Amicus Curiarum

VOLUME 25
ISSUE 5 May 2008

A Publication of the Office of the State Reporter

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Facts: The Attorney Grievance Commission of Maryland, acting through Bar Counsel, filed a Petition For Disciplinary or Remedial Action against Respondent Karin Marie Kendrick. The Petition alleged that Respondent violated Rules 1.1 (Competence), 1.3 (Diligence), 1.5 (Fees), 1.15 (Safekeeping Property), and 8.4 (Misconduct) of the Maryland Rules of Professional Conduct ("MRPC") in her representation as Co-Personal Representative of the Estate of Judith Nina Kerr, deceased ("Estate").

A judge of the Circuit Court for Baltimore City held an evidentiary hearing and issued proposed findings of fact and conclusions of law. The court found that on March 4, 1999, Kendrick and Oliver Kerr, brother of decedent Judith Nina Kerr, were appointed co-Personal Representatives of the Estate, which was opened in Baltimore County. Subsequently, Kerr paid a total of $6,000 to Kendrick as legal fees. Neither Kendrick nor Kerr ever filed a petition with the Orphan's Court for Baltimore County for authorization of these fees. Kendrick, however, defended the distributions, arguing that they were sanctioned by Kerr as the co-Personal Representative and sole heir to the Estate.

On August 28, 2002, after finding Kendrick and Kerr unable to discharge their duties as co-personal representatives, the Orphan's Court ordered them removed as co-Personal Representatives. The Orphan's Court appointed a Successor Personal Representative and ordered Kendrick and Kerr to turn over all Estate assets to that individual. Additionally, the Orphans' Court ordered Kendrick and Kerr to file a Third and Final Administration Account within 30 days of the order. The order was reissued on October 15, 2002, after Kendrick had not been properly notified of the August 28, 2002 order. Kendrick then filed a Motion to Reconsider the Appointment of a Successor Personal Representative with the Orphans' Court, which was promptly denied. Kendrick then unsuccessfully appealed the order to the Circuit Court for Baltimore County, Court of Special Appeals and the Court of Appeals.

After Kendrick failed to timely file the Third and Final Administration Account with the Register of Wills, the Successor Personal Representative filed a Petition to Hold Former Personal Representatives in Civil Contempt. On June 2, 2005, The Orphans' Court ordered Kendrick and Kerr held in civil contempt after determining that all Estate assets had not been turned over to the

Successor Personal Representative. The Orphans' Court directed Kendrick and Kerr to reimburse the Estate the $6,000 in unauthorized legal fees paid to Kendrick as well as tender the value of the assets that had not yet been turned over to the Successor Personal Representative. Kendrick then filed an appeal to the Circuit Court for Baltimore County, which was denied.

On May 16, 2006, Kendrick attempted to file a Revised Third and Final Administration Account; however, it was intercepted by the Court Auditor because of deficiencies found in Kendrick's accounting. On November 8, 2006, Kendrick then filed a Second Revised and Not Final Administration of the Account as well as a Petition for Allowance of Commissions and Counsel Fees. The Orphans' Court denied the Petition and the Account filing, and Kendrick filed a Motion to Alter or Amend Judgment, which was denied. Kendrick filed an Appeal with the Circuit Court for Baltimore County which did not proceed for failure to include the necessary filing fee.

The hearing judge also found that, as of the time of the issuance of the proposed findings of fact, the Estate had remained open and could not be closed until Kendrick filed a proper Final Accounting.

The hearing judge concluded that Kendrick violated Rule 1.5 by accepting fees far beyond those allowed by State law under the circumstances. The hearing judge found Kendrick's defenses were without merit, but noted her "actions [were not] motivated by avarice." The hearing judge concluded that Kendrick violated Rule 1.1 by repeatedly failing to file her Third and Final Administration Account. This was precipitated by Kendrick's inexperience with the topic and failure to get help. As a result the Estate remained open and unable to be closed for eight years. The hearing judge also concluded that Kendrick violated Rule 1.3 by failing to file the Administration Account and turn over Estate assets. The hearing judge noted that in failing to properly administer the estate and in filing motion after motion and repeated appeals, Kendrick was acting in her own best interest. The hearing judge also concluded that Kendrick violated Rule 1.15 by failing to turn over Estate assets and losing a check payable to the Estate. The hearing judge noted that Kendrick had failed to keep proper records (a), failed to deliver funds or property (d), and failed to distribute promptly (e). The court, however, found that Kendrick did not violation 8.4 because no criminal act was proven (b), Kendrick acted stubbornly but not dishonestly (c), and to find a violation under (d) would be unnecessarily cumulative.

Kendrick filed exceptions to several of the findings of fact and conclusions of law. Bar Counsel filed no exceptions. The Court overruled each of Kendrick's exceptions.

Held: Indefinite suspension with the right to reapply after Respondent provides full restitution to the Estate. In considering the proper sanction the Court relied on prior cases concerning mishandling of accounts and unauthorized taking of fees and commissions. The Court noted that Kendrick's misconduct was not due to greed or dishonesty, but rather due to obstinateness and incompetence in probate matters. The Court also noted that Kendrick had not been sanctioned previously by the Court for professional misconduct. Under the totality of the circumstances, the Court determined that Kendrick's misconduct necessitated an indefinite suspension.

Attorney Grievance Commission v. Karin Marie Kendrick, Misc. Docket AG No. 35, September Term, 2006. Opinion by Greene, J., filed March 11, 2008.

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CRIMINAL LAW - APPEAL AND ERROR - REVIEW - PRESERVATION

Facts: David Robinson was convicted in the Circuit Court for Montgomery County of sexual abuse of V.O., a minor. At the time of the incident, Robinson was V.O.'s mother's sister's husband – her uncle by marriage. After the incident, but before trial, Robinson and V.O.'s aunt divorced.

The issue before Court of Appeals was the interpretation of the statutory definition of "family member" and whether a divorced uncle is a family member. Before the Court of Appeals, appellant argued that the definition of "family member" as contained in § 3-601 of the Criminal Law Article, Md. Code (2002, 2006 Cum. Supp.) is unconstitutionally vague. "Family member" is defined as "a relative of a child by blood, adoption, or marriage." *Id.* Appellant also contended that there was insufficient evidence to convict him of child sexual abuse because he does not fall within the definition of "family member." Lastly, in the alternative, appellant argues that, if the Court were to find his argument was not preserved, he received ineffective assistance of counsel.

Held: Affirmed. The Court of Appeals held that neither the statutory construction question raised on appeal by appellant nor

the sufficiency of the evidence argument was preserved for appellate review.

A reviewing court, ordinarily, will not consider any point or question unless it was clearly raised in and decided by the trial court. Md. Rule 8-131 (a). The trial court did not have a chance to decide whether or not defendant's status as an uncle by marriage brought him within the definition of "family member." Also, the Court's strong general policy against unnecessarily deciding constitutional questions means that, except in very limited circumstances not present in this case, the Court will not address constitutional issues not raised below. *Burch v. United Cable,* 391 Md. 687, 695, 895 A.2d 980, 984 (2006). Therefore, this Court found appellant's argument that the definition of "family member" contained in § 3-601 and his sufficiency of the evidence argument were not preserved for appellate review. Finally, the Court declined to address appellant's claim of ineffective assistance of counsel on direct review, following the long-standing preference for consideration of ineffective assistance of counsel claims on post-conviction.

