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Facts: Zachary Shawn Fowler, Petitioner, was stopped for making an unsafe lane change by a Howard County police officer. The officer asked Fowler to submit to a preliminary breath test ("PBT"), used as a guide by police officers to determine whether to make an arrest. Fowler refused. After Fowler performed poorly on field sobriety tests, the officer arrested him for drunk driving and transported him to the police station.

At the police station, the officer provided Fowler with a DR-15 Advice of Rights form. This form has a dual purpose. First, it advises an arrested driver that, under §16-205.1 of the Transportation Article, Maryland Code (1977, 2002 Repl. Vol.), refusing to take a chemical alcohol concentration breath test, or submitting to a test and registering a blood alcohol concentration result in excess of 0.08, will result in a mandatory suspension of the driver's license. Second, it certifies that the arresting officer complied with the statute's advice of rights requirement. Both Fowler and the arresting officer signed the DR-15 Advice of Rights form and, consequently, Fowler was charged with refusing the chemical breath test in violation of §16-205.1. Fowler requested a hearing before the Motor Vehicle Administration to contest his license suspension. He filed also a motion to subpoena the arresting officer to testify at that hearing, but deferred action on his motion to the administrative law judge ("ALJ") conducting the suspension hearing.

At his hearing before the ALJ, Fowler disputed that he was fully advised of his rights by the officer. Fowler testified that when he was provided the DR-15 form, the officer informed him that his license was being suspended because Fowler already had refused to take the test. Fowler believed the officer's statement referred to the PBT, and that in signing the DR-15 Advice of Rights form he was merely acknowledging his refusal of the PBT requested by the officer on the street. He argued, therefore, he did not knowingly

refuse a chemical breath test at the station. While Fowler conceded that he was given the DR-15 form to read and sign, he stated that he merely "skimmed over it" before signing it and that the officer did not read it to him. Fowler asserted that if the arresting officer were subpoenaed, the officer would testify consistently with Fowler's version of events.

The ALJ found that Fowler's testimony that he "was told to read [the DR-15 form] and . . . skimmed over it" bolstered "the certification of the officer," and concluded there was no need " to call the officer to clarify anything." The ALJ noted also that there was "no indication the PBT was relied on or not relied on." Consequently, the ALJ denied Fowler's motion to subpoena the officer and suspended his license for 120 days, but modified the sentence to only five days of suspension on the condition that Fowler participate in the Ignition Interlock Program for one year.

Fowler sought judicial review of the ALJ's decision in the Circuit Court for Montgomery County. The Circuit Court affirmed, relying upon *Motor Vehicle Administration v. Karwacki,* 340 Md. 271, 666 A.2d 511 (1995). The Circuit Court concluded that the ALJ properly exercised his discretion by resolving the conflicting evidence of Fowler's testimony and the officer's certification on the DR-15 Advice of Rights form. The court emphasized further that under *Karwacki*, "[t]he ALJ was under no obligation to believe Petitioner over the officer's sworn statement." The Court of Appeals granted Fowler's Petition for Writ of Certiorari (390 Md. 500, 889 A.2d 418 (2006)).

Held: Reversed remanded to the ALJ for further proceedings. The Court of Appeals determined that the ALJ incorrectly denied Fowler's subpoena request where the ALJ was faced with the officer's certification on the DR-15 Advice of Rights form and Fowler's conflicting testimony, and the driver disputed that he was fully advised by the arresting police officer of the consequence for refusing to take a chemical breath test. Noting *Forman v. Motor Vehicle Administration*, 332 Md. 201, 630 A.2d 752 (1993), the Court re-emphasized the three options for an ALJ during a §16-205.1 hearing where the arrested driver files a motion for a subpoena request of the certifying officer and proffers evidence to support the request: accept the proffer and deny the subpoena, reject the proffer and deny the subpoena, or issue the subpoena to receive additional evidence. The Court of Appeals distinguished *Karwacki* because, unlike in the present case, no subpoena request was filed in *Karwacki*.

The Court noted also that an ALJ's treatment of the proffer must be indicated clearly. In the present case, the record

contained no specific or explicit statement indicating whether the ALJ accepted or rejected Fowler's proffered testimony as to what the certifying officer would say. Although it recognized that the ALJ might have attempted to comply with one of the options outlined in *Forman*, the Court ultimately remanded the case because, while the ALJ clearly denied the subpoena request, the basis for his decision was not apparent. The Court emphasized further that, in order for reviewing courts to perform proper appellate review, an ALJ's decision must contain "full, complete and detailed findings of fact and conclusions of law."

Zachary Shawn Fowler v. Motor Vehicle Administration, No. 111, September Term, 2005, filed 30 August 2006. Opinion by Harrell, J.

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ADMINISTRATIVE LAW - MARYLAND HEALTH CARE COMMISSION

Facts: In 2004, the Maryland Health Care Commission ("Commission") revised the portion of the State Health Plan ("SHP") addressing Cardiac Services. The revision retains a longstanding policy choice to encourage high volume programs, providing that there should be a minimum of 200 open heart surgery procedures performed annually at any hospital that provided such services and that the establishment of any new cardiac surgery programs should permit existing programs to maintain patient volumes of at least 350 annually. In addition, the SHP requires the Commission to consider adding a new program in any region where one or more existing programs failed to meet the 200 surgery goal for the past two consecutive years. Appellants Medstar Health and Adventist Health Care sought a declaratory judgment that the SHP is inconsistent with the Maryland Health Care Commission's statutory authority because Maryland Code, § 19-118 (d) of the Health-General Article requires the standards in the SHP regarding the establishment of new programs to "address the availability, accessibility, cost, and quality of health care." The Circuit Court upheld the validity of the SHP, and the Court of Appeals granted *certiorari* prior to any proceedings in the Court of Special

Appeals.

