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http://mdcourts.gov/opinions/coa/2012/90a11.pdf

ADMINISTRATIVE LAW – EMPLOYEE DISCIPLINE – APPEALS PROCEDURE

Facts:

Vanessa Fisher, a correctional officer at the Eastern Correctional Institution (ECI), was terminated from employment during early December 2008. Pursuant to § 11-109(c)(1) of the Maryland Code (1993, 2009 Repl. Vol.), State Personnel and Pensions Article, Ms. Fisher timely appealed her termination to the head of her principal unit, Gary D. Maynard, Secretary of the Department of Public Safety and Correctional Services. Section 11-109(e)(2) provides that "[w]ithin 15 days after receiving an appeal, the head of the principal unit shall issue to the employee a written decision that addresses each point raised in the appeal"; however, Secretary Maynard did not issue a decision on Ms. Fisher's appeal. Therefore, Ms. Fisher further appealed her termination to the Secretary of the Department of Budget and Management (DBM) in August of 2009.

The Secretary of DBM forwarded the appeal to the Office of Administrative Hearings for a hearing, where ECI moved to dismiss the appeal. ECI argued that § 11-108(b)(2), which provides "[a] failure to decide an appeal in accordance with this subtitle is considered a denial from which an appeal may be made," was triggered to automatically deny Ms. Fisher's appeal after Secretary Maynard did not issue a decision within 15 days. According to ECI, § 11-110(a)(1) required Ms. Fisher to file an appeal of the § 11-108(b)(2) automatic denial "[w]ithin 10 days after receiving [the] decision." Because she filed her appeal nearly 230 days after the automatic denial, the appeal was untimely. Ms. Fisher countered that §11-109(e)(2) required Secretary Maynard to issue a decision, while § 11-108(b)(2) granted her the discretion to choose when the non-decision was deemed a denial, thereby making her appeal timely.

The ALJ agreed with ECI, dismissing Ms. Fisher's appeal. On judicial review, both the Circuit Court for Somerset County and Court of Special Appeals affirmed the ALJ, holding that § 11-108(b)(2) deemed Secretary Maynard's non-decision a denial of the appeal, so that Ms. Fisher should have filed her further appeal within 10 days of that automatic denial.

Held: Affirmed

The Court of Appeals found that the only commonsensical way to interpret the statutory framework for appeals of disciplinary action was to read § 11-108(b)(2) as deeming Secretary Maynard's non-issuance of a decision as a denial of Ms. Fisher's appeal. Ms. Fisher's interpretation, granting an employee unfettered discretion on when to take a further appeal, was illogical in the face of the 10-day requirement imposed by § 11-110(a)(1). The Court's interpretation was confirmed by legislative history, as the statutes at issue were the product of an effort to make the State Personnel Management System more streamlined and efficient. Deeming a non-decision after 15 days a denial ensured that an employee's appeal was always ready for further judicial review after 15 days, while allowing an employee the choice of when to take a further appeal would burden the system with unpredictable delays.

Attorney Grievance Commission of Maryland v. Constance A. Camus, AG No. 15, September Term, 2011, filed April 23, 2012. Opinion by McDonald, J.

http://mdcourts.gov/opinions/coa/2012/15a11ag.pdf

ATTORNEY DISCIPLINE – APPROPRIATE SANCTIONS – DISBARMENT

Facts:

The Attorney Grievance Commission charged Constance A. Camus with violating several provisions of the Maryland Lawyers' Rules of Professional Conduct ("MLRPC"), including MLRPC 1.1 (duty to provide competent representation), 1.2(a) (duty to abide by client decisions regarding objectives of representation), 1.3 (duty to act with reasonable diligence and promptness), 1.4 (a) and (b) (duty to inform and consult with client), 1.5(a) and (d) (prohibition against unreasonable fees), 1.15 (a) and (d) (duty to keep safe funds of client or third parties), 1.16(d) (duty to protect client interests after termination of representation), 3.4(c) (duty to respond to lawful demand from disciplinary authority), 8.4(b) (prohibition against commission of a criminal act that reflects adversely on fitness), 8.4(c) (prohibition against conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (prohibition against conduct prejudicial to the administration of justice).

Ms. Camus was admitted to practice law in Maryland in 1997. As a solo practitioner, she agreed to represent a client in a custody matter and another client in a divorce case. In the custody matter, the client compensated Ms. Camus by cleaning her house and doing household chores once a week for six months. Ms. Camus, however, never entered her appearance in the case, despite a court order directing her to do so, and never responded to discovery requests or submitted her own such requests. After the client eventually obtained new counsel, Ms. Camus failed to provide her successor with the client's file.

In the divorce case, Ms. Camus advised her client to take funds from a joint marital account and transfer them to her trust account for safekeeping. She then took those funds as legal fees without informing the client, receiving consent, or providing billing statements. She was frequently late to and unprepared for various proceedings, and at one point misrepresented to the court that an expert was unprepared for trial in order to achieve a postponement. When her client obtained substitute counsel and filed an attorney grievance complaint against her, Ms. Camus refused to turn over the client's file and sent the client a legal bill for more than $100,000. The client eventually accepted a settlement offer that was less than an offer Ms. Camus had earlier advised her to reject. Ms. Camus missed multiple deadlines in the resulting attorney grievance investigation, including submitting one response more than 15 months after it was requested.

Pursuant to Maryland Rule 16-752, the case was referred to Judge Pamela L. North of the Circuit Court for Anne Arundel County to conduct an evidentiary hearing and make findings of fact and

conclusions of law. Judge North found violations of MLRPC 1.1, 1.2(a), 1.3, 1.4(a) and (b), 1.5(a) and (d), 1.15(a) and (d), 1.16(d), 3.4(c), 8.1(b), and 8.4(b), (c), and (d). Ms. Camus filed several exceptions to Judge North's conclusions of law, arguing that the alleged violations were legitimate disagreements between her and her clients, professional judgments made in good faith, and genuine misunderstandings about the purpose of client funds. She contended that her fees and communications with clients were reasonable. She also argued that, to the extent that there was misconduct, it was unintentional and her clients had not been prejudiced.

Held:

Ms. Camus violated 1.1, 1.2(a), 1.3, 1.4(a) and (b), 1.5(a) and (d), 1.15(a) and (d), 1.16(d), 3.4(c), 8.1(b), and 8.4(b), (c), and (d) by failing to enter an appearance in a case, failing to provide former clients with their files, failing to adequately prepare for proceedings and arrive to those proceedings on time, failing to adequately communicate with clients, failing to inform a third party about received funds in which that party had an interest, failing to keep client funds separate from her own, failing to timely respond to inquiries by a disciplinary authority, billing a client an unreasonable and retaliatory amount, and making misrepresentations to a court. The appropriate sanction was disbarment.

The Court agreed with Judge North's conclusions and accepted her findings of fact. An attorney who exhibits indifference toward and neglect of clients, disregard of a court order, cavalier treatment of trust funds, and an unreasonable and retaliatory bill has engaged in a pattern of misconduct and MLRPC violations. The Court explained that misappropriation of funds, taken alone, is grounds for disbarment. The Court did not find persuasive as mitigation that Ms. Camus was overwhelmed by her caseload, had a thyroid illness, and reformed and changed the focus of her practice. The Court emphasized the range and seriousness of Ms. Camus' misconduct, from failing to enter an appearance in a case to taking client funds without the client's knowledge or consent. To properly protect the public, disbarment was the necessary sanction.

In the Matter of Ira C. Cooke for Reinstatement to the Bar of Maryland, No. 82, September Term 2007, filed April 25, 2012. Opinion by Bell, C.J.

Battaglia, Adkins, and McDonald, JJ., dissent.

http://mdcourts.gov/opinions/coa/2012/82a07ag.pdf

LEGAL ETHICS – SANCTIONS – DISCIPLINARY PROCEEDINGS – APPEALS

Facts:

Ira C. Cooke was convicted in the Superior Court of California of various offenses involving fraud, deceit or misrepresentation. He appealed the judgments of conviction; however, while his appeal was pending, the Attorney Grievance Commission filed, along with the petitioner, a Joint Petition for Disbarment, citing Maryland Lawyers' Rule of Professional Conduct 8.4 (c) (misconduct involving dishonesty, fraud, deceit, or misrepresentation), and using his conviction as evidence of the misconduct. In that joint petition, the petitioner consented to disbarment, thus conceding the appropriateness of both the proceeding and the agreed upon sanction. During his disbarment from the practice of law, and while his appeal was pending, the petitioner, pursuant to his California court sentencing, as well as on his own accord, completed more than 1,000 hours of community service, paid restitution to the State of California, and resumed work as a consultant and as a part-time volunteer at a halfway house in Hagerstown, Maryland.

