Subject Property. The Association was thus aggrieved by the circuit court's dismissal of its prescriptive easement claim. As such, because the Association failed to cross-appeal, the issue was not before the Appellate Court.

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APPELLATE COURT OF MARYLAND

State of Maryland v. Robert Lee Meadows, No. 1750, September Term 2022, filed April 22, 2024. Opinion by Arthur, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/1750s22.pdf

CRIMINAL PROCEDURE – INTERSTATE AGREEMENT ON DETAINERS

Facts:

The District Court of Maryland for Cecil County issued a statement of charges and an arrest warrant for Robert Lee Meadows. At the time, Meadows was incarcerated in Delaware County, Pennsylvania.

Meadows invoked his rights under the Interstate Agreement on Detainers Act ("IAD") to request the final disposition of the charges against him. Meadows alerted the district court and the State's Attorney of his IAD request. Under the IAD, the State was required to bring Meadows to trial by September 21, 2022, which was 180 days from the date that both the State's Attorney and the district court received Meadows's request.

Because the district court did not have jurisdiction over several felonies with which Meadows was charged, the case was transferred to the Circuit Court for Cecil County. The State obtained an indictment charging Meadows in the circuit court. The State entered a nolle prosequi as to all of the district court charges.

During a status conference, the State announced the trial date, which was set for November 15, 2022. When counsel for Meadows had the opportunity to address the court, he did not mention the proposed trial date.

Once the 180-day deadline ran on September 21, 2022, Meadows filed a motion to dismiss, arguing that the State had violated his rights under the IAD by failing to bring him to trial within 180 days. The circuit court granted Meadows's motion to dismiss.

The State appealed, arguing that Meadows had waived his rights under the IAD by failing to object to a trial date beyond the 180-day deadline. The State also argued that it had complied with the 180-day deadline, on the theory that the circuit court indictment was a new charging document, separate from the statement of charges in the district court.

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Held: Affirmed.

The Appellate Court of Maryland held that the circuit court did not err in dismissing the indictment with prejudice, because the State failed to bring the defendant to trial within 180 days of the date when both the district court and the State's Attorney received his request for a final disposition of the charges.

The Interstate Agreement on Detainers Act ("IAD"), Maryland Code (1999, 2017 Repl. Vol.), §§ 8-401 through 8-411 of the Correctional Services Article, gives prisoners incarcerated in one state the right to request the prompt disposition of charges filed against them in another state. Once the prosecuting officer and the court receive the defendant's request, the charging state has 180 days to commence the trial. The burden of bringing the prisoner to trial falls on the charging state. If that state fails to bring the prisoner to trial within 180 days, the IAD requires that the charges be dismissed with prejudice. The court may extend the deadline for good cause.

The IAD does not explicitly address whether a defendant may waive the rights that the statute confers. In *New York v. Hill*, 528 U.S. 110 (2000), the Supreme Court held that a defendant could waive the defendant's speedy trial rights under the IAD without expressly requesting a trial date that fell after the 180-day deadline if the defendant (or defense counsel) expressly agreed to a trial date that fell after the deadline. Although the *Hill* opinion does not discuss whether a defendant waives the protections of the IAD by remaining silent, other courts have held that mere silence does not amount to a waiver.

In this case, the defendant did not expressly accept the proposed trial date. He remained silent during a discussion in which the State and the court mentioned a proposed trial date after the 180-day deadline. The defendant's silence does not constitute a waiver. The IAD places no obligation on the defendant to remind the State of its statutory duty. Accordingly, a defendant does not waive the defendant's speedy trial right under the IAD by failing to object when the court sets a trial date that falls after the 180-day deadline.

In an auxiliary argument, the State contended that it had complied with the IAD because it dismissed the district court charges and caused the district court to recall the arrest warrant before the 180-day deadline. The Court concluded that, when the State indicts a defendant in circuit court after the defendant has requested the final disposition of charges in the district court, the district court case and the circuit court case should be treated as a single, continuous proceeding for the purpose of the IAD. Thus, the State did not comply with its obligations under the IAD by dismissing the district court statement of charges after obtaining a circuit court indictment with charges arising from the same incidents.