Held: *Judgment affirmed*. The Maryland Health Care Commission acted within its statutory authority because a failure of a hospital to meet the 200-case minimum serves only as a gatekeeper for whether a new program will be considered. Any proposal for a new program would still have to satisfy an extensive review process under the SHP that would address all of the required statutory factors contained in the Commission's enabling statute.

Medstar Health, et al v. Maryland Health Care Commission, et al, No. 37, Sept. Term 2005, filed March 7, 2006. Opinion by Wilner, J.

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CRIMINAL LAW - APPEALS - ABATEMENT *AB INITIO*

Facts: Petitioner, Alan Chmurny, was found guilty in the Circuit Court for Howard County of first (Count 1) and second (Count 2) degree assault and three counts of reckless endangerment (Counts 3-5). Sentencing was scheduled for November 15, 2001. Contemporaneously with the return of the verdicts and the scheduling of sentencing, the petitioner, while still in the courtroom, ingested cyanide poison, from which he died the next day. Defense counsel moved for the dismissal of Counts 1 through 5 on the grounds of abatement by death. The trial court abated Counts 6 and 8, which had been severed prior to trial, but declined to dismiss the verdicts on the remaining counts. Counsel moved for reconsideration of the denial and the court denied the motion without hearing. No appeal was taken from the court's ruling and nothing more was done for four years until defense counsel filed a nearly identical motion which was denied. This Court granted *certiorari* prior to any disposition by the Court of Special Appeals.

Held: Appeal dismissed. The Court held abatement ab initio is an appropriate remedy when a defendant dies after a

verdict of guilty but before sentencing is imposed since there is no conviction or judgment and any appeal can properly be taken; however, the appeal filed was unauthorized and untimely since defense counsel lacked substantive authority or standing to file the appeal since he no longer had a client and could not step into the shoes of the former client and no appeal was taken from the nearly identical motion filed four years earlier.

Chmurny v. State, No. 77, Sept. Term, 2005, filed April 13, 2006. Opinion by Wilner, J.

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CRIMINAL LAW - APPEALS - DEATH PENDING APPEAL

Facts: Defendants Surland and Bell were both convicted and sentenced to periods of incarceration and to pay fines, but not restitution. Both died during the pendency of their first appeal. Upon the defendants' deaths, their lawyers moved to dismiss the appeal and remand with instructions to vacate the convictions and dismiss the indictments.

Held: Motion denied. Some courts in this situation do abate the conviction and direct dismissal of the indictment, some allow the conviction to stand, some abate the conviction but allow restitution orders to remain in effect, and some permit the defendant's personal representative to continue the appeal. The Court of Appeals adopted the last approach.

Surland v. State, No. 8 Sept. Term, 2005; Bell v. State, No. 45 Sept. Term, 2005, filed April 11, 2006. Opinion by Wilner, J.

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CRIMINAL LAW - CONFESSIONS - JURY – VOIR DIRE - COMPETENCY OF JURORS, CHALLENGES, AND OBJECTION.

Facts: Petitioner James Ramiah Logan was convicted in the Circuit Court for Prince George's County of two counts of second-degree murder. During trial the Circuit Court denied petitioner's motion to suppress his pretrial confession. The Circuit Court also refused to ask certain questions to the venire panel regarding the not criminally responsible defense and pretrial publicity. The Court of Special Appeals held that petitioner's pretrial confession violated *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1996), but deemed the error to be harmless. The Court of Special Appeals reversed the judgment of conviction on the basis of the Circuit Court's failure to formulate and pose additional questions to the venire panel.

Held: Affirmed. The Court of Appeals affirmed the Court of Special Appeals, but on different grounds. It held that the admission of petitioner's confession was not harmless error. The Court of Appeals reasoned that where the jury heard and saw a confession in which petitioner stated that he knew what he was doing and intended to kill through his actions, it could not say that the error in no way influenced the jury in reaching a verdict, particularly as to the not criminally responsible defense. The Court of Appeals further held that petitioner did not waive the error by attempting to minimize or explain the improperly admitted evidence.

In contrast to the Court of Special Appeals, the Court of Appeals held that the Circuit Court did not err when it refused to ask certain questions to the venire panel regarding the defense of not criminally responsible and pretrial publicity. The Court of Appeals reasoned that defenses, including the defense of not criminally responsible, do not fall within the category of mandatory inquiry on voir dire. Where petitioner proposed improperly phrased questions regarding the defense of not criminally responsible, refusal to ask such questions did not constitute abuse of discretion. The Court of Appeals also held there was no error when the court refused to ask jurors whether they would follow instructions regarding law before knowing what the court's instructions would be in that regard. The Court of Appeals further reasoned that the Circuit Court was not required to

ask content-based questions in regards to pretrial publicity; the Circuit Court was only required to ask questions that helped determine whether the juror could be fair or impartial in light of exposure to pretrial publicity.

State of Maryland v. James Ramiah Logan, No. 100, September Term, 2005, filed September 1, 2006. Opinion by Raker, J.

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CRIMINAL LAW - RECKLESS ENDANGERMENT

Facts: Appellants Kilmon and Cruz were both convicted in the Circuit Court for Talbot County of recklessly endangering their later born infants under Md. Code, § 3-204 (a)(1) of the Criminal Law Article by ingesting cocaine while still pregnant with the children. CL § 3-204 (a)(1) makes it a misdemeanor for a person recklessly to "engage in conduct that creates a substantial risk of death or serious physical injury to another." The Court of Appeals granted *certiorari* in both cases before any proceedings occurred in the Court of Special Appeals in order to consider whether ingestion of cocaine by a pregnant mother constitutes a violation of CL § 3-204 (a)(1).