Subsequently, the Court of Appeal of California reversed the petitioner's convictions and, on remand for a new trial, the State of California dismissed the underlying charges. The convictions were not reversed due to an insufficiency of evidence, but rather for prosecutorial misconduct that resulted in the introduction of unlawful evidence during trial. This Petition for Reinstatement followed. In it, the petitioner asks whether, where the criminal convictions on the basis of which he joined in filing a joint petition for disbarment and pursuant to which he was disbarred have since been reversed, the underlying charges dismissed on remand and not further pursued and he has, since his disbarment, become a proper person to practice law, he should be reinstated to the Bar of Maryland. Bar Counsel did not challenge the averments of the Petition.

Held:

The petitioner is ordered reinstated.

The factors we are to consider for reinstatement to the bar are (1) the nature and circumstances of the original misconduct; (2) the petitioner's subsequent conduct and reformation; (3) his present character; and (4) his present qualifications and competence to practice law. Where a petitioner for reinstatement consented to his own disbarment while the appeal of his convictions was pending, and his convictions were eventually reversed and the charges not retried, his

consent to disbarment does not amount to an admission of guilt and, thus, we can not take the facts, as stated in his trial, as true. Rather, the reversal and failure to retry the charges are considerations in the petitioner's favor bearing on the "nature and circumstances of the original misconduct." The petitioner, therefore, having shown clear and convincing evidence of reformation of character and present competence to practice law, is ordered reinstated.

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Attorney Grievance Commission v. Barry S. Brown, AG No. 1, September Term 2011, filed April 23, 2012. Opinion by Harrell, J.

http://mdcourts.gov/opinions/coa/2012/1a11ag.pdf

ATTORNEY DISCIPLINE – DISBARMENT – PROFESSIONAL MISCONDUCT:

Facts:

Petitioner, the Attorney Grievance Commission, acting through Bar Counsel, charged Respondent, Barry S. Brown, Esq., with violating the following Maryland Lawyers' Rules of Professional Misconduct (MLRPC) during his representation of four clients: 1.1, 1.2(a), 1.3, 1.4(a) & (b), 1.6(a), 1.16(d), 3.2, 8.1(a) & (b), and 8.4(c) & (d). An evidentiary hearing was held in the Circuit Court for Baltimore County from 26–29 September 2011. The hearing judge found the following facts. Respondent failed to prosecute his pertinent clients' claims in a timely manner, causing them to be dismissed for lack of prosecution. The applicable statute of limitations expired for two of those clients' claims prior to being dismissed by the lower court, leaving those clients without recourse for their claims. Respondent failed to respond to opposing parties' discovery requests, precipitating sanctions against his clients' claims. Further, Respondent explained his discovery response lapses with cryptic, unsubstantiated excuses. Respondent ignored his clients' repeated requests for updates about their respective cases, and failed to keep his clients apprised of the status of their claims. Respondent failed to provide to his clients, upon request, the portions of their case files (or a copy) to which they were entitled. Respondent misrepresented to two clients the statuses of their cases by express misrepresentation and by concealment. The hearing judge concluded that Respondent violated all the MLRPC alleged by Petitioner except MLRPC 1.6(a) and 8.1(a). Although Respondent did not file exceptions to the hearing judge's written findings of fact and conclusions of law, he filed two motions. He filed one with the Circuit Court, titled "Respondent's Motion for New Trial," and another with Court of Appeals, titled "Respondent's Motion to Dismiss or, in the Alternative, to Remand."

Held:

The appropriate sanction was disbarment. Regarding Respondent's motions, which it construed as excepting to the hearing judge's findings, the Court did not consider them. Respondent filed his Circuit Court motion for a new hearing with the wrong court; the Court of Appeals is the sole body with authority to grant a remand or a new hearing. Respondent filed his motion with the Court of Appeals untimely, per Rule 16-758. Even if the Court had considered Respondent's motions and treated them as exceptions, they would have been overruled. Where neither party filed exceptions to the hearing judge's written findings, the Court confirmed the hearing judge's findings under a non-deferential standard of review. As a result, the Court disbarred Respondent.

Attorney Grievance Commission of Maryland v. Henry D. McGlade, AG No. 6, September Term 2010, filed April 24, 2012. Opinion by Barbera, J.

http://mdcourts.gov/opinions/coa/2012/6a10ag.pdf

ATTORNEY DISCIPLINE – SANCTIONS – INDEFINITE SUSPENSION

Facts:

Petitioner, the Attorney Grievance Commission, acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action against attorney Henry D. McGlade, Jr., Respondent. Petitioner alleged violations of the Maryland Lawyers' Rules of Professional Conduct (MRPC) based on Respondent's conduct in the course of his representation of a client in an action by Anne Arundel County (County) for permanent injunctive relief based on alleged building code violations.

The Court of Appeals assigned the matter to the Honorable Pamela L. North, of the Circuit Court for Anne Arundel County, pursuant to Maryland Rule 16-752(a). Judge North conducted a three-day hearing and thereafter issued written findings of fact and conclusions of law. Judge North found by clear and convincing evidence that Respondent violated MRPC 1.1 (Competence), 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.3 (Diligence), 1.4 (Communication), 3.3 (Candor Toward the Tribunal), and 8.4(a), (c), and (d) (Misconduct).

Judge North found that Respondent had represented Mr. Jerome G. Brewis since 1999. Mr. Brewis received a civil citation for building code violations with respect to boathouses and piers located on his property. The County then filed an action for permanent and mandatory injunctive relief, and Brewis requested that Respondent represent him in that action. In the several days before the scheduled trial date of February 1, 2007, Respondent attempted to reach Brewis but was unsuccessful. Respondent appeared at the courthouse on the trial date and negotiated and entered into a proposed consent order. Respondent represented to the County Attorney that he had discussed the terms of the order with Brewis, who was in agreement. The terms included that Brewis would pay a $1625 fine and apply for permits for all cited structures within 30 days. Respondent, however, had not discussed the terms with Brewis before entering into the agreement. Respondent and the County Attorney then informed the trial judge that the parties had reached an agreement, and the judge signed the proposed consent order. Respondent paid the $1625 fine with a cashier's check, but did not apply for any permits during the thirty-day period specified in the consent order. Respondent did not discuss the consent order with Brewis until late March 2007. As neither Brewis nor Respondent had applied for the permits within the thirty-day period, the County filed a contempt petition against Brewis. Ultimately, Brewis, represented by different counsel, filed a motion to vacate the consent order, which the court granted.

Judge North concluded that Respondent violated MRPC 1.1 and 1.2 by failing to obtain Brewis's express authority to agree to the proposed consent order that ultimately settled the litigation. Additionally, Judge North concluded that Respondent's insufficient communication with Brewis both before and after the February 2007 trial date violated MRPC 1.4. Similarly, Respondent's failure to contact Brewis within thirty days after entering into the consent order in conjunction with his failure to file the permit application, or requests for variances, within that time period violated MRPC 1.3. Judge North concluded that Respondent violated MRPC 3.3 when he represented to the trial court that Brewis had consented to the $1625 fine by stating that "we very much want to avoid the entry of a money judgment, so we have today paid the fines." Finally, Judge North found that Respondent violated MRPC 8.4(a), (c), and (d). Respondent violated: MRPC 8.4(a) by having violated other Rules of the MRPC; 8.4(c) by misrepresenting that he was in communication with Brewis during the settlement negotiation; and 8.4(d) by entering into a consent agreement without authority from Brewis, which agreement led to the entry of a consent order that prejudiced Brewis and ultimately was vacated.

On remand for supplemental findings of fact concerning whether Respondent had proved remorse for his actions, Judge North found that Respondent demonstrated "some modicum of remorse" by a preponderance of the evidence.

Held:

Respondent violated MRPC 1.1, 1.2, 1.3, 1.4, 3.3, and 8.4(a), (c), and (d), for which the appropriate sanction is indefinite suspension.

Petitioner filed no exceptions to Judge North's findings and conclusions. Respondent excepted to Judge North's failure to make findings as to mitigation, which was rendered moot by Judge North's supplemental findings on remand. Respondent's remaining exception challenged Judge North's finding that the word "we" led the trial judge to assume that Respondent had communicated with and obtained the consent of Brewis. The Court of Appeals conducted an independent review of the record, giving deference to the hearing judge's findings of fact. Accordingly, the Court overruled Respondent's exception to Judge North's factual finding. The Court concluded that there was clear and convincing evidence in the record that Respondent violated each of the rules noted above.