David Robinson v. State of Maryland, No. 71, September Term, 2007, filed April 15, 2008. Opinion by Raker, J.

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CRIMINAL LAW - JURY INSTRUCTIONS - REFUSAL TO GIVE A REQUESTED INSTRUCTION ON DRUG USER OR ADDICT CREDIBILITY

Facts: This case presents the question of whether a trial court erred in refusing to give a jury instruction requested by the defendant as to the evaluation of the testimony of a witness who uses or is addicted to drugs. The requested instruction stated that the testimony of a particular witness "must be examined with greater scrutiny than the testimony of any other witness."

Petitioner Dickey was charged with first degree murder, attempted first degree murder, conspiracy to commit murder, and related charges in the Circuit Court for Baltimore City. Identification of the shooter was the primary issue in the case.

The State called four witnesses, one of whom testified that he was a drug addict and used heroin on the day on which the shooting took place. At the close of evidence, defense counsel requested that the following instruction be given:

> "There has been evidence introduced at the trial that the government (or defendant) called as a witness a person who was using (or addicted to) drugs when the events he observed took place or who is now using drugs. I instruct you that there is nothing improper about calling such a witness to testify about events within his personal knowledge.
>
> "On the other hand, *his testimony must be examined with greater scrutiny than the testimony of any other witness.* The testimony of a witness who was using drugs at the time of the events he is testifying about, or who is using drugs (or an addict) at the time of his testimony may be less believable because of the effect the drugs may have on his ability to perceive or relate the events in question.
>
> "If you decide to accept his testimony, after considering it in light of all the evidence in this case, then you may give it whatever weight, if any, you find it deserves."

The Circuit Court declined to give the jury the proposed instruction, reasoning that other instructions given, on witness credibility and accuracy of a witness's memory, fairly covered the material of the requested instruction. Dickey was convicted and appealed to the Court of Special Appeals. In an unreported opinion, the Court of Special Appeals affirmed, holding that the refusal to grant the instruction was error, but that the error was harmless. Dickey appealed to the Court of Appeals and argued that the error was not harmless. The State cross-petitioned and argued that the trial court did not err in refusing to give the requested instruction.

Held: Affirmed. The Court of Appeals held that the trial court did not err in refusing to give the requested instruction. Maryland Rule 4-325 requires that a requested jury instruction be given only where: 1) the instruction is a correct statement of law; 2) the instruction is applicable to the facts of the case; and 3) the content of the instruction is not fairly covered elsewhere in instructions actually given. The Court found that the instruction was not a correct statement of law and was fairly covered by other

instructions given on witness credibility and identification of the defendant. This view comports with the majority of federal courts, where the refusal to give a drug user or addict instruction is not error.

The Court of Appeals reasoned that the instruction's language stating that the testimony of a drug user or addict "must be examined with greater scrutiny than the testimony of any other witness" was not correct as a matter of law. There is no rational reason for examining the testimony of a drug user or addict witness with greater scrutiny than any other witness; other instructions on factors affecting witness credibility call for the jury to examine such testimony merely "with caution."

In addition, a requested instruction on the ability of a drug user or drug addict witness's ability to perceive and recall events was fairly covered by other instructions on witness credibility given by the trial court. Instructions given asked the jury to consider the witness's opportunity to see or hear events, the accuracy of the witness's memory, the witness's state of mind, and any other circumstances surrounding the event.

The Court of Appeals noted that, on the other hand, had defense counsel submitted a properly worded instruction advising the jury that if the jury found that a witness was addicted to drugs and had been using drugs during the relevant time in question, the jury should consider the witness's testimony with care and caution, it would have been within the court's discretion to do give the instruction and would not have been error.

Desmond Ellison Dickey v. State of Maryland, No. 23, September Term, 2007, filed April 15, 2008. Opinion by Raker, J.

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CRIMINAL LAW - PROCEDURE - WAIVER OF COUNSEL - RULE 4-215 - ADVICE OF PENALTIES - SUBSEQUENT OFFENDER

Facts: Derrick Knox was charged with possession with intent to distribute controlled dangerous substances and possession of controlled dangerous substances in Wicomico County. After Knox failed to appear for trial for the second time, his counsel withdrew from the case.

Knox appeared before the trial court without counsel and the court advised him of his right to counsel, that if he could not afford private counsel, he could apply to the public defender, and that if he appeared for trial without an attorney, the court could find that he waived his right to counsel. Knox was subject to enhanced penalties under Md. Rule 4-245 because he was a subsequent offender. The court then informed Knox of the maximum penalties of

the charges against him, but did not advise him of any penalty enhancements based on subsequent offender status.

On the day of trial, Knox appeared essentially pro se. The trial court found he had waived his right to counsel. He proceeded to trial before the court and was convicted on all charges. As a result of his status as a subsequent offender, he was sentenced to twenty years at the Maryland Department of Corrections, five years suspended, with ten years subject to parole only in accordance with § 4-305 of the Correctional Services Article, Md. Code (1999, 2001 Cum. Supp.).

Knox noted a timely appeal to the Court of Special Appeals. The intermediate appellate court held that Rule 4-215 did not require the court to inform the defendant of subsequent offender penalties. *Knox v. State*, 173 Md. App. 246, 253, 918 A.2d 556, 560 (2007). The Court of Appeals granted Knox's petition for writ of certiorari.

Held: Reversed. The Court held that Rule 4-215 requires that a defendant be notified of subsequent offender penalties. The Court noted that without information regarding the penalties a defendant might face as a result of the defendant's subsequent offender status, the defendant could not make a knowing and intelligent waiver of counsel with full knowledge of the ramifications of that choice.

The Court noted that Rule 4-215 was adopted by the Court of Appeals in order to protect the fundamental right to counsel guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. The Court noted also that the provisions of Rule 4-215 are mandatory and must be complied with. *Broadwater v. State*, 401 Md. 175, 182, 931 A.2d 1098, 1102 (2007). The fundamental right to counsel requires that any waiver of that right be taken with 'eyes wide open' and be made in a knowing and intelligent manner. *Id.* at 180-181, 931 A.2d at 1100-1101.

The Court held that the Circuit Court erred when it did not inform Knox of the penalties he was subject to as a result of his subsequent offender status.

Derrick Irwin Knox v. State of Maryland, No. 30, September Term, 2007, filed March 20, 2008. Opinion by Raker, J.

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CRIMINAL LAW - RAPE

Facts: Maouloud Baby, was indicted for first degree rape, first degree sexual offense, attempted first degree sexual offense, conspiracy to commit first degree rape, and third-degree sexual offense. Baby was initially tried in the Circuit Court for Montgomery County, but a mistrial was declared because of a hung jury. Baby was retried on December 13-17 and 20-21, 2004 before a jury on two counts of first degree rape, one count of attempted first degree rape, one county of first degree sexual offense, one count of attempted first degree sexual offense, one count of conspiracy to commit first degree rape, and two counts of third degree sexual offense.

At trial, the complaining witness ("J.L.") testified that she told Baby that she would allow him to have sex with her if he stopped when she told him. J.L. testified that Baby began intercourse and "it hurt" so she told him to stop. She stated that he did not stop when she told him to but that he continued vaginal intercourse for "[a]bout five or so seconds."
Baby testified that he began intercourse but that J.L. stated that "It's not going to do in" and sat up, whereupon he discontinued his actions.