Held: *Judgement Reversed*. The language of the reckless endangerment statue is ambiguous as to whether it includes the act of a pregnant woman with regard to her own fetus. Looking to the context and legislative history of the statute, the Court ruled that the General Assembly did not intend to include a pregnant mother's act upon her own fetus while it is still *in utero*, especially considering the broad range of behavior by a pregnant woman that a contrary construction would criminalize and the numerous other bills favoring a non-criminal approach to the problem of drug dependant pregnant mothers.

Kelly Lynn Cruz v. State of Maryland, No. 106, Sept. Term 2005 & Regina Mary Kilmon v. State of Maryland, No. 91, Sept. Term 2005 filed July 28, 2006. Opinion by Wilner, J.

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CRIMINAL LAW - STALKING

Facts: Petitioner, Wendall Hackley, was convicted of second degree assault, reckless endangerment, and stalking. Petitioner appealed claiming that the crime of stalking requires "approaching and pursuing" the victim and that the evidence failed to show that he engaged in that conduct. The Court of Special Appeals agreed that "approaching and pursuing" was an element of the offense but affirmed the conviction on the ground that Hackley's conduct amounted to approaching or pursuing his victim. The Court granted *certiorari* to consider the questions raised in the Court of Special Appeals.

Held: Judgment affirmed. The Court held that any malicious course of conduct intended to place another person in reasonable fear of serious bodily injury or death or that a third person likely will suffer such constitutes stalking. Petitioner's conduct satisfied this standard since on four occasions during the course of one month the petitioner 1) conducted the first initial assault, 2) left threatening letters on the victim's car, 3) approached the victim early in the morning in the same truck he drove on the first occasion coupled with the mysterious disappearance of the victim's dog, and 4) left a bookbag containing four more threatening letters on the victim's car.

Hackley v. State, No. 18, Sept. Term, 2005, filed November 9, 2005. Opinion by Wilner, J.

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CRIMINAL LAW - WAIVER OF JURY TRIAL - CONSTITUTIONAL LAW - SIXTH AMENDMENT RIGHT TO JURY TRIAL - ARTICLES 5, 21, AND 24 OF THE

MARYLAND DECLARATION OF RIGHTS - KNOWING AND VOLUNTARY WAIVER OF JURY TRIAL RIGHT

Facts: Two cases were decided in this consolidated opinion because they shared at least one common question. Tavony Wayne Zylanz was tried and convicted, after a bench trial in the Circuit Court for Baltimore County, of various crimes. Zylanz purportedly waived his right to trial by jury in an on-the-record colloquy in open court. After an extensive colloquy regarding various rights that he might be giving up, including trial by jury, the trial judge did not make an explicit finding that Zylanz's waiver was knowing and voluntary. Instead, at the end of the colloquy between Zylanz, his defense counsel, and the Court, the trial judge dismissed the venire, mentioned to Zylanz that it [the trial] was "just going to be you and me," and invited the State to call its first witness.

Steven Anthony Powell was convicted in the Circuit Court for Baltimore City of the second degree murder of his ex-wife. He also received a bench trial after purportedly waiving his right to trial by jury. In the course of the colloquy between Powell and his attorney in open court regarding his intent to waive that right, no specific inquiry was made as to voluntariness of the waiver. The trial judge, at the end of the colloquy, made no express findings as to whether he found the waiver voluntary or knowing. Instead, the Court simply said "[v]ery well. At this point, since this is a court trial, I'm going to ask for opening [statements] . . . ."

On appeal to the Court of Special Appeals, Zylanz argued that his jury waiver was invalid because the trial court failed to make an express determination on the record in open court that the waiver was knowing and voluntary. The intermediate appellate court affirmed. *Zylanz v. State*, 164 Md. App. 340, 883 A.2d 257 (2005). That court noted that the relevant rule, Maryland Rule 4-246, "does not require the court to make a specific finding by the use of certain words or phrases." Based on the record in this case, the court's acceptance of the waiver was both implicit and apparent.

Powell, in his appeal, argued similarly to Zylanz. In addition, he contended that a specific inquiry probing voluntariness was required to be made on the record. In an unreported opinion, the Court of Special Appeals affirmed. The Court opined that, despite the absence of a specific inquiry as to voluntariness, "the entire inquiry demonstrate[d] that the waiver was made voluntarily."

Zylanz's and Powell's petitions for certiorari were granted by the Court of Appeals.

Held: Affirmed in both cases. The Court's prior decisions in *Kang v. State*, 393 Md. 97, 899 A.2d 843(2006) and *Abeokuto v. State*, 391 Md. 289, 893 A.2d 1018 (2006) answered the argument that Md. Rule 4-246 (b) is violated if there is no record inquiry expressly into voluntariness. Unless there appears a factual trigger on the record, such as something said or observed during the waiver colloquy, which brings into legitimate question voluntariness, the trial judge is not required to ask a defendant if his decision to waive a jury trial was induced or coerced.

As to whether explicit findings of both voluntariness and a knowing waiver must be placed on the record by the trial judge, the Court concluded that, if the totality of the relevant circumstances appearing in the record, including statements, discourse, and actions during the waiver colloquy, support the presumption that an implied acceptance of the waiver was made by the court, an appellate court will conclude that an implicit determination was made that the waiver was voluntary and knowing. The permissible inference that the trial judge knew and properly applied the rule and the law of waiver is supported by the Court's decision in *State v. Chaney*, 375 Md. 168, 825 A.2d 452 (2003).