The Court further concluded that indefinite suspension was the appropriate sanction for Respondent's conduct, noting that Respondent did not engage in criminal conduct or perpetuate an actual fraud upon the court. Moreover, Respondent had no prior disciplinary record, had a good reputation as an attorney, and was found by Judge North to have demonstrated a minimal amount of remorse.

Muhammad H. Abdul-Maleek v. State of Maryland, No. 46, September Term 2011, filed April 27, 2012. Opinion by Barbera, J.

Bell, C.J., Greene and Cathell, JJ., concur.

http://mdcourts.gov/opinions/coa/2012/46a11.pdf

APPELLATE REVIEW – IMPERMISSIBLE SENTENCING CONSIDERATIONS – WAIVER
CRIMINAL PROCEDURE – SENTENCING – IMPERMISSIBLE CONSIDERATIONS

Facts:

Petitioner was convicted of theft in the District Court of Maryland sitting in Montgomery County. The court sentenced him to eighteen months' incarceration, sixteen months suspended, with one year of supervised probation upon release, and a fine of $500, $350 of which was suspended. Additionally, the court ordered Petitioner to pay restitution.

Petitioner appealed to the Circuit Court for Montgomery County. After a de novo trial, the jury returned a guilty verdict. At sentencing, the State argued for executed incarceration greater than what the District Court had imposed and specifically referenced that the District Court had imposed eighteen months, with all but sixty days suspended. When imposing sentence, the Circuit Court referenced that Petitioner "had every right to go to trial," and exercised that right "not once, but twice." The Circuit Court also mentioned that the victim had been required to testify in the District Court and then again in the Circuit Court. Ultimately, the Circuit Court imposed an eighteen month sentence, with all but eight months suspended, with eighteen months of probation upon release. Petitioner was also ordered to comply with standard probation conditions, to submit to drug and alcohol testing, to pay restitution, and to have no contact with the victim.

Petitioner filed a Petition for Writ of Certiorari, which the Court of Appeals granted, to consider whether the Circuit Court's reference at sentencing to Petitioner's having exercised his right to a de novo trial gave the appearance of an impermissible consideration.

Held:

Sentence vacated and case remanded for resentencing. The Court of Appeals held preliminarily that Petitioner had waived the issue because he failed to lodge a contemporaneous objection to the sentencing court's statements. The Court declined to expand the narrow category of allegations to which waiver principles do not apply. The Court, however, exercised its discretion to consider the issue, pursuant to Maryland Rule 8-131(a), because: (1) neither Petitioner nor the State would be prejudiced; and (2) the Court would be able to promote the "orderly administration of justice" by considering Petitioner's claim.

The Court held that, although confident that the Circuit Court knew the law and applied it correctly, as is presumed generally of judges, the sentence must be vacated and Petitioner resentenced because the Circuit Court's statements could "lead a reasonable person to infer that [the court] *might* have been motivated by an impermissible consideration." *Jackson v. State*, 364 Md. 192, 207, 772 A.2d 273, 281 (2001) (emphasis added).

Alonzo Jay King v. State of Maryland, No. 68, September Term, 2011, filed 24 April 2012. Opinion by Harrell, J.

Barbera and Wilner, JJ., dissent.

http://mdcourts.gov/opinions/coa/2012/68a11.pdf

CRIMINAL LAW – MARYLAND DNA COLLECTION ACT – FOURTH AMENDMENT – COLLECTION FROM MERE ARRESTEE

Facts:

In 2009, Alonzo Jay King was arrested on charges of first- and second-degree assault. While an arrestee only and pursuant to Maryland's DNA Collection Act, Maryland Code (1974, 2011 Repl. Vol.), Pub. Safety Art., § 2-504(3), the State collected King's DNA, analyzed it, and entered the results into Maryland's DNA database. King was convicted ultimately on the second-degree assault charge but, pending his trial on that charge, his DNA profile generated a match to a DNA sample collected from a sexual assault forensic examination conducted on the victim of an unsolved 2003 rape. This "hit" provided the sole probable cause for a subsequent grand jury indictment of King for the rape. A later-obtained search warrant ordered collection from King of an additional reference DNA sample, which, after processing and analysis, matched also the DNA profile from the 2003 rape. King was convicted of first-degree rape and sentenced to life in prison.

King appealed timely to the Court of Special Appeals, but the Court of Appeals granted, on its initiative, a petition for writ of certiorari to consider the following questions:

Did the trial court err by denying Appellant's motion to suppress DNA evidence obtained through a warrantless search conducted without any individualized suspicion of wrongdoing?

Did the court below improperly shift the burden of proof to the defense to demonstrate that a search or seizure made without individualized suspicion is unreasonable?

Held: Reversed.

The Court of Appeals concluded that § 2-504(3) of the Maryland DNA Collection Act, which allows DNA collection from persons arrested, but not yet convicted, for crimes of violence and burglary, is unconstitutional, under the Fourth Amendment totality of the circumstances balancing test, as applied to the relevant facts of this case because King's expectation of privacy is greater than the State's purported interest in using King's DNA to identify him for purposes of his 10 April 2009 arrest on the assault charges. The traditional methods for ascertaining and/or confirming the identity of King were, on this record, adequate to that purpose. Concluding that,

in King's circumstances, his DNA was collected unconstitutionally, and the evidence presented at trial should have been suppressed as "fruit of the poisonous tree," the Court did not reach King's second question as it became moot.

State of Maryland v. Reginald Stringfellow, No. 62, September Term 2011, filed April 23, 2012. Opinion by Harrell, J.

Bell, C.J., joins in judgment only. Battaglia and Adkins, JJ., concur.

http://mdcourts.gov/opinions/coa/2012/62a11.pdf

CRIMINAL LAW – PROCEDURE – OBJECTION TO VOIR DIRE QUESTION – PRESERVATION – HARMLESS ERROR

Facts:

The State charged Stringfellow with (1) possessing a regulated firearm after having been convicted of a disqualifying crime, and (2) wearing, carrying, or transporting a handgun. On the first day of his jury trial in the Circuit Court for Baltimore City, the trial judge reviewed voir dire questions proposed by the parties. The State proposed a voir dire question that inquired whether any member of the venire believed that the State must use certain scientific evidence and/or scientific investigative techniques before a potential juror could find the defendant guilty beyond a reasonable doubt. Stringfellow's attorney objected to the State's question unsuccessfully, and the trial judge propounded the State's question to the venire. At the conclusion of jury-selection process, both parties accepted without qualification the jury as empaneled, notwithstanding Stringfellow's prior objection. The jury found Stringfellow guilty of both crimes. Stringfellow appealed to the Court of Special Appeals, arguing successfully that the trial judge propounded erroneously the State's voir dire question and it prejudiced the jurors against him. The State petitioned successfully the Court of Appeals for a writ of certiorari.

Held: Reversed.

Stringfellow's objection posited that the State's voir dire question prejudiced the venire and the ultimate jurors against him; i.e., the question inferred that Stringfellow was guilty and lowered the State's burden of proof by diminishing the value of scientific evidence/investigative techniques (which were lacking from the State's case). Voir dire objections of this nature, going to the inclusion or exclusion of a prospective jurors from the ultimate panel, are waived when the objecting party fails to renew his/her earlier objection or otherwise qualify his/her acceptance at the time the jury is sworn-in. Accepting the empaneled jury without complaint is directly inconsistent with the earlier objection about the prospective jurors. Thus, Stringfellow abandoned his prior objection to the propounded voir dire question when he accepted, without qualification or reservation, the empaneled jury. Even if propounding the subject voir dire question was erroneous, the error was harmless. The trial judge allowed explicitly Stringfellow to argue in closing the absence of scientific evidence linking Stringfellow to the handgun as reason enough to find reasonable doubt, which cured the error. Moreover, the judge's jury instructions contributed also to curing any error stemming from the subject voir dire question.

Carlton M. Green, Personal Representative of the Estate of Walter L. Green, et al. v. Helen Nassif, No. 57, September Term, 2011, filed April 20, 2012, Opinion by Adkins, J.

Harrell, J., concurs and dissents.

http://mdcourts.gov/opinions/coa/2012/57a11.pdf

ESTATES AND TRUSTS LAW – ENFORCEABLE CLAIMS: The term "enforceable claims," as used in Maryland Code (1974, 1991 Repl. Vol.), Section 1-101(n) of the Estates and Trusts Article, means claims that in fact reduce the assets in the estate or are allowed by the court.

ESTATES AND TRUSTS LAW – VALUATION OF ELECTIVE SHARE ASSETS: Assets in a spouse's elective share are valued, when paid in kind by legatees, as of the date of distribution, and when paid in cash pursuant to Maryland Code (1974, 1991 Repl. Vol.), Section 3-208(b) of the Estates and Trusts Article, as of the date of the spouse's election to take a statutory share.