Testifying on behalf of the State was Dr. Ann Burgess, a Professor of Nursing at Boston College. Dr. Burgess' testimony was offered as an expert on the subject of "rape trauma syndrome," to which Baby's attorney objected, having filed a motion *in limine* to exclude Dr. Burgess' testimony.

The trial court instructed the jury on the elements of first degree rape using language substantively similar to that in the pattern jury instructions. After the jurors began deliberation, they asked a question about withdrawal of consent after penetration to which the trial court referred them to the rape instruction. Defense attorney objected and requested that the jury be instructed to return a verdict of not guilty of rape if it was persuaded that the complaining witness consented to sexual intercourse, but withdrew her consent after penetration.

Baby was convicted of one count of first degree rape, one count of first degree sexual offense, and two counts of third degree sexual offense. Baby noted an appeal to the Court of Special Appeals. He argued that the circuit court erred in refusing his request to instruct the jury that it should return a verdict of not guilty of rape if it was persuaded that the

complaining witness consented to sexual intercourse, but withdrew her consent after penetration; that the circuit court erred by denying Baby's request to remove a juror who indicated that he had read a newspaper article about the case; and that the circuit court erred in denying Baby's motion *in limine* to exclude Dr. Burgess' testimony concerning "rape trauma syndrome." In a reported opinion, the Court of Special Appeals reversed Baby's conviction, holding that the trial court erred in refusing to answer the questions submitted to the jury regarding whether a sex act initially consented to by the complaining witness can constitute rape if she withdraws consent after penetration has occurred. The intermediate appellate court also held that if a woman "consents [to sexual intercourse] prior to penetration and withdraws the consent following penetration, there is no rape." *Baby v. State* 172 Md. App. 588, 618, 916 A.2d 410, 428 (2007). Additionally, the Court of Special Appeals decided that the trial court did not err when it allowed Dr. Burgess to testify as an expert witness on the subject of "rape trauma syndrome." The intermediate appellate court also determined that the trial court had properly exercised its discretion in waiting until the jury began deliberations to excuse a juror who had read a newspaper article about the case, but who had not shared what he read with any of the other jurors.

Held: Reversed and remanded for a new trial. After concluding that the language in *Battle v. State*, 287 Md. 675, 414 A.2d 1266 (1980), was dicta and did not have precedential value, the Court of Appeals held that Maryland's rape statute punishes the act of penetration which persists through force or the threat of force even after the withdrawal of consent. The Court further held that the trial court committed error by not providing the jury with the law it needed to decide the case, as the responses to the jury's questions did not adequately address the juror's concerns about post-penetration withdrawal of consent. The Court concluded that this error was not harmless beyond a reasonable doubt under the standard articulated in *Dorsey v. State*, 276 Md. 638, 350 A.2d 665 (1976). The Court therefore reversed Baby's convictions and remanded the case to the Circuit Court for Montgomery County for a new trial.

For the guidance of the circuit court at the new trial, the Court also addressed the question of whether Dr. Burgess' expert testimony on "rape trauma syndrome" should have been subjected to a *Frye-Reed* hearing prior to its admission. The Court suggested that "rape trauma syndrome" evidence is of the type of novel scientific theory or technique that the Court held in *Reed v. State*, 283 Md. 374, 391 A.2d 364 (1978), must first be determined to be generally accepted as valid and reliable by the relevant scientific community before it may be admitted into evidence if an appropriate objection is lodged.

State of Maryland v. Maouloud Baby, No. 14, September Term, 2007,

filed April 16, 2008. Opinion by Battaglia, J.

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INSURANCE - MARYLAND CONDOMINIUM ACT

Facts: This appeal consists of two separate underlying cases. In Dianne Anderson, Individually, et al. v. Council of Unit Owners of The Gables on Tuckerman Condominium, No. 271904, Circuit Court for Montgomery County, Dianne Anderson owned a two-level town home in The Gables on Tuckerman Condominium. The Council of Units of Gables carried a master condominium insurance policy on the property with a deductible of $10,000 per occurrence; Ms. Anderson was insured by a condominium owners "Condocover" policy issued by Erie Insurance Exchange ("Erie"). In July of 2004, the water heater on the upper level of Ms. Anderson's home began leaking and water flowed through the ceiling into the kitchen, "causing severe water damage to the carpet and walls of the unit," amounting to $6,358.23. No other condominium town home was affected, nor was any other part of the structure damaged. Ms. Anderson requested that the Council of Gables repair or provide proceeds to repair the damage. The Council of Gables declined, and subsequently, after Ms. Anderson paid the $250.00 deductible, Erie paid for the repairs.

In Erie Insurance Exchange, et al. v. The Council of Unit Owners of Bridgeport Condominium, No. 03724, Circuit Court for Prince George's County, Charles and Cindy O'Carroll owned a home in The Bridgeport Condominium. The O'Carrolls also were insured by a condominium owners "Condocover" policy issued by Erie; the Council of Bridgeport carried a master insurance policy with a deductible of $25,000 per occurrence. On an evening in March of 2003, a grease fire erupted, which caused the ceiling sprinkler system to engage. Smoke, fire and water damage resulted; carpet, walls, blinds, cabinetry and a microwave in the O'Carrolls' home were damaged in the total amount of $12,157.14; the damage was confined to the O'Carrolls' home and the structure of the condominium was not affected. The O'Carrolls asked the Council of Bridgeport to repair or replace the damage, which the Council of Bridgeport declined to do; subsequently, after the O'Carrolls paid their $250.00 insurance policy deductible, Erie paid for the repair or

replacement.

Appellants, the condominium owners and their insurance company, filed separate complaints seeking to recover the funds expended to repair or replace the damage, arguing that under Section 11-114 of the Maryland Condominium Act, Real Property Article, Maryland Code (1974, 2003 Repl. Vol.), the councils were required to maintain insurance on the damaged property under their master insurance policies. Summary judgment was granted in the councils' favor. Appellants noted appeals to the Court of Special Appeals and the intermediate appellate court granted the parties' Joint Motion to Consolidate Appeals. Subsequently, the Court of Appeals issued, on its initiative, a writ of certiorari prior to any proceedings in the intermediate appellate court.

Held: The Court of Appeals affirmed, holding that the Maryland Condominium Act does not require a condominium association to repair or replace property of an owner in an individual condominium unit after a casualty loss. The Court concluded that Section 11-114, which states under subsection (a) that the council of owners is required to maintain insurance on the entire condominium property, "the common elements and units, exclusive of improvements and betterments installed in units by unit owners," but under subsection (g), the council of owners is responsible for repairing or replacing "any portion of the condominium damaged or destroyed," is ambiguous. The Court examined the entire regulatory scheme of the Condominium Act and its legislative history, which made clear that the master insurance provision was intended to cover only damage sustained to the common elements or the structure of a condominium. The Court also iterated that its conclusion was supported by Erie Insurance's own "Condocover" policy, which only applies to damaged property owned by the owners collectively, and not by an individual owner.

Dianne Anderson, et. al. v. Council of Unit Owners of The Gables on Tuckerman Condominium, et. al., No. 99, September Term 2007, filed April 15, 2008, Opinion by Battaglia, J.

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REAL PROPERTY - PLANNING AND ZONING - JUDICIAL REVIEW - ARTICLE

66B, § 4.08 - A PROPOSED AMENDMENT TO A COUNTY MASTER WATER AND SEWER PLAN IS NOT A "ZONING ACTION" WITHIN THE MEANING OF MARYLAND CODE, ARTICLE 66B, § 4.08, AND, THEREFORE, MAY NOT BE THE SUBJECT OF A PETITION FOR JUDICIAL REVIEW.