Steven Anthony Powell v. State of Maryland, No. 129, September Term, 2005; Tavony Wayne Zylanz v. State of Maryland, No. 130, September Term, 2005. Opinion filed September 15, 2006 by Harrell, J.

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FAMILY LAW - CHILD CUSTODY - JURISDICTION

Facts: Respondent, Deepa Garg, filed a complaint in the Circuit Court for Baltimore County seeking a limited divorce from her husband, petitioner Ajay Garg, custody of their minor child, Chaitanya, spousal and child support, and certain ancillary relief. Petitioner moved to dismiss the complaint because proceedings were already pending in a court in Indore, India. The Circuit Court concluded that, because of the case pending in India, it should not exercise jurisdiction and dismissed the entire action. The Court

of Special Appeals vacated that judgment and remanded the case for further proceedings, concluding 1) even if the Maryland court should not exercise jurisdiction over the custody dispute, it had subject matter jurisdiction over the divorce action, 2) the Circuit Court erred deferring a request by respondent to appoint an attorney for the child pending resolution of the jurisdictional issue, and 3) in revisiting the jurisdictional issue on remand, the trial court was to apply the newly enacted Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) rather than the Uniform Child Custody Jurisdiction Act (UCCJA) that was in effect when the complaint was filed. The Court of Appeals granted *certiorari* to review the rulings of the Court of Special Appeals.

Held: Judgment of the Court of Special Appeals reversed. The trial court may properly decline jurisdiction in a custody dispute, pursuant to the UCCJA, when proceedings are ongoing in another jurisdiction. The Court of Special Appeals erred in holding that the Circuit Court was required as a matter of law to appoint counsel for the child prior to a hearing on the jurisdictional issues. Although, FL § 1-202 provides that in a contested action for custody or support of a minor child, the court *may* appoint counsel to represent the minor child, the statute merely *authorizes* the appointment of counsel at the discretion of the trial court, reviewable under an abuse of discretion standard. For this case the motion was never formally denied, Respondent did not pursue a ruling, and a hearing proceeded without counsel for the minor child.

The Court of Special Appeals also erred in holding that the newly enacted UCCJEA applied in lieu of the UCCJA. The UCCJEA took effect October 1, 2004 and applies only to cases filed after that date.

Garg v. Garg, No. 97, Sept. Term, 2005, filed June 8, 2006. Opinion by Wilner, J.

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INSURANCE - SUBROGATION - DOCTRINE OF IMPLIED CO-INSUREDS

Facts: Rausch and Harkins both leased properties which became damaged by fires they started during their tenancies. Both landlords had insurance policies that contained subrogation clauses providing (1) if the insurance company paid any loss, the insured person's rights to recover from anyone else becomes the insurance companies right up to the amount paid, (2) the insured person must protect these rights and help the insurance company enforce them, but (3) the insured could waive the right to recover against another person for loss involving the property covered by the policy if the waiver was in writing and was given prior to the date of loss. No such direct waiver was made in either case. The Court granted *certiorari* to determine if there is a contractual right of subrogation against a tenant of the insured who negligently damaged the insured premises and thereby caused loss.

Held: In Misc. No. 6, questions answered as set forth, costs equally divided; In No. 128, judgment of Circuit Court of Harford County affirmed in part and reversed in part; case remanded to that court for further proceedings in conformance with this opinion including, if necessary, resolution of the issue of Harkins's negligence with costs equally divided. The Court held that Maryland does not subscribe to the doctrine of implied co-insureds. Subrogation claims against tenants by landlord's insurance company are permissible on a case by case basis looking at the lease itself and any other admissible evidence under the standard of reasonable expectations of the parties to the lease if there is liability in the first instance by the tenant to the landlord and the tenant is not relieved of liability under the lease or by agreement or the leased premises is a unit within a multi-unit structure.

Rausch, et ux. v. Allstate Insurance Company, Misc. No. 6, Sept. Term, 2004; Harford Mutual Insurance Company v. Harkins, No. 128, Sept. Term, 2004, filed September 8, 2005. Opinion by Wilner, J.

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LABOR AND EMPLOYMENT - OAH - CLASSIFICATION GRIEVANCE

Facts: Petitioners included seven correctional institution employees, each of whom is involved in procurement for the Department. Prior to 1999, DPSCS used the unitary "Agency Buyer" (AB) classification series for all procurement positions. As a result of a 1999 classification study, a separate "Agency Procurement Specialist" (APS) series was promulgated for employees who purchased items using the competitive bidding or negotiation process. DBM examined the 23 positions in the DPSCS that were involved with procurement activities and issued a report. Petitioners were not satisfied with the analysis and filed grievances for further reclassification. The grievances proceeded through the three step grievance process and were referred to the OAH. After an evidentiary hearing, the ALJ filed a memorandum and order in which he granted the grievances filed by two employees and denied the others. DPSCS filed a petition in the Circuit Court for Baltimore County for judicial review of the ALJ's decision to reclassify the two employees and the other five grievants filed a cross-petition seeking review of the denial of relief. The court found no error as to the reclassification but concluded the ALJ exceeded the scope of authority by actually ordering the reclassification and directed the ALJ to modify his order and remand the cases to DBM for restudy. The court affirmed the ALJ's decision as to the other five employees. The Court of Special Appeals held the ALJ did not exceed his authority in ordering the reclassification and reversed the judgment of the Circuit Court on that point and affirmed the Circuit Court ruling as to the other five employees. The Court granted *certiorari* to consider both those issues.