ESTATES AND TRUSTS LAW – UNTIMELY DECISION TO PAY CASH: Ordinarily, legatees cannot exercise the option to pay a spouse's elective share in cash, under Maryland Code (1974, 1991 Repl. Vol.), Section 3-208(b) of the Estates and Trusts Article, 13 years after the decedent's death.

ESTATES AND TRUSTS LAW – ELECTIVE SHARE INCOME: Elective spouses share in income on assets in the net estate.

JUSTICIABILITY – An issue is not justiciable on appeal when the parties have not pointed to specific facts that would be affected by a judgment on the issue.

Facts:

This case involves a dispute over a decedent's multi-million dollar estate between the decedent's wife, Helen Nassif, and his two children, Anne D. Fotos and Carlton M. Green. Instead of receiving her bequest in the Will, Nassif elected to take a statutory share of the estate pursuant to Maryland Code (1974, 1991 Repl. Vol.), Section 3-206(a) of the Estates and Trusts Article. There were numerous claims against the estate that needed to be paid or settled before it could be distributed. Green, acting as Personal Representative, was able to reduce or settle many of the claims so that the estate was ultimately diminished by only $102,869. Nevertheless, he claimed that he was entitled, under the law in effect when the decedent died, to deduct $13,204,136 in claims from the estate before calculating Nassif's one-third statutory share.

Green filed a complaint for declaratory judgment seeking a declaration that (1) his calculation of enforceable claims totaling in excess of $13 million was correct; (2) those claims were properly

deductible from Nassif's statutory share; and (3) Green and Fotos could pay Nassif her statutory share in cash, pursuant to Section 3-208(b)(2), in an amount equal to the fair market value of the interest in the specific property on the date the election to take an elective share was made by Nassif. The trial court ruled in Green's favor, and Nassif appealed. The Court of Special Appeals held that (1) enforceable claims means claims that are valid and are required to be paid or paid; (2) an elective spouse shares in income on estate property, even if the legatees decide to pay her statutory share in cash; (3) the Maryland Uniform Principal and Income Act, Maryland Code (1974, 2001 Repl. Vol.), § 15-501 *et seq.* of the Estates and Trusts Article, applies in this case; (4) there is no time limit on a legatee's decision to pay an elective spouse in cash; and (5) assets in the spouse's statutory share are valued as of, (a) for property, the date of distribution, and (b) for cash, the date of the spouse's election to take a statutory share. Both parties filed petitions for *certiorari*.

Held:

The Court of Appeals affirmed in part, reversed in part, and vacated in part, holding that (1) "enforceable claims," as used in Maryland Code (1974, 1991 Repl. Vol.), Section 1-101(n) of the Estates and Trusts Article, means claims that in fact reduce the assets in the estate or are allowed by the court; (2) assets in a spouse's elective share are valued, when paid in kind by legatees, as of the date of distribution, and when paid in cash pursuant to Section 3-208(b), as of the date of the spouse's election to take a statutory share; (3) ordinarily, and under the circumstances present here, legatees cannot exercise the option to pay a spouse's elective share in cash 13 years after the decedent's death; (4) elective spouses share in income on assets in the net estate; and (5) there is no justiciable issue in this case regarding the Maryland Uniform Principal and Income Act. The Court remanded for a new calculation of the enforceable claims that could be deducted before calculating Nassif's statutory share.

Johnette Cosby v. Department of Human Resources, Allegany Department of Social Services, No. 74, September Term 2011, filed April 25, 2012. Opinion by Greene, J.

http://mdcourts.gov/opinions/coa/2012/74a11.pdf

COLLATERAL ESTOPPEL – ADMINISTRATIVE ABUSE/NEGLECT HEARING:

Facts:

Johnette Cosby ("Ms. Cosby" or "Petitioner") requested an administrative hearing to challenge a determination by the Allegany County Department of Social Services ("the Department" or "Respondent") that she was responsible for "indicated child neglect," a finding which would result in her placement into the Department's central registry of child neglectors. Prior to the hearing, her son was adjudicated to be a Child in Need of Assistance (CINA) based on the same allegations of neglect presented in the administrative action. As a result, the administrative law judge granted the Department's motion to dismiss Ms. Cosby's administrative appeal based on collateral estoppel. Ms. Cosby filed a petition for judicial review, arguing that amendments to Maryland Code (1984, 2006 Repl. Vol.) § 5-706.1 of the Family Law Article precluded application of the common law doctrine. The Circuit Court for Allegany County agreed and reinstated Ms. Cosby's administrative appeal, however, the Court of Special Appeals reversed that determination. *See Dep't of Human Res. v. Cosby*, 200 Md. App. 54, 24 A.3d 199 (2011).

Held: Affirmed.

It was clear that amendments to § 5-706.1 of the Family Law Article did not abrogate the application of common-law collateral estoppel in administrative abuse or neglect hearings. Prior to the amendments, if a CINA petition had been filed involving the child victim, the alleged maltreator could not appeal unless and until the CINA petition was dismissed, irrespective of the possibility that he or she may not have been a party to the CINA proceeding or that the facts presented in the CINA petition may have differed from those supporting the Department's finding. The amendments removed this overreach in order to comport with, rather than prohibit, the common law tenent, allowing an ALJ to apply collateral estoppel in a proper case.

Kelly Swartzbaugh, et al. v. Encompass Insurance Company of America
No. 100, September Term 2011, filed April 25, 2012. Opinion by McDonald, J.

http://mdcourts.gov/opinions/coa/2012/100a11.pdf

INSURANCE LAW – UNINSURED MOTORIST COVERAGE WAIVER – FIRST NAMED INSURED

Facts:

In July 1998, Lynne Swartzbaugh purchased an automobile insurance policy for her family. The policy, which provided liability coverage greater than the minimum required by law, included a waiver of uninsured motorist ("UM") coverage that reduced the amount of that coverage from an amount equal to the liability coverage to the minimum permitted by law. Under Insurance Article, §19-510(b), such a waiver is to be executed by the "first named insured," although that phrase is not defined in the statute. Lynne Swartzbaugh personally signed the waiver form, which included a certification that she was the "first named insured." The phrase "first named insured" did not otherwise appear in the policy. In another part of the policy, her husband Kenneth appeared first in a listing labeled "policyholder," followed by Lynne.

In March 2008, their daughter Kelly was injured in an automobile accident involving an under-insured driver. The driver's insurance company tendered the limits of his policy, but because of Lynne's waiver, Kelly was unable to recover additional sums under the Swartzbaugh's UM coverage. The Swartzbaughs sought a declaratory judgment that the waiver was ineffective on the theory that Lynne Swartzbaugh was not the "first named insured" because she was listed second, behind Kenneth, in the listing of the policyholders in the policy. The Circuit Court for Carroll County disagreed and ruled that the waiver signed by Lynne was valid and enforceable. The Court of Special Appeals affirmed the circuit court in a reported decision. *Swartzbaugh v. Encompass Ins. Co.*, 201 Md. App. 133, 28 A.3d 785 (2011).

Held: Affirmed

The Court of Appeals affirmed the judgment of the Court of Special Appeals, holding that, in the context of a waiver of enhanced UM coverage under §19-510 of the Insurance Article, the phrase "first named insured" refers to a person insured under the policy and specifically named in the policy, who acts on behalf of the other insured parties and is designated as such in the policy documents. Here, Lynne Swartzbaugh was the first named insured, having specifically identified herself as such and having acted on behalf of the other parties.

In explaining its decision, the Court noted the lack of a statutory definition of "first named insured," the certification on the waiver form that Lynne Swartzbaugh was the first named insured, the fact that the waiver form was created by the Maryland Insurance Administration

pursuant to a statutory directive, and the possible absurd consequences of giving legal effect to the order in which a clerical employee happened to type the names of the insured parties.

Return to ToC

Sheriff Darren M. Popkin v. Deputy Erick Gindlesperger, No. 104, September Term 2011, filed April 26, 2012. Opinion by Battaglia, J.

http://mdcourts.gov/opinions/coa/2012/104a11.pdf

PUBLIC SAFETY – LAW ENFORCEMENT OFFICER'S BILL OF RIGHTS – PRODUCTION OF DOCUMENTS – NO RIGHT TO PRE-HEARING PRODUCTION OF DOCUMENTS UNDER SECTION 3-107(d)(1) OF THE PUBLIC SAFETY ARTICLE

Facts:

Deputy Erick Gindlesperger of the Montgomery County Sheriff's Office filed a subpoena request, pursuant to Section 3-107(d)(1) of the Maryland Code (2003, 2011 Repl. Vol.), seeking to compel the production of documents prior to a disciplinary hearing under the Law Enforcement Officers' Bill of Rights (LEOBR). The request sought the compelled production of records pertaining to "accidental" or "mistaken release of an inmate" by other officers and other items not at issue. Sheriff Raymond Kight, predecessor to Sheriff Darren M. Popkin, objected to the subpoena request, arguing that Section 3-107(d)(1) did not provide for compelled production of documents before the hearing. The hearing board denied Deputy Gindlesperger's request.