Facts: Aston Development Group, Inc., ("Aston") hopes to construct 302 dwellings on 390 acres of land in Cecil County, intending to name the project "Aston Pointe" (the "Property"). The Property, which abuts a nature preserve, presently lacks public water and sewer line service. In June 2004, Aston, as the initial governmental step to arrange other than individual well and septic service for each proposed dwelling, requested the Board of County Commissioners of Cecil County (the "Board") to amend the Cecil County Master Water and Sewer Plan (the "Plan") to "upgrade" the Property to areas W2 and S2. W2 and/or S2 areas are areas that may be served by central water and/or sewage facilities within 0 to 5 years. Having received from the Cecil County Planning Commission (the "Planning Commission") an unfavorable recommendation regarding the request, the Board rejected Aston's initial request for amendment on 13 July 2004.

In December 2004, Aston renewed its request for amendment of the Plan. On 4 January 2005, the Board held a public hearing on the matter. A final decision on the second requested amendment was postponed because the Board asked Aston to produce evidence that 400,000 gallons of water per day would be available from wells to be drilled on the Property. After drilling test wells and submitting the results to the Maryland Department of the Environment (MDE), Aston obtained a letter from MDE stating that the proposed number of wells on the Property could produce between 369,000 and 452,000 gallons of water daily, depending on ambient conditions. MDE noted, however, that further analysis was required because watershed water balance requirements could reduce significantly the amount of water ultimately allowed to be withdrawn. On 24 August 2005, the Board denied Aston's second request for an amendment to the Plan.

After Aston drilled additional test wells on the Property with a view to increasing the amount of water that might be extracted, Aston requested for the third time an amendment to the Plan. On 18 January 2006, the Planning Commission voted to recommend to the Board that the Board grant Aston's requested amendment. The MDE, on 27 January 2006, indicated that it would not review the additional water and well information until the Board approved and submitted to MDE a proposed amendment to the Plan for the Property. The Board voted 3-2 to approve Aston's proposed amendment on 31 January 2006. On 1 February 2006, and again on 17 April 2006, the Cecil County Director of Planning, Zoning, and Parks and Recreation submitted the proposed amendment to MDE for its approval as required by Maryland Code (1982, 2007 Repl. Vol.), Environmental Article, §§ 9-503(c) and 9-507(a).

During the time after the two submissions to MDE and before MDE acted on them, a group of Cecil County residents opposed to the proposed amendment to the Plan specifically, and the Aston Pointe development generally, filed, on 23 February 2006, individually and collectively as the Appleton Regional Community Alliance (Appleton), a Petition for Judicial Review in the Circuit County for Cecil County challenging the Board's approval of the proposed amendment to the Plan. Both Aston and the Board (collectively here, "Respondents") filed Motions to Dismiss claiming that the judicial review action was premature and did not amount to a "zoning action" for purposes of the statutory review allowed by Maryland Code, Article 66B, § 4.08(a). The Circuit Court granted the motions on 7 August 2006. Appleton noted its appeal on 25 August 2006 to the Court of Special Appeals from the Circuit Court's dismissal of the Petition for Judicial Review.

MDE responded on 15 September 2006 to the Board's submission of the proposed amendment to the Plan, noting that "MDE approves the map amendment, in the context of the existing [Cecil] County Water and Sewerage Plan . . . ."

On 27 October 2006, Appleton filed a second action in the Circuit Court for Cecil County seeking a Writ of Mandamus, Declaratory Judgment, and Injunctive Relief. Only the Board was named as defendant. In this action, Appleton limited its challenge to the Board's approval of the proposed amendment to the Plan, making no mention of the MDE approval thereof. Appleton requested that the Circuit Court vacate the vote of the Board and remand to the Board with instructions to deny Aston's request for the proposed amendment. In the alternative, Appleton sought to have declared that the Board was without authority to approve the proposed amendment and to enjoin the Board from taking action to approve the proposed amendment. That action, Case No. 07-C-06-000414, was dismissed, without prejudice, pending the outcome of the present litigation.

The Court of Special Appeals, on Appleton's appeal of the Circuit Court's dismissal of its Petition for Judicial Review, affirmed in an unreported opinion filed on 28 August 2007. The Court of Appeals granted Appleton's Petition for Certiorari to consider whether the Circuit Court for Cecil County was correct in dismissing Appleton's Petition for Judicial Review.

Held: Affirmed. The Court of Appeals first noted that there were three potentially dispositive issues in the case. The Court of Special Appeals affirmed the Circuit Court's dismissal of Appleton's Petition for Judicial Review because: (1) the proposed amendment to the Plan approved by the Board is not a "zoning action," subject to a petition for judicial review action, within the meaning of Maryland Code (1957, 2003 Repl. Vol.), Article 66B § 4.08; and (2) the case is not ripe because the Board's approval

of the proposed amendment was not the final administrative action rendering the Plan amendment effective and final for governmental purposes. Aston argued to the intermediate appellate court that Appleton's Petition for Judicial Review action was anathema for a third reason, mootness, which went undecided by the Court of Special Appeals. Specifically, Aston contended that the case is moot because MDE, following initiation of Appleton's Petition for Judicial Review, approved finally the Board's proposed action. The Court of Appeals declined to decide the latter two issues because it held that the proposed amendment to the Plan was not an appealable "zoning action."

The Court of Appeals recounted the general rule that there generally must be a legislative grant of the right to seek statutory judicial review in order for a petition for judicial review to be properly before the courts. The Court rejected Appleton's view that the proposed amendment to the Plan was a "zoning action" within the meaning of Maryland Code (1957, 2003 Repl. Vol.), Article 66B, § 4.08.

Citing *Maryland Overpak Corp. v. Mayor & City Council of Balt.*, 395 Md. 16, 53, 909 A.2d 235, 257 (2006), the Court Appeals summarized the two-part test for determining a "zoning action." First, the Court noted that a zoning action must be the result of a "quasi-judicial" process. The Court assumed, without deciding, that the process used to amend the Plan was a "quasi-judicial" process. Second, a "zoning action" must affect permissible uses of land. The Court stated that the proposed amendment to the Plan did nothing to affect the permissible uses of the Property. The zoning status of the Property remained unchanged as a result of the proposed amendment. The Court of Appeals held that the proposed amendment to the Plan constituted a planning action.

The Court of Appeals also relied on *Gregory v. Board of County Commissioners of Frederick County*, 89 Md. App. 635, 599 A.2d 469 (1991). The Court of Special Appeals in *Gregory* held that an amendment to the Frederick County Master Water and Sewer Plan was not a "zoning action." The Court of Appeals was unpersuaded by Appleton's attempts to distinguish *Gregory* on the grounds that the amendment in *Gregory* affected a larger "subregion." The Court stated that all amendments to a Master Water and Sewer Plan are, by definition, comprehensive planning actions. The Court also observed that the record reflected that the amendment, if effective, would have an effect on areas surrounding the Property.

Finally, the Court of Appeals stated that in previous reported appellate cases, challenges to amendments to state-required comprehensive water/sewerage and solid waste management plans have been brought as declaratory judgment or mandamus actions, not as petitions seeking judicial review of zoning actions. None of the plan amendment cases surveyed by the Court discuss whether a

proposed or final amendment to the plan was a "zoning action," despite the fact that a "zoning action" ordinarily would not be reviewable in a declaratory judgment action. The actions complained of by the plaintiffs in those cases were recognized as clearly falling outside the realm of "zoning action[s]," as does the Board's action in the present case.