Held: Affirmed. ALJ has the authority to direct that the employee be placed into the proper classification if he concludes that an employee is performing duties that entitle the employee to be in a different classification. SPP § 12-103 provides that, unless another procedure is provided by SPP, the grievance procedure "is the exclusive remedy through which a nontemporary employee in the [SPMS] may seek an administrative remedy for violations of the provisions of this article." The ALJ is the final decision maker and pursuant to SPP § 12-401, the decision maker shall determine not only the "proper interpretation or application of the policy, procedure, or regulation involved in the grievance" but also the "appropriate remedy." Section 12-402(a) makes clear that the remedies include the restoration of "rights, pay, status or benefits" and § 12-402(b) contemplates that back pay must reflect the additional compensation attached to the position the employee should have had. The Court affirmed the Court of Special Appeals with regard to the other five employees.

Department of Public Safety and Correctional Services v. Myers, No. 51, Sept. Term, 2005, filed May 9, 2006. Opinion by Wilner, J.

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REAL PROPERTY - APPEALS

Facts: Petitioner opposed construction of a parking lot that respondent, Baltimore City, authorized. Bill 03-1228 was introduced in October, 2003 and enacted as Ord. No. 04-659 in March, 2004 granting permission for the establishment, maintenance, and operation of the parking lot subject to two conditions. The Bill was enacted to comply with § 10-504 of the Baltimore City Zoning Code prohibiting land in this district from being used as a parking lot "unless authorized by an ordinance of the Mayor and City Council." Petitioners alleged procedural deficiencies and irregularities in th legislative process and that the ordinance prevented petitioners from using adjacent garages for the storage of automobiles effecting an unlawful taking. The City moved to dismiss on the ground that the challenged ordinance did not constitute a "zoning action" under § 2.09 and there was no right to seek judicial review. The court granted the motion and dismissed the appeal and later denied petitioners' motion to alter or amend its judgment, whereupon petitioners noted an appeal to the Court of Special Appeals.

Held: Reversed. The Court held that so long as the Circuit Court entered a final or otherwise appealable judgment, which it did, an appeal will lie. The Court of Special Appeals had jurisdiction to consider the appeal.

Armstrong, et al. v. Baltimore City, Maryland, No. 30, Sept. Term, 2005, filed January 6, 2006. Opinion by Wilner, J.

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REAL PROPERTY - INVERSE CONDEMNATION

Facts: Petitioner claimed lost tenancy and forced relocation due to insistence by Baltimore City that petitioner's landlord redevelop the building in which petitioner's business was located and threats by the City to condemn the building if that was not done. The City placed pressure on the landlord to redevelop the building in conformance with the general redevelopment plan in the area and expressed intent to seek authority to condemn the building if it was not done. Council Bill 823 was introduced in June, 2002 and enacted in March, 2004. CB 823 included the building in a list of 37 structures for which it sought condemnation authority. Petitioner's landlord had made some efforts to renovate the building and terminated petitioner's tenancy in February, 2003 more than a year before the City had legal authority to acquire the building through eminent domain.

Held: Affirmed. The Court of Appeals held that petitioner was not a "displaced person" pursuant to RP § 12-205. The City did not acquire the property by condemnation or through negotiations conducted under threat of condemnation. Petitioner was not displaced as a result of government action.

College Bowl, Inc. v. Mayor and City Council of Baltimore, No. 127, Sept. Term, 2005, filed August 31, 2006. Opinion by Wilner, J.

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TORTS - DETAINMENT PURSUANT TO WARRANT - MISTAKEN IDENTITY

Facts: Respondent Evelyn Yulonda Dett was taken into custody during a routine traffic stop at approximately 5:00 pm on a Friday afternoon. She was arrested pursuant to an outstanding warrant for "Vanessa Hawkins AKA Evelyn Dett." The warrant included a State Identification Number ("SID"), which is a unique number generated for each individual on the basis of their fingerprints. Despite Respondent's protests that she was not the Vanessa Hawkins sought in the warrant, she was brought to Baltimore City Intake Center, where she was fingerprinted. By 6:44 pm that evening, Central Records had processed Ms. Dett's fingerprints, which produced a

different SID than that on the warrant, among other discrepancies between Ms. Dett and the subject of the warrant. Nevertheless, Ms, Dett was transferred to the Baltimore City Detention Center the next morning, where she remained for the weekend. On Monday, paperwork reflecting these discrepancies was filled out, but nothing was done until the next day, when she was finally released on Tuesday afternoon. Ms. Dett filed a claim under the Maryland Tort Claims Act against the state agencies operating the Intake Center and Detention Center for false imprisonment, negligence, and violation of her rights under Article 24 of the Declaration of Rights. The Circuit Court granted summary judgment in favor of the defendants before any discovery. On appeal, the Court of Special Appeals reversed, reasoning that the defendants had to have a good faith belief that they were detaining the proper subject of the warrant in order to have legal justification for the detention, and that there was a genuine dispute of material fact as to whether they retained such a belief through the four days of detention. The Court of Appeals granted *certiorari* to consider whether the Court of Special Appeals erred in reversing.

Held: *Judgment affirmed*. Legal justification to detain an individual against her will pursuant to a facially valid warrant is contingent on a reasonable belief by the detaining officials that they are holding the proper subject of the warrant. Whether the detaining officials held such a reasonable belief despite the numerous discrepancies between what they knew about their prisoner and the information they knew about the subject of the warrant was a material fact of genuine dispute, rendering summary judgment inappropriate.

State of Maryland v. Evelyn Dett, No. 25, September Term, 2005 filed February 7, 2006. Opinion by Wilner, J.