Deputy Gindlesperger filed a Motion for a Show Cause Order in the Circuit Court for Montgomery County. After a hearing, the Circuit Court determined that the request for compelled pre-hearing production of records identified in the subpoena, pertaining to "accidental" or "mistaken release of an inmate" by other officers, was governed by the language of Section 3-107(d), specifically the phrase "[i]n connection with a disciplinary hearing," which it construed to include time before the hearing. Sheriff Popkin appealed to the Court of Special Appeals; prior to any proceedings in the intermediate appellate court, the Court of Appeals granted certiorari.

Held: Reversed.

The Court of Appeals reversed the judgment of the Circuit Court for Montgomery County. The Court reviewed the plain meaning of the express language of Section 3-107(d)(1) and concluded that while other provisions of the LEOBR instructed that production of particular documents or information be compelled "before the hearing," the language "in connection with a hearing" did not warrant the compelled production of documents in advance of the hearing. Instead, the Court observed that the Legislature also used this phrase in one other instance in the LEOBR to indicate that the hearing board or chief may administer oaths "[i]n connection with a disciplinary hearing." As oaths are taken at the LEOBR hearing only, the Court concluded that the phrase "in connection with a disciplinary hearing" referred to that which transpires at the hearing only.

MRA Property Management, Inc. et al. v. Armstrong et al., No. 93, September Term 2007, filed April 30, 2012. Opinion by Battaglia, J.

http://mdcourts.gov/opinions/coa/2012/93a07.pdf

STATUTORY INTERPRETATION – MARYLAND CONSUMER PROTECTION ACT – APPLICATION OF THE CONSUMER PROTECTION ACT IN A SALE OF A CONDOMINIUM UNIT TO ENTITIES OTHER THAN DIRECT SELLERS – APPLICATION OF THE CONSUMER PROTECTION ACT TO DISCLOSURES MADE PURSUANT TO THE MARYLAND CONDOMINIUM ACT

Facts:

A group of purchasers who had bought condominium units in the Tomes Landing Condominium Complex between 2000 and 2004 brought suit against the Association of Unit Owners (Association) and MRA Property Management, Inc. in the Circuit Court for Cecil County alleging that MRA and the Association had violated the Maryland Consumer Protection Act, as well as allegations of common law fraud, breach of contract, and negligent misrepresentation. Prior to trial, the unit purchasers moved for summary judgment, on only the counts alleging violations of Consumer Protection Act Sections 13-301(1), 13-301(3), and 13-303, on the theory that the operating budgets that were supplied to the purchasers by MRA and the Association, pursuant to their statutory duty to provide such, were misleading or had the tendency or capacity to mislead. MRA and the Association filed cross motions for summary judgment in which they asserted that the Consumer Protection Act did not apply to them because they were not sellers of any consumer realty, that their compliance with the Maryland Condominium Act insulated them from liability even if the Consumer Protection Act did apply, and that the budgets were not misleading and did not have the tendency or capacity to mislead because they were the actual budgets prepared and used in the management of the Tomes Landing Condominium Complex. The Circuit Court granted summary judgment in favor of the unit purchasers on the grounds that the operating budgets had the capacity, tendency, or effect of misleading purchasers in violation of the Consumer Protection Act.

MRA and the Association appealed to the Court of Special Appeals, but, while that appeal was pending, the Court of Appeals granted Petitions for a Writ of Certiorari from both MRA and the Association as well as the unit purchasers. After hearing arguments, the Court of Appeals filed an opinion that vacated the grant of summary judgment and remanded the matter back to the Circuit Court with instructions to proceed to determine if MRA and the Association had violated their duty under the Maryland Condominium Act to disclose known, but uncharged, building violations. Both MRA and the Association, as well as the unit purchasers, filed Motions for Reconsideration of that opinion in which MRA and the Association argued that the issue of known but uncharged building violations was not properly before the Court because it had been abandoned and did not form the basis for the grant of summary judgment in the Circuit Court; the unit purchasers argued that the Court of Appeals should have explicitly stated that an entity

can comply with the disclosure requirements in the Condominium Act but do so in a manner that violates the Consumer Protection Act and that the Court should have explicitly stated that the operating budgets, which showed declining amounts being budgeted for repairs at a time when MRA and the Association allegedly knew of the need for a massive special assessment, were misleading as a matter of law and so violated the Consumer Protection Act. The Court of Appeals granted both motions and considered anew the original questions presented.

Held: Vacated and Remanded.

The grant of summary judgment was vacated and the case remanded to the Circuit Court. The Court of Appeals held that the Consumer Protection Act can apply to entities that are not the direct sellers of consumer goods or realty, under the principle set forth in *Hoffman v. Stamper*, 385 Md. 1, 867 A.2d 276 (2005), provided that the information disclosed by the entity is integral to the transaction. The Court also held that an entity can comply with the disclosure obligations set forth in the Maryland Condominium Act but do so in a manner that violates the Consumer Protection Act, if the disclosures have the tendency, capacity, or effect of misleading a purchaser. Finally, the Court held that there exists a dispute of material fact sufficient to overcome a Motion for Summary Judgment and vacated its grant. The case was remanded to the Circuit Court for Cecil County for further proceedings consistent with the opinion.

Dorothy M. Tracey v. Anthony K. Solesky and Irene Solesky, as parents, Guardians and Next Friends of Dominic Solesky, a Minor, No. 53, September Term, 2011, filed April 26, 2012. Opinion by Cathell, J.

Harrell, Greene, and Barbera JJ., dissent.

http://mdcourts.gov/opinions/coa/2012/53a11.pdf

NEGLIGENCE – DOG ATTACKS – MODIFICATION OF THE COMMON LAW

Facts:

On the day of the attacks on two young boys, the pit bull dog twice jumped out of its enclosure. Both boys were injured. In the second attack Dominic Solesky was severely injured including an injury to his femoral artery. He spent 17 days in the hospital during which he endured other surgeries in addition to the surgery required to repair his femoral artery. He spent a year in rehabilitation.

The plaintiff sued the landlord of the premises from which the dog attacked the two boys. At the trial court level, the court, correctly applying the common law standards that existed at that time, granted the defendant's motion for judgment at the close of the Plaintiff's case because there was insufficient evidence introduced to establish that the landlord, Ms. Tracey, knew of the dangerous characteristics of the particular dog involved in the attacks. The landlord did, however, know that the dogs being kept on the premises were pit bulls because she had inserted into the lease for the premises an exculpatory clause that clearly referred to the dogs as "pit bulls."

Held: Reversed.

The Court examined the Maryland cases dealing with pit bull attacks. Additionally, it examined cases throughout the country in which pit bulls had attacked persons. Other literature on the subject of dog attacks, including medical literature, indicated that pit bull attacks on humans were, generally, much more severe than attacks by most other breeds of dogs, and that the number of fatal attacks by pit bulls, compared to attacks by most other breeds of dogs, was significantly disproportionate in number.

The Court modified the common law standards previously extant in respect to dog attack negligence cases, stating: ". . . [U]pon a plaintiff's sufficient proof that a dog involved in an attack is a pit bull or pit bull [cross] mix, and that the owner, or other person(s) who has a right to control the pit bull's presence on the subject premises (including a landlord who has the right and/or opportunity to prohibit such dogs on leased premises as in this case) knows or has reason

to know, that the dog is a pit bull or cross-bred pit bull mix, that person is strictly liable for the damages caused to a plaintiff who is attacked by the dog on or from the owner's or lessor's premises. This holding is prospective and applies to this case and causes of action accruing on or after the date of the filing of this opinion."