Appleton Regional Community Alliance, et al. v. County Commissioners of Cecil County, MD, et al., No. 92, Sept. Term 2007, filed 7 April 2008, Opinion by Harrell, J.

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TORTS - FAMILY LAW – Interference with Custody and Visitation Rights

Facts: A jury for the Circuit Court for Anne Arundel County awarded Michael Shannon $3,017,500 in compensatory and punitive damages against his former wife, Nermeen Khalifa Shannon, and her mother, Afaf Nassar Khalifa, after both fled to Egypt with the couple's two minor children and have not returned. At the time of the abduction, Michael Shannon was the custodial parent of the oldest child and the visitation parent of the younger child. Appellants noted a timely appeal, and the Court of Appeals granted certiorari prior to any proceedings in the intermediate appellate court to address whether Maryland recognizes the tort of interference with custody and visitation rights of children and whether the damage award was excessive.

Held: Affirmed.

1) *Maryland has previously recognized the cause of action of interference with custody and visitation rights.* The Court of Appeals, citing *Baumgartner v. Eisenbrot*, 100 Md. 508, 60 A. 601 (1905), first noted that the torts of abduction and harboring were recognized as viable causes of action under Maryland law. The Court then concluded that in a majority of original American colonies that also followed the English common law, the torts of abduction and harboring were likewise well-established. Turning to the tort of interference with parent-child relations, which the

Court explained was the contemporary embodiment of the common law torts of abduction and harboring, the Court held that the case of *Hixon v. Buchberger*, 306 Md. 72, 77-78, 507 A.2d 607, 609-10 (1986), established the tort of interference with custody and visitation rights in Maryland.

2) *Loss of services is not a prerequisite element*. The Court next addressed appellant's contention that loss of services was a prerequisite element. The Court explained that loss of services was not a prerequisite element of the tort itself, but rather, arose from common law pleading requirements in force in England, and Maryland, the latter at least until 1870. The Court first distinguished the common law pleading forms of trespass *vi et armis* and trespass on the case. It explained that the former pleading form was designed to redress a direct harm inflicted upon the person pursuing the cause of action and did not require loss of services; whereas, the latter form redressed a consequential harm and required loss of services as the sole measure of damages. The Court then noted that although there were numerous cases of seduction and economic enticement in Maryland, where a parent proceeded "on the case" to redress harms inflicted upon their children, no parent in Maryland apparently had brought a cause of action in trespass *vi et armis* to redress the direct harm that the abduction and harboring of a child inflicts upon the parent, themself. The Court, therefore, again looked to the English common law and concluded that the cause of action of abduction or harboring could be brought either in trespass or on the case, and that therefore loss of services was not a prerequisite element of the torts once accounting for the abolishing of the common law pleading forms. The Court went on to iterate that the *Hixon* Court explicitly acknowledged that loss of services was not a prerequisite element when it listed loss of services as one of numerous other measures of damages under the contemporary tort of interference with custody and visitation rights.

3) *A visitation parent may bring the cause of action so long as the interference is a "major and substantial" one*. The Court of Appeals previously established the right of a visitation parent to sue in tort in *Hixon*. There, the relevant question before the Court was "[w]hether, under the common law of Maryland, a cause of action exists (or ought to be recognized) for money damages resulting from the intentional tortious interference by a non-custodial third-party with the visitation rights of a parent." In answering this question, the *Hixon* Court recognized that interference with visitation rights was a cognizable claim, but rejected the proposition that even the most trivial departures from court-ordered visitation could create a sustainable cause of action. Based on this understanding, the *Hixon* Court held that Hixon failed to state a claim upon which relief can be granted because the interferences alleged fell short of the more substantial interferences complained of in cases upon which he

relied. Applying the *Hixon* ruling to the present case, the Court of Appeals determined that the interference alleged by Shannon was precisely the type of "major and substantial" interference contemplated by *Hixon*. The Court, therefore, concluded that the trial court did not err when refusing to dismiss Shannon's complaint for failure to state a claim upon which relief can be granted.

4) *The damage award is not excessive*. Using the factors set forth in *Bowden v. Caldor, Inc.*, 350 Md. 4, 47, 710 A.2d 267, 288 (1998), as "guideposts," the Court of Appeals upheld the damage award.

Afaf Nassar Khalifa, et al.v. Michael Shannon, No. 56, September Term, 2008. Opinion filed on April 9, 2008 by Battaglia, J.

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COURT OF SPECIAL APPEALS

CONSTITUTIONAL LAW - POLITICAL ACTIVITY OR SPEECH

Facts: After Jonathan G. Newell was elected State's Attorney for Caroline County, Maryland, he told three employees who actively campaigned for the losing candidate, Robert Greenleaf, that they would be terminated when he took office. Susan Runnels and Marjorie Cooper, two of the three employees terminated, brought suit against Mr. Newell, the County Commissioners for Caroline County and the State of Maryland. The employees made two primary allegations in Counts I-III. First, they alleged that by firing them Mr. Newell violated their First Amendment rights under the U.S. Constitution and Article 40 of the Maryland Declaration of Rights, to participate freely in political activities and express their political views. Second, the County Commissioners for Caroline County and the State of Maryland, were alleged to be jointly liable for Mr. Newell's illegal action in firing the employees in retaliation for their political activities.

Appellants alleged in Counts IV and VI that the County was liable for violations of the Fair Labor Standards Act (FLSA) and Maryland wage and hour laws because, in lieu of one and on-half pay for overtime, they were granted leave equal to the amount of time they worked in excess of the required forty hours per week.

The case was removed to the Circuit Court for Worcester County where the motions judge granted the County's motion to dismiss portions of Counts I, II, and III. The judge subsequently granted summary judgment on all counts for all three defendants. The motions judge ruled that Ms. Runnels and Ms. Cooper's political activities were constitutionally unprotected because Mr. Newell "had an absolute right to manage his office as he saw fit." For support, the motions judge relied upon two Supreme Court decisions, commonly referred to as the *Elrod-Branti* political patronage test. The motions judge found that he was not bound to follow the *O'Leary v. Shipley*, 313 Md. 189 (1988)decision because it did not set "forth controlling precedent for this court...when addressing federal questions of law."

Held: Counts I and II reversed as to Mr. Newell; Count II reversed as to the State; Counts IV and VI reversed as to the County and all other judgments affirmed.

The Court held that the facts alleged by this were similar to those in *O'Leary*, where a government worker was discharged not due to political patronage but for overt expressive conduct in supporting a person other than the one who won election. In *O'Leary* the Court held that based on the facts before them the

analysis called for the application of the *Pickering-Mt. Healthy* line of cases, also named for two Supreme Court cases, instead of the test set forth in the *Elrod-Branti* line. The motions judge erred in not following *O'Leary* because no Supreme Court decision provided an interpretation contrary to the *O'Leary* decision. The court ruled that when the Maryland Court of Appeals' decides an issue interpreting federal law, even if it is at odds with interpretations of other federal appellate courts, inferior courts in Maryland, are bound to follow the Court of Appeals decision. If *O'Leary* had been followed the *Pickering-Mt. Healthy* balancing test would have been applied because Mr. Newell did not make the initial showing that political patronage was the sole motive for appellants' discharge. Under Count I, the motion for summary judgment in favor of Mr. Newell should have been denied, but, as to that count, the State was not jointly liable under Section 1983 of Title 42 of the U.S. Code.