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COURT OF SPECIAL APPEALS

CRIMINAL LAW - PRE-SENTENCE REPORT - MD. CODE, § 6-112(C)(1) & (3) OF THE CORRECTIONAL SERVICE ARTICLE

Facts: Following a re-trial, Darris Ware, appellant, was convicted of the murders of two young women in 1993, for which he was sentenced to death. That conviction was affirmed. However, by way of post conviction relief, he was provided with a new sentencing hearing, at which the State sought life without parole. Because it was appellant's third sentencing on the same case, the court did not order a new pre-sentence report.

Held: Affirmed. At appellant's third sentencing for the same case, the court was not required to obtain a third, updated PSI report, when two other PSI's had been prepared for the two prior sentencing proceedings. In a death penalty or life without parole case, the statute does not mandate that, upon reversal of a conviction that results in a retrial, a new PSI must be obtained.

Darris Alaric Ware v. State of Maryland, No. 2103, September Term, 2004. Filed September 7, 2006. Opinion by Hollander, J.

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CRIMINAL LAW - SIXTH AMENDMENT RIGHT TO JURY TRIAL - MARYLAND DECLARATION OF RIGHTS - CITIZENSHIP - VOIR DIRE - JUROR QUESTIONNAIRE - EVIDENTIARY HEARING - COURTS ARTICLE §§ 8-101 TO 8-401 - ELECTION LAW

Facts: Appellant, Marcus Dannon Owens, was convicted of second-degree depraved heart murder of his two-year old stepson, as

well as first degree assault and child abuse. After appellant's conviction, but before his sentencing, it was discovered that a foreign national sat on the jury that convicted Owens. Appellant moved for a new trial, arguing that his trial was not conducted in front of a lawful jury, because the jury contained a juror who was not qualified for jury service in Maryland. The court denied the motion, reasoning that neither the United States Constitution nor the Maryland Declaration of Rights mandates that a jury be composed only of United States citizens, and that appellant was not prejudice.

Held: Affirmed. In order to qualify for jury service in Maryland, one must be a United States citizen and a citizen of the jurisdiction where the court convenes. However, a defendant in a criminal trial does not have a constitutional right to a jury composed only of United States citizens; that right is a statutory one, and it may be waived. Appellant waived his right to complain because he failed to use the voir dire process to verify the qualifications of the venire panel. Moreover, the circuit court properly held an evidentiary hearing and concluded that the juror's failure to disclose his status as a foreign national on the juror questionnaire was a mere "oversight," and that appellant was not prejudiced.

Article 21 of the Maryland Declaration of Rights, as well as the Due Process Clause of the Fourteenth Amendment, guarantee the right to an impartial jury to the accused in a criminal case. However, a foreign national's service on a jury does not automatically infringe a defendant's due process right to a fair and impartial jury, merely because of his status as a foreign national.

Marcus Dannon Owens v. State of Maryland, No. 2397, September Term, 2004, filed September 7, 2006. Opinion by Hollander, J.

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FAMILY LAW - CHILD CUSTODY - COUNSEL FEES AND COSTS INCURRED BY

PARENT IN ENFORCING CUSTODY ORDER AGAINST OTHER PARENT WHO HAS ABDUCTED CHILD TO FOREIGN COUNTRY - EXCEPTIONS FROM AUTOMATIC STAY IN BANKRUPTCY.

Facts: Father abducted child to Turkey. Court awarded immediate physical and legal custody to Mother, and then, in a trial Father did not attend, awarded final legal and physical custody to Mother. Over the course of two years, Mother incurred several hundred thousand dollars in counsel fees and costs in an effort to enforce the custody orders. Mother filed contempt petition against Father for failure to comply with the court's orders, and submitted evidence of expenses she had incurred in attempting to enforce the orders. Court found Father in contempt, awarded Mother $200,000 as costs, and directed that Father could purge contempt finding by returning child to Maryland, which Father did not do. Judgment was entered in favor of Mother for $200,000.

Mother eventually prevailed in a Hague Convention proceeding in Turkey, and Father returned child to Maryland. Father filed chapter 7 bankruptcy petition. Mother filed paper entitled "request for child support," seeking recovery of fees and costs incurred in obtaining child's return from Turkey. Court determined that Mother's motion was, in fact, for fees and costs, and treated it as such; ruled that the automatic stay in bankruptcy did not apply to proceeding on Mother's motion; awarded Mother $252,930 in fees and costs; and denied Father's motion to deduct the $200,000 judgment from the award because the $200,000 judgment was a contempt sanction, not an award of fees and costs. On appeal, Father challenged award of $252,930.

Held: Vacated order of circuit court and remanded for further proceedings consistent with opinion. Court properly treated Mother's motion for child support as one for fees and costs, which it was in substance. Automatic stay in bankruptcy did not apply to proceedings on Mother's motion because, under federal bankruptcy law, fees and costs incurred in enforcing custody order are a form of child support, and proceeding for child support is an exception to the automatic stay. The $200,000 judgement was an award of fees and costs for some of the same fees and costs later awarded by way of the $252,930 judgment. The court should have subtracted from the $252,930 award any sums that also were covered by the $200,000 award.

Corapcioglu v. Roosevelt, No. 1313, September Term, 2005, filed September 20, 2006. Opinion by Eyler, Deborah S., J.