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The Estate of H. Gregory Brown v. Carrie M. Ward, et al., No. 1009, September Term 2023, filed April 19, 2024. Opinion by Arthur, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/1009s23.pdf

FORECLOSURE – DEFENSES

Facts:

During his lifetime, H. Gregory Brown owned a residential property in Baltimore County. In 2006, Mr. Brown entered into a home equity line of credit agreement with GN Mortgage, LLC. The agreement established a revolving line of credit in the maximum principal amount of $88,500, governed by the Credit Grantor Revolving Credit Provisions subtitle. The parties executed a separate deed of trust securing the debt with a lien on the Brown property.

Mr. Brown subsequently defaulted on his payment obligations. Through a chain of indorsements, U.S. Bank became the successor to GN Mortgage under the home equity line of credit agreement. U.S. Bank filed suit against Mr. Brown. In 2014, U.S. Bank obtained a personal judgment against Mr. Brown in the amount of $88,500. Later that year, Mr. Brown filed a Chapter 7 bankruptcy petition. The bankruptcy court granted him a discharge of his debts, but the discharge order did not eliminate existing liens.

Mr. Brown died in 2015. The estate of Mr. Brown continued to own the Brown property.

FirstKey, a statutory trust organized under the laws of Delaware, obtained an assignment of the deed of trust in 2022. FirstKey recorded the assignment in the land records for Baltimore County. Substitute trustees initiated a foreclosure action in the Circuit Court for Baltimore County, seeking to foreclose the lien on the Brown property pursuant to the deed of trust.

The personal representative of Mr. Brown's estate moved to dismiss the foreclosure action or to stay the sale of the property under Md. Rule 14-211. The circuit court denied the motion without a hearing. The personal representative appealed.

Held: Vacated and remanded.

The Appellate Court of Maryland rejected all but one of the challenges to the foreclosure action. The personal representative contended that FirstKey had no right to foreclose because it had not obtained a license that is required when a credit grantor makes a revolving credit plan secured by a lien on residential real property. The Court rejected FirstKey's arguments that this licensing requirement was inapplicable. Consequently, the Court vacated the order denying the motion to stay or dismiss the foreclosure action.

The Credit Grantor Revolving Credit Provisions, codified at Subtitle 9 of Title 12 of the Commercial Law Article ("CL") of the Maryland Code, governs a "revolving credit plan" when a "credit grantor" offers the plan to a consumer borrower under that subtitle. The term "credit grantor" includes "[a]ny person who acquires or obtains the assignment of a revolving credit plan made under this subtitle." CL § 12-901(f)(2)(iii). Among other things, this subtitle makes certain credit grantors subject to the licensing authority of the Commissioner of Financial Regulation. CL § 12-915(a) and (b) provide that "a credit grantor making a loan or extension of credit under this subtitle" is subject to certain licensing provisions set forth in the Financial Institutions Article, unless the credit grantor or the loan or extension of credit is exempt.

The Court held that the licensing requirements of CL § 12-915 apply not only to an original credit grantor but also to a party that acquires or obtains the assignment of a revolving credit plan made under this subtitle. Interpreting this provision to apply only to an original credit grantor would be inconsistent with the principle that an assignee of a mortgage loan succeeds to the same rights and obligations under the loan agreement as its assignor. The Court perceived no clear indication that the General Assembly intended to depart from the common law governing assignments of mortgages and mortgage loans when it enacted CL § 12-915.