The Court affirmed the motion judge's grant of summary judgment in favor of all defendants as to Count III on the basis that it was duplicative of Count II.

Appellants' claim (Count II) against the State and Mr. Newell under Article 40 was reinstated because the Maryland Tort Claims Act (MTCA) allows a plaintiff to sue the State for intentional and constitutional torts, having waived its sovereign immunity where a state official, acting in his/her official capacity, performs his/her official duties without gross negligence or malice. There was sufficient evidence to find that Mr. Newell's actions in firing appellants constituted intentional wrongdoing, amounting to malice. The circuit court, therefore, erred in granting summary judgment in favor of the State and Mr. Newell as to Count II.

With regards to the County, as to Counts I and II, appellants could not point to a constitutional provision, or facts to support their contention that Mr. Newell was acting as a final policymaker for the County when he fired appellants or that the County had actual knowledge of the improper conduct and acquiesced. The circuit court, therefore, did not err in dismissing portions of these counts and granting summary judgment in favor of Caroline County.

The Court held, however, that the motions judge did err in granting summary judgment for the County as to Counts IV and VI. The crux of the problem was that the County knew of the State's Attorney's Office (SAO) overtime problems but refused to provide funding. Appellants' presented sufficient evidence to show the County had some control over those aspects of the employment relationship giving rise to the violation. The SAO would not have had to resort to the comp time scheme it used if it was not for the County's refusal to provide funds.

Susan Runnels, et al. v. Jonathan G. Newell, et. al, Case No. 1374, September Term, 2006, filed March 28, 2008. Opinion by Salmon, J.

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CORPORATIONS AND ASSOCIATIONS - JUDGMENT LIEN - CHARGING ORDER - MONEY JUDGMENT

Facts: A judgment debtor brought a declaratory judgment action against his judgment creditor, claiming that the creditor's charging order against the debtor's interest in a partnership was extinguished when the creditor failed to renew the underlying money judgment. The circuit court granted summary judgment in favor of the creditor, ruling that the charging order survived the expiration of the money judgment.

Held: Affirmed. The charging order, because it settled the rights of the litigants at the time it was entered and concluded the matter between the parties, was a final judgment, and remained enforceable even after the underlying money judgment had expired.

Keeler v. Academy of American Franciscan History, Inc., No. 2433, September Term, 2006, filed March 4, 2008. Opinion by Krauser, C.J.

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CRIMINAL LAW – INDICTMENT – PLEA AGREEMENTS

Facts: Christopher Lee, appellee, was convicted by the Circuit Court for Baltimore City of offenses related to the unlawful possession of a firearm. The State, appellant, charged appellee in a two-count criminal indictment, filed on July 27, 2004. Count one of the indictment charged that on the date of July 1, 2004, appellee was in possession of a regulated firearm after

having been convicted of a disqualifying crime, in violation of Maryland Code (2003, 2007 Supp.) § 5-133(b)(1) of the Public Safety Article ("P.S."). Count two of the indictment charged that appellee did unlawfully wear, carry, and transport a handgun in violation of Maryland Code (2002, 2007 Supp.) § 4-203 of the Criminal Law Article ("C.L."). The facts surrounding the offenses appellant allegedly committed occurred on July 1, 2004. Police officers patrolling in Baltimore City observed appellee sitting on the front steps of a home with a group of people. Appellee was displaying the characteristics of an armed person, and when appellee walked into the home, the officers chased appellee. The officers stopped appellee and recovered a semi-automatic handgun from a location where the officers had observed appellee hiding.

On May 14, 2007, following numerous postponements, appellee appeared for trial in circuit court. Prior to trial, the prosecutor moved to amend the charging document, stating that the count one charge under P.S. § 5-133(b)(1) should be amended to P.S. § 5-133(c)(1)(ii). Public Safety § 5-133(c)(1)(ii) prohibits possession of a regulated firearm by a person convicted of certain enumerated offenses, including violations of C.L. § 5-602 prohibiting the manufacture, distribution, possession with intent to distribute, or dispensing of a controlled dangerous substance (CDS). Violations of P.S. § 5-133(c) carry a minimum sentence of 5 years, no part of which may be suspended. Appellee was a person prohibited from possessing a regulated firearm under P.S. § 5-133(c)(1)(ii), based on a January 23, 2003 conviction under C.L. § 5-602 relating to distribution of CDS. Appellee objected to appellant's amendment to the charging document, which the trial court overruled. Counsel for appellee then offered his own motion to amend the charging document and proffered that under the "rule of lenity," appellee should be charged under C.L. § 5-622, which had similar elements to P.S. § 5-133(c) and carried a maximum sentence of five years with the possibility of suspension or parole, instead of 5-133(c). Appellant opposed appellee's motion. The trial court ruled that under the rule of lenity, appellee was entitled to the benefit of C.L. § 5-622, which provided eligibility for parole, instead of P.S. § 5-133(c). The trial court then dismissed count one of the indictment and added a new charge: unlawful possession of a firearm by a convicted felon under C.L. § 5-622. Appellant objected, but the trial court overruled the objection. Appellee offered a guilty plea, which the trial court accepted, and the trial court then sentenced appellee to a total of eight years, all of which was suspended, and three years of supervised probation, plus payment of court costs. Appellant appealed the ruling pursuant to Maryland Code (2006 Repl. Vol., 2007 Supp.) § 12-302(c)(1) of the Courts and Judicial Proceedings Article ("C.J.").

Held: Reversed. The Court of Special of Appeals began its discussion by considering appellant's right of appeal under C.J. §

12-302(c)(1). The Court held that appellant's right of appeal under C.J. § 12-302(c)(1) became ripe upon final judgment. The Court held the fact that only one count was dismissed in the two-count indictment was not a bar to appeal under C.J. § 12-302(c)(1).

As to the trial court's action in dismissing count one of the indictment and adding a new charge under C.L. § 5-622, the Court held that based upon the broad discretion State's Attorneys are afforded in determining which charges to prosecute, and the limited role that trial courts are to play during plea bargaining, the trial court had exceeded the permissible bounds of judicial participation in a defendant's entry of a guilty plea. The Court explained there was no authority under the Maryland Rules, Code, or case law that permits a trial court to bring a new charge against a defendant after dismissing an original charge, without the State's consent. The Court explained the rule of lenity did not permit or authorize a trial judge to substitute charges in a charging document or to impose a plea agreement. *See* Alston v. State, 159 Md. App. 253, 272-73 (2004). The Court noted People v. Smith, 53 Cal. App.3d 655 (1975), which involved the same facts and where the California Court of Appeal held the trial court's conduct was unlawful. The Court then held the trial court abused its discretion when it dismissed the count one charge under P.S. § 5-133 and added a new charge under C.L. § 5-622. The Court reversed appellee's convictions, vacated appellee's guilty pleas, reversed the dismissal of the original charge under P.S. § 5-133 and the addition of a new charge under C.L. § 5-622, and remanded for further proceedings.

State of Maryland v. Isaac Christopher Lee, No. 988, September Term, 2007, filed February 28, 2008. Opinion by Eyler, James R., J.

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CRIMINAL LAW - FOURTH AMENDMENT SEARCH AND SEIZURE - SCOPE OF WARRANT. SEARCH AND SEIZURE WARRANT FOR PARTICULAR RESIDENTIAL ADDRESS REFERRED TO AS THE "PREMISES" COVERED THE AREA IN THE CURTILAGE OF THE HOUSE, WHICH INCLUDED A SMALL FENCED-IN BACK YARD, AND FURTHER INCLUDED A LOCKED UTILITY SHED IN THAT YARD.