HNS Development, LLC v. People's Counsel for Baltimore County, et al., No. 85, September Term, 2011, filed April 23, 2012. Opinion by Harrell, J.

http://mdcourts.gov/opinions/coa/2012/85a11.pdf

ZONING AND PLANNING – BALTIMORE COUNTY DEVELOPMENT PLAN REVIEW – COMPLIANCE WITH MASTER PLAN

Facts:

In 2004, Petitioner, HNS Development, LLC (HNS), purchased Lot 42 of the Longfield Estates subdivision, which contained the historic Langenfelder Mansion in Baltimore County. The Longfield Estates subdivision came into existence in 1990 with the approval by the County Review Group (CRG)of Phase I. Approval of Phase II of the proposed development, which contained Lot 42 and Parcel A, was delayed, until 1991, by a referral from the CRG to the County Planning Board because of a potential conflict with the County Master Plan. The Planning Board required easements on certain parcels in the Phase II development plan, in order to protect the viewshed of the historic mansion. The Planning Board did not place easements on Lot 42 and Parcel A; instead it requested that Note 18 be placed on the approved development plan that read:

> The Baltimore County Office of Planning & Zoning would not support future development on Lot 42 or Parcel "A". Any future subdivision of Lot 42 and/or Parcel "A" would be considered a conflict with the Master Plan as detailed by the Planning Board's decision. Lot 42 as shown on the revised CRG Plan is designed in accordance with the Planning Board's action of January 17, 1991. Furthermore, the Office of Planning and Zoning supports and strongly encourages the applicant to seek a conservation easement to restrict future development on Lot 42 and Parcel "A" to permanently protect the integrity of the scenic view.

The Longfield Estates development was built-out and in 2005, HNS submitted an amended plan to the CRG proposing to subdivide Lot 42 into two lots, one for the Mansion and one for a new dwelling, as well as a dwelling on Parcel A. The Planning Board submitted comments to the CRG urging the amended plan be denied in light of Note 18 on the approved Phase II development plan indicating that further development of Lot 42 and Parcel A would conflict with the Master Plan. The CRG denied the amended development plan and HNS appealed to the County Board of Appeals. The Board of Appeals concluded that the CRG had erred by failing to refer formally the amended plan and the potential Master Plan conflict to the Planning Board. The Board of Appeals remanded the case to the Planning Board to determine the force of Note 18 and whether there was a continued conflict with the current Master Plan. Based on the

Planning Board's report that a Master Plan conflict continued to exist (just as it had in 1991 under the former version of the Master Plan), the Board of Appeals dismissed HNS's appeal.

HNS sought judicial review of the Board of Appeals's decision in the Circuit Court for Baltimore County. The Circuit Court affirmed the Board of Appeals's decision. HNS appealed and the Court of Special Appeals affirmed. The Court of Appeals granted certiorari to determine whether 1) the Board of Appeals created impermissibly a new requirement of Master Plan compliance in addition to that contained in the development regulations, 2) the Board of Appeals's finding was a taking without just compensation and, 3) Note 18 on the development plan was an exaction.

Held: Affirmed.

The Court of Appeals held that, according to the Baltimore County Code, the Master Plan is an inextricable part of the development regulations and, as such, compliance with its recommendations is a binding regulatory requirement of the subdivision and development plan review process in the County. Thus, nonconformity with the Master Plan can provide a valid and independent basis for denying approval of a proposed amended development plan, compliance with the other requirements of the development regulations notwithstanding. Petitioner's takings question is waived due to HNS's failure, under Maryland Rule 8-504(a)(5) and (6), to provide in its brief any argument regarding the appropriate standard of review to apply or any authorities in support of its regulatory takings claim. The Court concluded also that, on the record of this case, there was no justiciable controversy whether Note 18 on the 1991 development plan approval was an impermissible exaction. This was so because all parties conceded that Note 18 was not an extraction. Moreover, this issue was moot, in light of our conclusion that nonconformity with the Master Plan can serve as an independent reason for rejecting an amended development plan. Accordingly, we affirm the judgment of the Court of Special Appeals.

Maryland Board of Public Works, et al. v. Kent Hovanian's Four Seasons at Kent Island, LLC, et al., No. 67, September Term 2011, filed April 23, 2012. Opinion by Wilner, J.

http://mdcourts.gov/opinions/coa/2012/67a11.pdf

ZONING AND PLANNING – WETLANDS

Facts:

After receiving all required local and State permits to develop a mixed-use adult community on Kent Island, Hovnanian applied for a license from the Board of Public Works to fill or dredge State wetlands. The filling or dredging involved four elements that would have impacted 9,939 square feet of State wetlands. The evidence indicated that the impact on the wetlands would have been minor and well-compensated by mitigation efforts. Both the State Department of Environment and the Wetlands Administrator recommended approval of the application, attesting that the project met all legal requirements, including requirements of the Board's own regulations. Nonetheless, by a 2-1 vote, the Board denied the license, not because of any finding regarding the impact on the wetlands of the requested dredging or filling, but because two members concluded that the project as a whole was unsuitable for Kent Island for environmental, traffic, and public safety reasons. The Circuit Court for Queen Anne's County, concluding that the Board had applied inappropriate standards and thereby exceeded its lawful discretion, vacated the Board's decision and remanded the case for further consideration by the Board.

Held: Affirmed

The Court of Appeals affirmed the Circuit Court judgment. The question of whether the development was suitable for Kent Island was committed to other State and local agencies which, over a 13-year period, had considered all applicable requirements and approved the project on multiple occasions. In deciding upon an application to dredge or fill State wetlands, the Board of Public Works does not act as a super land use authority but may consider only whether, applying the considerations set forth in Md. Code, Environment Article, § 16-202(g)(1), which look to the impact of the dredging or filling on the affected State wetland, issuance of a license is in the State's interest. The case was remanded to the Board to reconsider the application using the proper standards.

COURT OF SPECIAL APPEALS

Edwin H. Lewis v. Douglas F. Gansler, et al., No. 2174, September Term 2009, filed April 25, 2012. Opinion by Kehoe, J.

http://mdcourts.gov/opinions/cosa/2012/2174s09.pdf

ADMINISTRATIVE LAW – AGENCY ACTION – CRITICAL AREA COMMISSION
When the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays exercises its statutory authority to determine whether a local government's Critical Area program is deficient under Md. Code Ann., Nat. Res. Article § 8-1809(l), it acts in a quasi-legislative capacity, and not in a quasi-judicial capacity, because these determinations are part and parcel of the Commission's statutory obligation to oversee the administration of local Critical Area programs to ensure the programs are consistent with State law, and to correct the local programs' "clear mistakes, omissions, or conflicts with criteria or laws." NR § 8-1809(l).

CRITICAL AREA COMMISSION – DEFICIENCY DETERMINATION
The Commission was acting within the scope of its statutory authority when it decided that the Wicomico County Critical Area program contained a "clear mistake, omission, or conflict" with the Commission's law or criteria on the basis that the local program's variance provisions contained no standards under which the County could refuse to consider a variance application for a structure that had already been adjudicated as a violation of the County's Critical Area law.

ADMINISTRATIVE LAW – AGENCY ACTION – STANDARD OF REVIEW – QUASI-LEGISLATIVE AND QUASI-JUDICIAL ACTIONS.
That an agency's decision arises out of a land-use dispute involving a particular property does not necessarily render the decision quasi-judicial; rather the determination whether an agency's action is quasi-legislative or quasi-judicial depends up a consideration of the type of facts considered by the agency and the bases for its decision. *See Miles Point Talbot County v. Miles Point*, 415 Md. 372, 387-88 (2010).

Facts:

Appellant owns a tract of land in Wicomico County which includes "Phillips Island," a 5.30 acre upland area surrounded by tidal marsh. Nearly all of Phillips Island lies within the Critical Area Buffer, as defined by Wicomico County's Critical Area program and set forth in the Wicomico County Code. Appellant hired a contractor to construct six buildings on the island, each of which was, in some part, located within the Buffer. Neither Appellant nor his contractor obtained permits or sought County approval prior to initiating construction. When confronted with the lack of necessary permits, Appellant submitted an application to the Wicomico County Board of

Appeals for an after-the-fact variance from the restriction on building in the Buffer. The Board denied this variance and ordered Appellant to present a buffer management plan and a demolition permit so that all six structures could be removed from the island as soon as possible. The denial of this variance was extensively litigated. *See Lewis v. Dep't of Natural Res.*, 377 Md. 382, 395 (2003) ("*Lewis I*"); *Lewis v. Dep't of Natural Res.*, No. 608, September Term 2005 (filed January 22, 2007), *cert. denied* 399 Md. 34 (2007) ("*Lewis II*").

After the Court of Appeals denied Appellant's petition for writ of certiorari in *Lewis II*, he submitted a variance application requesting that he be permitted to remove the structures and replace them with a single-family house. Appellant submitted a structure removal plan and a buffer management plan in which he proposed dividing the demolition process into two phases. Phase One, to begin within ten days after receiving a demolition permit, involved removing five of the six structures on the Island. Phase Two, which would only go into effect if the Board denied the new variance, involved the demolition of the remaining structure.