The Court rejected FirstKey's argument that foreign statutory trusts are exempt from the licensing requirements of CL § 12-915. FirstKey, a statutory trust organized under the laws of Delaware, failed to identify any express statutory exemption. FirstKey purported to rely on a line of federal district court opinions following *Suazo v. U.S. Bank Trust, N.A.*, 2019 WL 4673450 (D. Md. Sept. 25, 2019) (unreported). The *Suazo* line of cases, however, do not concern the licensing requirements imposed by the Credit Grantor Revolving Credit Provisions subtitle. Moreover, Maryland's highest Court specifically disavowed the *Suazo* line of cases in *Nationstar Mortgage LLC v. Kemp*, 476 Md. 149, 186 n.48 (2021). In support of its position that foreign statutory trusts are exempt, FirstKey also cited *Blackstone v. Sharma*, 461 Md. 87 (2018). That opinion, however, was limited to licensing under the Maryland Collection Agency Licensing Act (MCALA), a statute narrowly limited to collection agencies.

Although the Court vacated the order denying the motion to stay or dismiss the foreclosure action, the Court rejected the other challenges to the foreclosure action.

The Court rejected the personal representative's contention that the rule of merger precluded the foreclosure action. When a borrower defaults on a promissory note that is secured by a deed of trust on real property, the lender has more than one remedy available. The lender may seek to foreclose the lien on the property pursuant to the deed of trust. In addition, the lender may proceed against the borrower personally in an action to recover under the promissory note. If the lender first obtains a personal judgment against the borrower under the promissory note, the claims under the deed of trust do not merge into the judgment. In those circumstances, the lender may foreclose on the property pursuant to the deed of trust, to the extent that the judgment remains unsatisfied.

The Court rejected the contention that FirstKey had no right to foreclose because FirstKey had not obtained an assignment of the prior judgment entered in the action to recover under the

promissory note. The Court concluded that this issue was unpreserved. In any event, the Court concluded that FirstKey was entitled to a conclusive statutory presumption of its ownership of the secured debt. By operation of section 7-103(a) of the Real Property Article of the Maryland Code, when a party duly records an assignment of the deed of trust, the assignee establishes a conclusive presumption of its title to "any promissory note, other instrument, or debt secured by" the deed of trust. Because this statute creates a conclusive presumption, it cannot be overcome by evidence or argument to the contrary.

The Court rejected the personal representative's contention that a three-year statute of limitations barred the foreclosure action. There is no statute of limitations applicable to foreclosure actions in Maryland.

The Court rejected the contention that the circuit court violated the personal representative's right to procedural due process when it denied the motion to stay or dismiss a foreclosure action without a hearing. The personal representative failed to demonstrate that the circuit court violated any applicable procedural requirement when it denied the motion consistent with the standards set forth in Md. Rule 14-211. The Court was not persuaded that the procedures set forth in the Maryland Rules fail to provide adequate notice or the opportunity to be heard.

Finally, the Court rejected the contention that the foreclosure action was improper on the ground that the record established doubt as to the validity of the lien or the lien instrument. Aside from the personal representative's merger argument (which was incorrect), none of the various challenges concerned the validity of the lien or the lien instrument.

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Felicia Robinson, et al. v. Canton Harbor Healthcare Center, Inc., No. 2169, September Term 2022, filed April 24, 2024. Opinion by Beachley, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/2169s22.pdf

HEALTH CLAIMS ARBITRATION ACT – CERTIFICATE OF QUALIFYING EXPERT – CAUSATION – PRESSURE ULCERS

Facts:

In the Circuit Court for Baltimore City, the wife and children of decedent, Everett Robinson, filed a medical malpractice claim against Canton Harbor Healthcare Center, a skilled nursing facility. With their complaint, the Robinsons provided a certificate of qualifying expert ("CQE"). The CQE was authored by a registered nurse, who opined both that Canton Harbor breached the standard of care for skilled nursing facilities and that this breach caused Mr. Robinson to develop pressure ulcers. Canton Harbor moved to dismiss the complaint, arguing that a registered nurse is not qualified to provide an opinion on medical causation. The circuit court agreed and dismissed the complaint. The Robinsons then appealed.

Held: Reversed.