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LABOR & EMPLOYMENT - ATTORNEYS' FEES - L.E. §§ 3-427 & 3-507.1

Facts: Following the Court of Appeals' decision in *Friolo v. Frankel*, 373 Md. 501 (2003)("*Friolo I*"), the case was remanded to the Circuit Court for Montgomery County so that the court could utilize the lodestar analysis- multiplying Friolo's counsel's reasonable hourly rate by the reasonable number of hours expended in connection with the case- and provide a clear explanation for how it determined attorneys' fees. As they had at each stage of the litigation, Friolo's counsel requested increased attorneys' fees to reflect their post-judgment and appellate work.

After holding a hearing, for argument only, on Friolo's motion for attorneys' fees and costs, as well as the various supplements filed, the circuit court issued an opinion and order awarding attorneys' fees in the amount of $65,348.

Held: Vacated. Although the circuit court used the basic lodestar calculation and stated that it took into consideration several factors, there was no clear explanation of the factors utilized by the court in making its award as required by the Court of Appeals in *Friolo I* .

Friolo was not entitled to "reasonable attorneys' fees" for appellate and post-judgment services that were unrelated to (1) protecting the underlying judgment, (2) securing the specific relief afforded by the trial court, or (3) overturning a grossly disproportionate award, or an outright denial of attorneys' fees.

Frankel v. Friolo, No. 254, September Term, 2005, filed September 14, 2006. Opinion by Sharer, J.

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REAL PROPERTY – TENANCY BY THE ENTIRETY – SEVERANCE AND TERMINATION.

PERPETUITIES – CREATION OF FUTURE INTEREST - VESTING WITHIN PERMISSIBLE PERIOD.

CONTRACTS – SPECIFIC PERFORMANCE.

Facts: In February 1995, Cattail Associates, Inc., entered into a land sales contract with Leonard Sass, Sr., Leonard Sass, Jr., Beverly Sass, Sandra DeVor, and Theresa Sass. Settlement was conditional on Cattail's having obtained the necessary county approvals for its subdivision plan and having settled on an adjacent property. The contract also provided that it will "expire" prior to any violation of the rule against perpetuities. In 2000, Cattail learned that Faye Sass, wife of Leonard Sass, Sr., owned an interest in the property, but was not a party to the contract. In 2002, because it was nearing completion of its subdivision plan, Cattail informed the sellers that it would waive all conditions and proceed to settlement. After the sellers refused, Cattail filed suit for specific performance.

After Cattail presented its case at trial, the circuit court granted judgment in favor of the sellers, finding that the contract violates the rule against perpetuities because settlement is contingent on certain conditions in the control of a third party -- the county. Cattail appealed.

Held: Reversed and remanded for further proceedings.The absence of Faye Sass as a party does not render the contract invalid. The lot in question was owned by Leonard Sass, Sr., and Faye Sass, as tenants by the entirety, in a joint tenancy with Theresa Sass. The signature of Leonard Sass, Sr., on the contract did not transfer Faye's interest in the property. When Theresa Sass contracted to convey her interest in the property, the joint tenancy was severed, and a tenancy in common with Leonard Sass, Sr. and Faye Sass was created. When Leonard Sass, Sr., died, Faye Sass became the sole owner of their interest. If the contract is enforceable, with respect to the lot in question, Cattail would hold an undivided share as a tenant in common with Faye Sass.

The Maryland rule against perpetuities provides that no interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest. If a land sales contract "creates an equitable right in real property, enforceable by specific performance, the contract is subject to the Rule." *Dorado Ltd. P'Ship v. Broadneck Dev. Corp.*, 317 Md. 148, 152, 562 A.2d 757 (1989). Because the granting of the

necessary approvals is within the control of the county, it cannot be known with any certainty whether settlement will take place within the perpetuities period.

The "savings provision" in the contract provides that the contract will "expire" "on the last day of the time period legally permitted by the Rule Against Perpetuities." In a perpetuities analysis, if the measuring life is not expressly identified in the instrument, we look to the natural persons implied by the instrument or involved in the limitations. Considering the Contract as a whole and the express recognition of the perpetuities issue as reflected by the "savings" provision, the clear implication is that the sellers as a class should be considered the measuring lives. To extend to the last day "legally permitted," the title to the Property must vest, if at all, prior to the passing of the last surviving seller, plus twenty-one years. By virtue of the savings clause, the rule against perpetuities is not violated.

The sellers urge two alternative grounds for affirmance: (1) that Cattail could not unilaterally waive the conditions to settlement, and was therefore not entitled to specific performance; and (2) that specific performance is barred by the doctrine of laches. Both issues turn on the facts of the case, as found by the circuit court. Because the court determined that the contract was void *ab initio*, it made no findings on Cattail's waiver or the effect of the eight year delay from execution of the contract to Cattail's suit for specific performance. Consequently, we decline to consider these alternative grounds for affirmance; they should be considered by the circuit court on remand.

Cattail Associates, Inc. v. Leonard Sass, Jr., et al., No. 849, September Term, 2005, filed September 15, 2006. Opinion by Kenney, J.

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TORTS – LANDLORDS – DUTY OWED – LANDLORDS' OWED NO DUTY TO PROTECT DOG-BITE VICTIM FROM DOG OWNED BY TENANTS WHERE, AS OF DATE OF VICTIM'S INJURY, LANDLORDS DID NOT HAVE CONTROL OVER THE PORTION OF THE PREMISES WHERE "THE DANGEROUS OR DEFECTIVE CONDITION" EXISTED.

Facts: On December 23, 2002, Ward, a cab driver, was called to pick up a fare from a home owned by the Hartleys and leased to the Alstons. He knocked on the door of the premises and heard Mrs. Alston tell the children not to open the door. A child opened the door anyway and someone yelled, "Get the dog." At that time, a large dog (a pit bull) bounded out of the house. Ward hit the pit bull with some rolled-up cab sheets, at which time the dog spun around and bit Ward's foot. Ward ran back to the cab and climbed on top of it, despite the dog's jaw still being clamped to his foot.