The Critical Area Commission took the position "that no new permit or variance application may be accepted for processing until all of the illegal structures are removed and the site is restored . . . in accordance with an approved [buffer management plan]." The County Attorney, however, had concerns whether the County Board of Appeals could refuse to process Appellant's variance application until after the structures on the property were removed and the required environmental remediation completed.

As a result of this conflict, the Commission decided that the County's Critical Area program contained a clear mistake, omission, or conflict with the Commission's law or criteria because it lacked provisions to ensure effective implementation and enforcement of the County's Critical Area law with regard to variances. Specifically, the Commission determined that County's variance provisions, Article VI, §§ 125-36 through 125-38, were deficient because they contained no standards under which the County could refuse to accept an application for variance, even if the requested project had been adjudicated as a violation of the County's Critical Area law. The Commission explained that, because any variance granted under a deficient program is null and void, the County shall not accept, nor process, any applications for variances to the Critical Area Program until such deficiencies are corrected. The Commission's actions were taken pursuant to its authority under Maryland Natural Resources Article 8-1809 (l).

The County Planner informed Appellant that the County could not accept or process any variance application and, therefore, they would not initiate review of Appellant's application. Appellant appealed, and the Board of Zoning Appeals affirmed the County Planner's decision. Appellant then filed a petition for judicial review of the Board's decision.

While Appellant's administrative appeal was pending, the Attorney General filed this action in the circuit court. The Attorney General sought "a court order directing appellant to (1) remove the unlawfully built structures, (2) restore the property in the Buffer to its original condition

before he built there, (3) plant native vegetation in mitigation of the development activity, and (4) pay damages."

Appellant filed a third party-complaint against the Commission for a declaratory judgment and against Wicomico County for a writ of mandamus. Appellant's claim against the County was dismissed on the County's motion. In pursuing his claim against the Commission, Appellant filed a motion for summary judgment arguing that, because the Commission had no factual or legal basis to deny the Board of Appeals the authority to consider his buffer variance, the Commission's actions had no legal force or effect. The Commission filed a cross-motion for summary judgment.

The court denied Appellant's motion, granted the Commission's motion, and ordered that Appellant "remove the unlawfully built structures, restore the property in the buffer area to the original condition, mitigate buffer area disturbance by the planting of native vegetation, and pay damages pursuant to NR § 8-1815.1(G)(3)." The court concluded that the Commission "properly found the Wicomico County Critical Area Program to be deficient pursuant to NR § 8-1809(1);" that the Commission "properly advised Wicomico County not to accept or process [Appellant's] 2008 variance application;" and that the Commission's decision "does not prevent [Appellant] from removing the offending structures."Appellant appeals from the court's judgment. The circuit court has stayed the Attorney General's enforcement action pending the outcome of this appeal.

Held: Affirmed.

The Commission acted in a quasi-legislative capacity when it decided that certain provisions of Wicomico County's Critical Area program did not conform to state law. Because the Commission was acting quasi-legislatively, this Court need only determine whether it exceeded its statutory authority in so doing. We conclude that it did not. We therefore affirm the decision of the Circuit Court for Wicomico County granting summary judgment to the Attorney General and the Commission in an action against Edwin H. Lewis to enforce provisions of Wicomico County's Critical Area program.

Town of Oxford, et al. v. Constantine Koste, Case No. 2355, September Term 2010, filed April 26, 2012. Opinion by Zarnoch, J.

http://mdcourts.gov/opinions/cosa/2012/2355s10.pdf

CONSTITUTIONAL LAW – REFERENDUMS

Facts:

In January 2009, the President of the Commissioners of the Town of Oxford introduced an annexation resolution intended to annex 142 acres of submerged lands under public waters adjacent to the current municipal boundary. The purpose of the annexation was to confirm the Town's jurisdiction over adjacent lands and waters and to regulate the placement of wharves, piers, mooring piles, mooring buoys, floating docks, and other structures within municipal waters. After public notice and hearing, the resolution was adopted without alteration in November 2009.

The next month, Town citizens presented to the Commissioners and Town Clerk a petition for referendum consisting of 195 signatures, demanding that the Town suspend the effectiveness of the resolution and hold a referendum election pursuant to §19(g) of Article 23A of the Md. Code. Under that section, at any time within the 45-day period following the final enactment of an annexation resolution by the municipality, 20 percent of the qualified voters of municipal corporation may petition the chief executive or administrative officer for a referendum on the resolution. After review, the Election Board determined that of the 616 registered voters in Oxford, the petition contained 177 valid signatures. Of those signatures, 62 were obtained after the resolution was adopted; 83 were acquired before the public hearing; and 32 were acquired after. Consequently, the Commissioners requested an opinion from the Attorney General to determine whether the signatures obtained before the final enactment of the resolution could be counted toward the threshold necessary to petition for referendum.

In May 2010, before the Attorney General's opinion could be obtained, Constantine Koste , a Town resident and voter filed a complaint in the Circuit Court for Talbot County against the Town and moved for summary judgment. Koste asserted, and the court agreed, that the 177 petition signatures were valid and met the statutory threshold to require the Commissioners to suspend the effectiveness of the resolution, contingent upon the results of a referendum. The court granted summary judgment in favor of Koste, entered a declaratory judgment consistent with Koste's request and ordered the Town to hold a referendum election within 60 days, prompting an appeal.

Held: Reversed.

The Court of Special Appeals reversed, explaining that the issue was one of statutory construction, resolvable on the basis of judicial consideration of three general factors: 1) text; 2) purpose; and 3) consequences. At issue was the meaning of the word, "petition." The Court explained that one general definition of "petition," likely embraced by Koste, was "a formal written request presented to a court or other official body," as Koste interpreted the statutory 45-day period only as a deadline for presenting the necessary signatures. To the Town, the word "petition" meant a process established by the law for individuals to affix their signatures and demonstrate support for placing a question on the ballot. Thus, the Town asserted, the statutory 45-day window created a beginning and ending period for the petition process.

Because of this ambiguity, the Court examined the text of entire statute, holding that public hearing and annexation plan requirements demonstrate the intent of the Legislature to facilitate an informed electorate about the impact of annexation and to address and mollify their concerns after they have been heard. According to the Court, these provisions have the purpose of giving the voters a chance to study the issue before being approached by petition circulators, a purpose not served by Koste's proffered construction of § 19 of Art. 23A.

The Court also said the consequences of a frontally open-ended petition circulation period would allow the signing of a petition before the resolution, amendment or debate and before the citizens were educated on the proposition.

Based on this examination of the text, purpose and consequences of Koste's asserted interpretation, the Court held that the General Assembly intended the 45-day period of §19(g) to be a restriction on the circulation of petitions that does not permit signatures to be gathered before final enactment of the resolution.

Michael David Gordon v. State of Maryland, Case No. 2968, September Term 2010, filed March 30, 2012 Opinion by Watts, J.

http://mdcourts.gov/opinions/cosa/2012/2968s10.pdf

EVIDENCE – HEARSAY – EXCEPTIONS – STATEMENTS BY PARTY OPPONENTS – ADMISSIONS – ADOPTED STATEMENTS – CRIMINAL LAW & PROCEDURE – APPEALS – REVIEWABILITY – WAIVER – ADMISSION OF EVIDENCE – DOCUMENTARY EVIDENCE – BEST EVIDENCE RULE – RULE APPLICATION & INTERPRETATION

Facts:

A jury sitting in the Circuit Court for Charles County convicted Michael David Gordon, appellant, of third-degree sexual offense and sexual solicitation of a minor. On February 8, 2011, the circuit court sentenced appellant to ten years of imprisonment, with all but one year suspended, and five years of supervised probation.

At trial, the State sought to prove Gordon's age, which was a material element of the case, through the testimony of a detective. During direct examination, the prosecutor asked the detective whether he knew appellant's age. The detective responded that he had knowledge of appellant's date of birth based on having viewed his "identification." Gordon objecting stating "hearsay" as the basis; the circuit court overruled the objection. Gordon contended, on appeal, that the trial court erred in permitting the State to prove his age through the detective's inadmissible hearsay testimony and by permitting the State to prove the contents of his driver's license through parol evidence instead of through the original copy of the driver's license in violation of the best evidence rule.

Held: Affirmed.

The Court of Special Appeals affirmed Gordon's convictions. Whether evidence is hearsay is an issue of law reviewed *de novo*. Md. Rule 5-801 defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." "A hearsay statement may be admissible, however, under certain recognized exceptions to the rule if circumstances provide the requisite indicia of trustworthiness concerning the truthfulness of the statement." Maryland Rule 5-803(a) permits the introduction of a hearsay statement that is offered against a party and is either the party's own statement or one in which the party has manifested an adoption or belief in its truth.