After reviewing the statutory and regulatory framework, the Appellate Court held that, in a case against a skilled nursing facility alleging pressure ulcer injury, a nurse with sufficient training and experience can attest to the cause of a patient's pressure ulcer injury in a CQE. CJP § 3-2A-02 provides that a "health care provider" may serve as the expert in a CQE. Registered nurses are included in the statutory definition of "health care provider." Various Maryland and federal statutes and regulations relating to RNs and skilled nursing facilities indicate that the prevention and treatment of pressure ulcers are tasks entrusted primarily to nursing staff. Furthermore, COMAR 10.27.09.02 provides that the functions of registered nurses include nursing diagnosis, developing a plan of care that prescribes interventions to achieve expected outcomes, and revising the plan of care based on the effectiveness of the interventions. Together, these statutes and regulations indicate that a sufficiently experienced and trained RN may qualify as an expert on the cause of pressure ulcers.

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David L. Peacock v. William C. Debley, et al., Case No. 410, September Term 2023, filed April 22, 2024. Opinion by Berger, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0410s23.pdf

MARYLAND TORT CLAIMS ACT – THREE-YEAR FILING DEADLINE – LIMITED WAIVER OF SOVEREIGN IMMUNITY – COVID-19 TOLLING ORDERS – GENUINE DISPUTE OF MATERIAL FACT – STATE PERSONNEL – IMMUNITY

Facts:

On October 29, 2018, Montgomery County Deputy Sheriff William C. Debley was operating his assigned Sheriff's Office vehicle on his way to the Sheriff's office to begin his shift when he struck the rear of a vehicle operated by David Peacock. In September 2021, Peacock filed a complaint in the Circuit Court for Montgomery County against Montgomery County and Debley alleging one count of negligence against each defendant. The County and Debley both moved to dismiss the complaint. The County argued that Debley was not acting as an agent of the County at the time of the accident, and, therefore, the County was not a proper defendant. Debley argued that he was entitled to statutory immunity and dismissal under the Maryland Tort Claims Act ("MTCA") because he was "State personnel" at the time of the accident. On January 28, 2022, Peacock filed an amended complaint which added the State as a party. Because an amended complaint had been filed, the circuit court denied the motions to dismiss the original complaint as moot. The State subsequently moved to dismiss, arguing that Peacock's claim was time-barred because he failed to sue the State within three years of the accident as required by the MTCA.

Following discovery, the State, the County, and Debley filed motions for summary judgment. The State argued, *inter alia*, that Peacock's claim was barred by the MTCA because it was filed more than three years after the accident. The State asserted that Peacock had failed to satisfy a condition precedent to the State's waiver of sovereign immunity. Debley argued that he was entitled to immunity under the MTCA, and the County argued that it was entitled to summary judgment because it was not Debley's employer. Debley argued that there was a dispute of material fact as to whether Debley was a State or County employee at the time of the accident and that the Supreme Court's COVID Tolling Orders extended the filing deadline for his claim against the State. Debley further argued that he was entitled to directly recover against the County on his claim of *respondeat superior* liability.

Following a hearing on April 10, 2023, the circuit court entered judgment in favor of the County, the State, and Debley. The circuit court determined that the MTCA's filing deadline was not extended by the COVID Tolling Orders. The court further determined that Debley was entitled to immunity under the MTCA. Peacock appealed.

Held: Affirmed.

The Appellate Court of Maryland discussed the Judiciary's response to the COVID-19 public health emergency, including the Supreme Court's issuance of administrative orders addressing suspension of deadlines and statutes of limitations. The Court observed that the Supreme Court of Maryland had held that the Chief Judge "acted within her authority and consistently with the Maryland Constitution when she issued an administrative order temporarily tolling statutes of limitations under Maryland law with respect to civil actions during the COVID-19 pandemic." *Murphy v. Liberty Mut. Ins. Co.*, 478 Md. 333, 385-86 (2022).