A police officer who happened to be in the vicinity took a report of the incident. In the report, the officer indicated that, after his arrival, Ms. Alston emerged from the house and said, "I told them [about] that [expletive] dog."

Ward sued the Hartleys and Alstons for injuries caused by the dog bite, alleging that the defendants were liable to him for negligence and strict liability.

At their depositions, the Alstons testified that the dog had never showed his teeth to anyone in an aggressive manner, never bitten anyone, nor had he done anything else to lead them to believe that he was vicious or dangerous. Mrs. Alston testified in deposition that when she yelled, "Don't open the door," she did so for fear that her child would leave the house with a stranger. She denied that she yelled the command because she was afraid that the dog might get out and attack someone.

Mr. Hartley testified at his deposition that the tenants had the responsibility of maintaining the premises, that he did not even know that the Alstons had a dog until after the incident and that after he leased the premises to the Alstons he never inspected the inside of the premises but that he would drive past the premises every three or four months to make sure that all of the windows and other things were still intact.

The Hartleys filed a motion for summary judgment in which they claimed that Ward could not prove liability against him for three independent reasons, viz.:

> As landlords they did not maintain control over the premises leased to the

> Alstons and therefore they owed no duty to the tenants' invitees (such as Ward) who were injured on the leased premises.
>
> Alternatively, even if Ward could prove that the Hartleys retained control over the portion of the premises where the injury occurred, Ward could not prove that they had any knowledge of the vicious propensities of the Alstons' dog prior to the date of Ward's injury.
>
> Even if Ward could prove that the Hartleys had a duty to inspect the leased premises, Ward could not prove that had an inspection been made by them prior to the date of injury they would have discovered that the Alstons kept a vicious dog on the premises.

The summary judgment motion and plaintiff's opposition thereto was supported by (1) a copy of the lease between the Hartleys and the Alstons; (2) the police report concerning the December 23 incident; (3) interrogatory answers filed by Ward and Hartley; and (4) excerpts from the depositions of Ward, Stephen Hartley, and the Alstons.

The Hartleys' motion for summary judgment was granted. Ward dismissed the Alstons from the case and appealed.

Issues: Is a landlord liable to an invitee who is bit by a tenant's dog on the landlord's leased premises?

Held: No. Judgment affirmed.

The Court held that a landlord owes no duty to a protect dog-bite victim from a dog owned by tenants where, as of the date of the victim's injury, the landlord did not have control over the portion of the premises where "the dangerous or defective condition" existed.

The Court also held that, even if Ward could prove that the landlord retained control over the portion of the premises where the injury occurred, appellant could not prove that either the tenants or the landlord had actual or constructive knowledge of the vicious propensities of the tenants' dog prior to the date of the appellant's injuries.

The Court went on to point out that summary judgment was also appropriately granted because Ward could not prove that had an

inspection been made by the landlord prior to the date of injury the landlord would have discovered that the tenants kept a vicious dog on the premises.

Lastly, the Court declined Ward's invitation to establish a judicial fiat that "all pit-bull dogs are dangerous" because there was no factual basis for such a conclusion.

Ward v. Hartley, No. 175, September Term, 2005, filed April 10, 2006. Opinion by Salmon, J.

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WORKERS' COMPENSATION ACT - AWARDS FOR COMPENSABLE HEARING LOSS

Facts: Appellant, employed by appellee as a mold shop worker for more than 30 years, filed a notice of employee's claim for workers' compensation benefits, under Maryland's Workers' Compensation Act ("the Act"), Maryland Code, Labor and Employment Article, Title 9, alleging that "years of exposure to loud glass machine(s) caused [a] loss of hearing." Although a compensation formula computation, under § 9-650 of the Act, indicated that appellant suffered a zero percent hearing loss, appellant did suffer some hearing loss within the frequencies of the 2000 and 3000 hertz range.

Following a hearing on appellant's claim, the Commission passed an order denying compensation because appellant failed to meet the threshold requirements for compensable hearing loss under the Act. In consideration of the parties' opposing motions for summary judgment, the circuit court granted summary judgment in favor of the employer, denied appellant's motion for summary judgment, and affirmed the decision of the Commission.

Held: Affirmed. Appellant conceded that he did not meet the audiological requirements for compensable hearing loss under § 9-650, but argued that he nevertheless was entitled to compensation

in the form of medical expenses, by virtue of experiencing some hearing loss within the 2000 and 3000 hertz ranges, under the much broader language of § 9-505 setting out the definition of occupational deafness.

The Court found that § 9-650 provides the technical criteria necessary for any claim of compensable occupational hearing loss. The language of § 9-505 suggests that it does not exist in a vacuum, but is qualified by other provisions of the Act. The language of § 9-505 is also much too broad and nontechnical to serve as a measure of compensability for occupational hearing loss. Section 9-505, however, does serve an independent purpose under the Act by providing recognition that occupational hearing loss due to industrial noise in certain frequencies is, in fact, a compensable condition when qualified by the provisions of Part VII of subtitle 6 of the Act, and, in particular, § 9-650.

Green v. Carr Lowery Glass Company, No 0990, Sept. Term, 2005, filed September 15, 2006. Opinion by Sharer, J.

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JUDICIAL APPOINTMENTS

On August 11, 2006, the Governor announced the appointment of DANEEKA LaVARNER COTTON to the District Court for Prince George's County. Judge Cotton was sworn in on
And fills the vacancy created by the elevation of Hon. Albert N