Facts: Herbert Johnson Walls, the appellant, was charged by indictment with possession with intent to distribute cocaine. He filed a motion to suppress the cocaine seized from a storage shed on the property where he resided.

The following facts were adduced at the suppression hearing. On October 21, 2005, Detective Sean Marston of the Harford County

Sheriff's Office applied for a search warrant for Walls's residence in Aberdeen. The affidavit in support of the application detailed Walls's criminal background and four tips by confidential informants that Walls was selling cocaine out of his residence. The warrant was issued that same day. The warrant and supporting affidavit at varying times used the words "premise" and "premises" of Walls's residence to describe that area that Detective Marston was authorized to search.

Detective Marston executed the search warrant on October 26, 2005. While searching Walls's house, the detective received a tip from a colleague that Walls might be storing the contraband in the shed behind his residence. The backyard of the Walls residence was completely fenced in. The shed was located flush against the back fence about 20 to 25 feet from the house and locked with a padlock. Walls's key was used to unlock the shed. Lawn equipment, drugs, and paraphernalia were found.

Walls argued in his motion to suppress that the warrant did not authorize a search of the shed or any other outbuilding on the property because it used the word "premise" to indicate only his residence. Further, even if buildings within the curtilage of the residence were implicitly including in the warrant, the shed at issue was not within the curtilage. The suppression court disagreed on both points and denied the motion.

Held: Affirmed. It is clear from the context of the warrant and supporting affidavit, that the words "premise" and "premises" were being used to mean "premises" – that is, a "tract of land with the buildings thereon" as that term is defined in the MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY and other dictionaries. The singular form of the word "premise" means "a previous statement or contention from which a conclusion is deduced" and has no relevance to a tract of land. Second, the disputed shed was within the house's curtilage and therefore was subject to the warrant authorizing search of the "premises" of the residence. The distance of 20 to 25 feet from the house and within a backyard enclosed by a fence places the shed within the judicially construed meaning of the term "curtilage." Further, there was nothing on the shed's exterior to indicate that it was used for a lawn mower or other business purpose. Even if the warrant had not authorized a search of the shed, we would affirm the suppression court's decision under the good-faith exception, which provides that evidence will not be suppressed when it is discovered by officers acting in good faith and in reasonable, though mistaken, belief that they were authorized by a signed search warrant. *See United States v. Leon*, 468 U.S. 897, 924 (1984).

Walls v. State, No. 1849, 2006 Term, filed March 28, 2008. Opinion by Eyler, Deborah S., J.

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LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS–SUBPOENA POWER

Facts: Brian Miller, appellant, is a corporal in the Baltimore County Police Department, appellee. In the spring of 2006, an internal investigation of appellant was initiated, regarding an incident that occurred on March 27, 2006. As a result of the internal investigation, disciplinary action was taken against appellant for disobeying a lawful order of his superior officer. On or about December 5, 2005, appellant's superior officer, Lieutenant Kevin Green, consulted appellant about fraternizing with civilians while on duty, and instructed appellant that any such conduct by appellant should stop immediately, and that if it did not, appellant would be disciplined. On or about March 27, 2006, while appellant was on duty, Lieutenant Green observed appellant meet a female acquaintance at a Seven-Eleven convenience store in Towson, Maryland. Lieutenant Green observed appellant and the female acquaintance drive their respective vehicles to the rear of a nearby church. Lieutenant Green reported that he then observed the two fraternizing with each other, however, when appellant was questioned shortly after the incident occurred, appellant purportedly alleged the meeting was coincidental.

During the course of the internal investigation of the March 27, 2006 incident, appellee issued two subpoenas in order to retrieve appellant's personal cell phone records from Cellco Partnership DBA Verizon Wireless. The two subpoenas ordered the production of the records of incoming and outgoing calls for appellant's cell phone between the dates January 1, 2006 and March 28, 2006, and July 1, 2006 and July 24, 2006, respectively. Both subpoenas expressly purported to have been issued under the authority of Maryland Code (2003, 2007 Supp.) § 3-107(d)(1) of the Public Safety Article ("P.S."), a provision of the Law Enforcement Officers' Bill of Rights (LEOBR), P.S. § 3-101, *et seq.*, relating to hearings before a hearing board. Verizon complied with the subpoenas without complaint and produced appellant's cell phone records.

On October 11, 2006, appellant was notified that he was under investigation regarding the March 27, 2006 incident. On October

18, 2006, appellee's representative interviewed and questioned appellant about Lieutenant Green's sighting of appellant at the Seven-Eleven and church on March 27, 2006, and about the cell phone records. This is when appellant first learned that his cell phone records had been subpoenaed. On February 26, 2007, a reprimand and disciplinary action report was filed, notifying appellant of a disciplinary violation, to wit, disobeying the lawful order of a superior officer on March 27, 2006, by fraternizing with a civilian while on duty. The reprimand and disciplinary action report stated that appellant's personal cell phone records revealed that appellant and the civilian had had a series of telephone conversations prior to their March 27, 2006 meeting at the Seven-Eleven. On March 28, 2007, appellant requested that the matter be reviewed by a hearing board.

On November 28, 2006, after the issuance of the subpoenas and prior to notification to appellant of disciplinary action, appellant filed a complaint and petition to show cause in the circuit court, alleging that appellee had violated appellant's rights under the LEOBR because appellee did not have authority to issue subpoenas during its internal investigation of the March 27, 2006 incident. Appellant sought an order, requiring appellee to return the originals and all copies of documents that appellee received from the issued subpoenas, that appellee be precluded from using any information obtained from the subpoenas, and that any questions asked in reference to the phone records in interviews with appellant be stricken from the investigation. On April 9, 2007, the circuit court issued a memorandum opinion and order dismissing appellant's complaint and petition to show cause. The circuit court held the statutory scheme under the LEOBR granted appellee such subpoena powers during the course of an internal investigation.

Held: Reversed. The Court of Special Appeals began its analysis by noting that it is generally recognized that the courts and legislatures have inherent power to compel the production of witnesses for the purpose of testifying and the production of documents, subject to current laws, rules and regulations regulating that power. However, there were no reported cases in Maryland recognizing the executive branch's inherent power to compel testimonial information. The Court explained that administrative agencies, in Maryland, have power to subpoena information but only through the express statutory grant of such power by the General Assembly. The Court explained there are two types of agencies that have been granted broad statutory subpoena power: (1) regulatory commissions and boards that regulate for the public good, such as the Maryland Commission on Human Relations, the Maryland Home Improvement Commission, and boards that regulate professions; and (2) State agencies delegated with multiple responsibilities of regulation, licensing, and administration of program duties, such as the State Department of Health and Mental

Hygiene, and the Department of Labor, Licensing and Regulation. The Court explained police departments do not have inherent subpoena powers, either in the context of civil investigations, such as employee disciplinary matters, or in criminal investigations. The Court explained the grant of statutory subpoena power, to any agency, for the purpose of conducting an investigation in the context of an employee disciplinary matter was much less apparent than in the earlier described situations.

The Court concluded that, having found no basis for any subpoena power in appellee in the context of investigating an employee disciplinary matter, and having found no statutory grant outside the LEOBR, the Court's analysis of appellee's power to issue subpoenas would depend on the Court's interpretation of the LEOBR.