The Court observed that the parties agreed that if the COVID Tolling Orders -- which extended deadlines by a total of 141 days -- applied to the MTCA's three-year filing requirement, Peacock's claim against the State would be considered timely. The issue before the Court was whether the 141-day extension applicable to statutes of limitations applies as well to the three-year filing requirement in the MTCA. The Court discussed the MTCA's statutory framework, observing that the MTCA was enacted as a waiver of the State's sovereign immunity. Along with the waiver of the State's sovereign immunity, the MTCA provides for immunity from suit and from liability in tort for State personnel. The Court observed that the MTCA contains two timing requirements: (1) a one-year notice requirement, and (2) a three-year filing requirement after the cause of action arises.

In assessing whether the MTCA's three-year filing requirement was a statute of limitations that was extended by the COVID Tolling Orders, the Court observed that the Supreme Court had previously held that the MTCA's three-year filing requirement is "both a statute of limitations and -- along with SG 12-106(b)(1) -- a condition precedent to the waiver of sovereign immunity." *Higginbotham v. Pub. Serv. Comm'n of Maryland*, 412 Md. 112, 128 (2009). The Court looked to Judge Harrell's concurring and dissenting opinion in *Higginbotham*, in which he observed that "[i]f the condition is not fulfilled because a claimant fails to bring his or her action within the specified period of time, the State's sovereign immunity is not waived and the plaintiff loses his or her right to maintain a claim against the State." *Id.* At 136-37 (Harrell, J., concurring and dissenting). The Court emphasized that only the General Assembly -- and not the Judiciary -- can waive sovereign immunity and that courts "must read and 'construe legislative dilution of governmental immunity narrowly in order to avoid weakening the doctrine of sovereign immunity by judicial fiat.'" *Magnetti v. Univ. of Md*., 402 Md. 548, 565 (2007) (quoting S*tern v. Bd. of Regents*, 380 Md. 691, 720 (2004)). Accordingly, the Court held that the Chief Judge's COVID Tolling Orders cannot be read as extending the MTCA's three-year filing requirement. The Court, therefore, rejected Peacock's assertion that the circuit court erred in ruling that the time for filing the action was not extended by the Maryland Supreme Court's COVID Tolling Orders.

The Appellate Court further addressed Peacock's assertion that circuit court erred in determining that there was no genuine dispute of fact as to whether Deputy Debley was "State personnel" under the Maryland Tort Claims Act and thus entitled to immunity. The Appellate Court agreed

with the circuit court that there was no genuine dispute of fact as to Debley's status as a State employee. Finally, the Appellate Court rejected Peacock's argument that the circuit court erred when it determined that Section 5-524 of the Courts and Judicial Proceedings Article did not authorize direct recovery against the County for Peacock's claim of *respondeat superior* liability.

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ATTORNEY DISCIPLINE

REINSTATEMENTS

By Order of the Supreme Court of Maryland

BRIAN JEFFREY ROSENBERG
JOHN ANTHONY MOODY

have been replaced on the register of attorneys permitted to practice law in this State as of April 22, 2024.

*

DISBARMENTS/SUSPENSIONS

By Order of the Supreme Court of Maryland dated February 22, 2024, the following attorney has been disbarred by consent, effective April 22, 2024:

LAWRENCE JOHN ANDERSON

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JUDICIAL APPOINTMENTS

*

On February 8, 2024, the Governor announced the appointment of the **Honorable Stephen Hughes Kehoe** to the Appellate Court of Maryland. Judge Kehoe was sworn in on April 11, 2024, and fills the vacancy created by the retirement of the Hon. Christopher B. Kehoe.

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RULES ORDERS

*

A Rules Order pertaining to the 221st Report and the Supplement to the 221st Report of the Standing Committee on Rules of Practice and Procedure was filed on April 5, 2024.

http://www.mdcourts.gov/sites/default/files/rules/order/ro221st.pdf

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UNREPORTED OPINIONS

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

https://mdcourts.gov/appellate/unreportedopinions

	Case No.	*Decided*
A		
Akum, Emmanuel v. State	2164 *	April 25, 2024
Anderson, Henriette v. Anderson	2184 *	April 2, 2024
Asokere, James v. Waldrop	0478	April 17, 2024
B		
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