Applying principles of statutory construction, the Court of Special Appeals found there is no grant of subpoena power under P.S. § 3-104 (relating to the investigation of a law enforcement officer); and second, that the grant of subpoena power to the chief or a hearing board under P.S. § 3-107(d)(1) is limited to compelling the attendance and testimony of witnesses and the production of documents to proceedings by the hearing board, after a disciplinary violation charge has been filed against an officer, and not to the pre-charge investigation or interrogation. The Court held that such a construction was consistent with the other sections of the LEOBR, and with the legislative purpose of the statute, which was to provide law enforcement officers with procedural safeguards during investigations and hearings that could result in disciplinary action.

As for the remedy, the Court concluded that dismissal of the disciplinary charge was not an appropriate remedy. The Court held the phone records and appellant's responses in interrogation, to the extent they were based on the phone records, could not serve as a basis for the charge. The administrative process would determine, in the first instance, whether the resultant charge was sustainable. Additionally, as long as applicable provisions in the LEOBR relating to notice and disclosure were complied with, the Court explained it was not aware of any law that would prevent using the records as evidence in a hearing before a hearing board. The Court explained there is no general exclusionary rule under State law, based on unlawful obtention of evidence.

Brian Miller V. Baltimore County Police Department, No. 343, September Term, 2007, filed February 29, 2008. Opinion by Eyler, James R., J.

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TAXATION - DEVELOPMENT IMPACT TAX - TAX COURT - VESTED RIGHTS - DEVELOPMENT - STATUTORY INTERPRETATION

Facts: Appellants challenged an assessment of Montgomery County's Development Impact Tax for Transportation Improvements ("Impact Tax"), which was levied when they filed building permit applications for the construction of two warehouses on their property. The Impact Tax ordinance was amended, effective July 1, 2002, to apply to all areas of the County, including appellants' property and applied, by its terms, to an application for a building permit for "development," filed on or after July 1, 2002. Before the effective date, appellants applied for a building permit to construct retaining walls on their property, which were needed to construct a building pad for the two warehouses that were to be built later, after the effective date of the amendment to the ordinance. An Impact Tax of approximately $300,000 was imposed when, after the effective date, appellants sought permits to build the warehouses.

The Maryland Tax Court rejected appellants' argument that they were exempt from the Impact Tax because they had filed their first permit application to construct retaining walls before the effective date of the Impact Tax amendment. The circuit court affirmed the Tax Court.

Held: Affirmed. The retaining walls, built pursuant to the first permit, were not for "development: within the meaning of the Ordinance, because non-residential "development" in the Act refers to specific buildings or structures, for which permits are sought, that increase gross floor space. In contrast, the two permit applications for the warehouses were for "development" within the meaning of the ordinance, because they increased gross area.

In addition, the Ordinance provides that a building permit for "development" is subject to the Impact Tax if the application is filed after the effective date. As appellants' building permit applications for the warehouses were filed after the effective date, they were subject to the Impact Tax. The filing of "a building permit" prior to the effective date does not mean "the first" or "every" building permit, so as to exempt all subsequent permit applications.

In addition, the Maryland Tax Court and the circuit court correctly determined that appellants did not have a vested right to proceed under the pre-2002 Impact Tax provision. The Impact Tax is a tax, not a regulatory fee. Unlike zoning regulations, which regulate the use to which a property may be put, the Impact Tax is a hazard of the business enterprise. A taxpayer has no vested right in the tax code and therefore the vested rights doctrine is inapplicable as a bar to the Impact Tax.

F.D.R. Srour Partnership, et al. v. Montgomery County, Maryland, No. 2208, September Term 2006, filed March 27, 2008. Opinion by Hollander, J.

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TAXATION - SPECIAL TAX DISTRICTS - CORPORATE GOVERNANCE - MUNICIPAL CORPORATIONS -CORPORATE BYLAWS - QUORUM - SUPPLEMENTAL TAX - BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE §§ 10-206(a), 10-601(a) - BALTIMORE CITY CHARTER, ARTICLE VII, § 26 - RULE 1-311 - CORPORATIONS AND ASSOCIATIONS § 2-408(b)- MD. CODE, ARTICLE 23A.

Facts: The Charles Village Community Benefits District Authority ("Authority") is a special tax district that provides certain services to the residents and business interests of the Charles Village Community Benefits District ("District"). Appellant sued to block the Authority from imposing a supplemental tax on property owners in the District. The circuit court rejected appellant's claim that the Authority's Board of Directors ("Board") lacked a proper quorum when it voted to approve the surtax. The circuit court also determined, *inter alia*, that a bylaw provision requiring the approval of the supplemental tax by a majority of all the voting Board members means a majority of the Board members sitting at the time of the vote, not a majority of authorized seats on the Board.

Held: Affirmed. The Authority is a corporate body, subject to the Corporations and Associations Article, rather than a municipal corporation under Md. Code Article 23A. Pursuant to C.A. § 2-408(b), and the Authority's Enabling legislation (Baltimore City Code, Article 14, § 6-1, et seq.), the Board was entitled to adopt a bylaw providing that a quorum can consist of less than a majority of the authorized Board members. In addition, pursuant to the Authority's bylaws, the sole owner and officer of a Subchapter S corporation that owns property in the District may represent the corporation as a voting member of the Board. In addition, a

majority of the voting Board may appoint a Board member to fill a vacancy created during the term.

The Court dismissed the appeal, however, as to *pro se* litigants who failed to sign the notice of appeal. A *pro se* litigant may not represent other *pro se* litigants; such conduct amounts to the unauthorized practice of law, in violation of B.O.P. §§ 10-206(a) and 10-601(a).

The Court also ruled that an attorney in the City Solicitor's Office did not violate Baltimore City Charter, Article VII, § 26, by filing a cross appeal in the Court of Special Appeals. Section 26, which provides that "no appeals on behalf of the City to the Court of Appeals . . . shall be taken except upon the written order of the City Solicitor," or by properly-approved outside counsel, does not apply to a cross-appeal filed in the Court of Special Appeals.

Joan L. Floyd v. Mayor and City Council of Baltimore, et al., No. 1588, September Term, 2006, filed March 27, 2008. Opinion by Hollander, J.

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ATTORNEY DISCIPLINE

By an Opinion and Order of the Court of Appeals of Maryland dated March 11, 2008, the following attorney has been indefinitely suspended, effective April 10, 2008, from the further practice of law in this State:

KARIN MARIE HENDRICK
*

By an Opinion and Order of the Court of Appeals of Maryland dated April 15, 2008, the following attorney has been disbarred, from the further practice of law in this State:

DAVID WAYNE PARSONS
*

By an Order of the Court of Appeals of Maryland dated April 15, 2008, the following attorney has been suspended for sixty (60) days by consent, effective May 8, 2008, from the further practice of law in this State:

CHARLENE SUKARI HARDNETT
*

By an Opinion and Order of the Court of Appeals of Maryland dated April 17, 2008, the following attorney has been disbarred from the further practice of law in this State:

BARBARA OSBORN KREAMER
*

By an Opinion and Order of the Court of Appeals of Maryland dated April 21, 2008, the following attorney has been disbarred from the further practice of law in this State:

CAROL LONG McCULLOUCH
*

The following attorney has been replaced upon the register of attorneys in the Court of Appeals of Maryland effective April 21, 2008:

PHYLLIS J. OUTLAW
*