The express adoption of an admission is not limited to a spoken or written adoption and the definition has been extended to non-spoken forms of communications that manifest a similarly unequivocal intent.

One who presents a driver's license in response to a request for identification by a law enforcement officer manifests an adoption or belief in the truth of information contained in the license, including the person's name and date of birth, as the individual seeks to have the license accepted as accurate.

Pursuant to Md. Rule 4-323(a), "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived."

Md. Rule 5-1002, provides that: "To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute." The Best Evidence Rule requires, as an evidentiary matter, that an original writing must be produced to prove its existence and contents. The best evidence rule exists to express a preference for introducing originals over copies of writings.

The Best Evidence Rule is not applicable where the State seeks to present testimony as to a defendant's age depicted on a driver's license that defendant presented to a law enforcement officer in response to a request for identification, and there was no dispute or contest raised as to the accuracy of the information on the license or the validity of the driver's license.

Donald Stewart Kohler v. State of Maryland, No. 2150, September Term, 2009, filed February 2, 2012. Opinion by Salmon, J.

http://mdcourts.gov/opinions/cosa/2012/2150s09.pdf

CRIMINAL LAW – DISTRIBUTION OF CONTROLLED DANGEROUS SUBSTANCES
A buyer of a controlled dangerous substance (CDS) may not be convicted of distribution of a CDS based on the theory that the buyer "participated" in the sale of the CDS as a second-degree principal, i.e., as an aider and abettor of the distribution.

Facts:

After using mostly fake money to purchase marijuana, Donald Kohler immediately fled from the seller, Warren Jerome Yates ("Yates"). Upon discovering the deception, Yates ran after Kohler and fired a shot aimed at Kohler. The shot killed Shirley Worcester, an innocent bystander. Based on the State's theory that Kohler aided and abetted Yates's felony distribution of marijuana, a jury in the Circuit Court for Baltimore County convicted Kohler of second-degree felony murder and conspiracy to distribute marijuana. On appeal, Kohler did not take issue with his conviction of possession with intent to distribute marijuana, he claimed only that the evidence presented by the State was insufficient to sustain his conviction for either second-degree felony murder or conspiracy to distribute marijuana. The narrow issue presented on appeal was whether a buyer of a controlled dangerous substance ("CDS") may be convicted of distribution based on the theory that he or she "participated" in the sale as a second degree principal, i.e., as an aider or abettor of the distribution.

Held: Reversed.

The Court of Special Appeals ruled that because the crime of CDS "distribution" requires a delivery *to another person*, it is clear that the General Assembly intended the prohibition against distribution to encompass only those who deliver CDS, but not to apply to those to whom CDS is delivered. The State's characterization of appellant as a participant in Yates's distribution would require a reader of the statute to ignore the common usage or common meaning of the words "participation" and the phrase "aiding and abetting."

The Court opined that defendant (Kohler) could not be convicted of felony murder under the State's theory that he abetted Yates in this distribution of marijuana. The Court stressed that at trial the State's theory was not that appellant distributed the marijuana to others, but that appellant was "a participant" in the sale of marijuana by Yates because appellant was "the buyer" who "received it." Here, the record was devoid of any evidence that Kohler was acting in any capacity other than that of a purchaser. As a consequence, the State's evidence was insufficient to support a distribution conviction and therefore was also insufficient to support a felony murder conviction.

Clayton Colkley v. State of Maryland, No. 1770, September Term, 2010, and *Darnell Fields v. State of Maryland*, No. 1764, September Term, 2010, filed April 26, 2012. Opinion by Moylan, J.

http://mdcourts.gov/opinions/cosa/2012/1770s09.pdf

MURDER – ATTEMPTED MURDER – CONSPIRACY TO COMMIT MURDER – PRIOR TESTIMONY – EXCULPATORY – INCULPATORY – PERJURY AND TESTIMONIAL INCOMPETENCE – RULE 5-804(B)(5) – WITNESS UNAVAILABILITY BECAUSE OF PARTY'S WRONGDOING – INEFFECTIVE ASSISTANCE OF COUNSEL – MISSING WITNESS – JURY MISBEHAVIOR – CONFIDENTIAL FILES – DISCOVERY VIOLATION – RESENTENCING

Facts:

Clayton Colkley ("Colkley") and Darnell Fields ("Fields") appealed their convictions by a jury in the circuit court for Baltimore City. Colkley was found guilty of second-degree murder, attempted first-degree murder, conspiracy to commit first-degree murder, the illegal use of a handgun, and two counts of unlawfully wearing or carrying a handgun. Fields was convicted of conspiracy to commit first-degree murder, second-degree assault, and the unlawful wearing or carrying of a handgun. The two cases were consolidated on appeal.

The crimes in this case were committed almost a decade ago. Following an initial jury trial, both Colkley and Fields were convicted in a variety of crimes. Both appealed to this Court. In 2007, we filed an opinion in *Fields v. State*, 172 Md. App. 496, 916 A.2d 357, *cert. denied*, 399 Md. 33 (2007), in which we reversed the convictions because of an improper response to a note from one of the jurors. The case was remanded for further proceedings.

After retrial, Colkley was convicted of the second-degree murder of James "Buck" Bowens, the attempted first-degree murder of William Courts, conspiracy to commit the first-degree murder of William Courts, and various handgun offenses. Fields was also convicted of conspiracy to commit the first-degree murder of William Courts, a second-degree assault on William Courts, and a handgun charge.

Colkley was a contract killer. The accessory-before-the-fact who hired Colkley as a hit man was Eric Horsey. Horsey was the head of a major drug-distributing operation in East Baltimore. The apparently smaller but rival drug organization was run by the brothers William and David Courts. It was the William and David Courts group that was the target of the shooting spree.

There was bad blood between Horsey and the Courts brothers. Colkley peddled his services to Horsey as a hired gun who, for a price, offered to eliminate both William Courts and David Courts. The deal with Horsey was then on and off for several months. It was Colkley who led

the execution-style raid of May 28, 2003. Fields was the driver of the car from which Colkley shot. Horsey refused to pay him, however, when it came to light that one of the two desired targets, William Courts, had survived even after receiving ten bullets at point-blank range. When Colkley and Brian "Bee" Smith were successful in killing David Courts on the very next day, however, Horsey readily paid them $10,000 for the job.

In the taped statement Qonta Waddell gave to the police on July 2, 2003, which was played for the jury, Waddell stated that he, a member of the Courts brothers group, had been standing at the top of Port Street when the Grand Marquis drove down the street and stopped. He heard James Bowens approach the car and say, "That's Pooh" (Fields). He then saw four people get out of the car and start shooting. Waddell hid behind a van until the shooting was over. From photo arrays, he later identified three of the gunmen as the appellant Colkley, the appellant Fields, and Edwin Boyd, who was later murdered after Colkley discovered that he was turning over information to the police.

The taped statement that Edwin Boyd had given to the police was also played before the jury. In that statement, Boyd said that he had been a part of the execution squad that drove to Port Street under the command of Colkley.

Eric Horsey, although he did not testify at the first trial, was a key witness at the retrial. Horsey testified as to Colkley's having solicited the job of hit man for both William and David Courts. He testified as to how Colkley, on the morning after the May 28 shootings, boasted about killing William Courts, describing how he had stood over Courts's prostrate body and put ten bullets in him, in his chest, stomach, side, back, hip and arm. When it was learned that William Courts was not dead, however, Horsey refused to pay Colkley for that job. When a day or two later, Colkley reported that he had killed David Courts and that fact was then verified, Horsey paid Colkley $10,000 for the successful "hit."

On appeal, Colkley and Fields alleged the following:

Both appellants raised the following four questions:

1. Did the trial court err in excluding "exculpatory" testimony by one of the alleged victims, William Courts, from the first trial?

2. Did the trial court err in denying appellants' request for a missing witness instruction relating to William Courts?

3. Did the trial court err in denying appellants' motion for a new trial after it was discovered that the jury conducted independent investigation during deliberations?

4. Did the trial court err in refusing to disclose to the defense Baltimore Police Department Internal Investigation Division files

concerning misconduct by officers who testified for the State and later in refusing to allow appellants to cross examine the officers about misconduct?

Colkley alone raised five additional questions:

5. Did the trial court err in admitting a taped statement by a witness who died prior to retrial on the ground that appellant Colkley procured his unavailability?

6. Did the trial court err in permitting the State to elicit a detective's opinion of Colkley's credibility?

7. Did the trial court err in admitting improper lay opinion testimony?

8. Must Colkley's convictions be reversed as a result of the State's failure to fulfill its discovery obligations?

9. Did the trial court impose an illegal sentence on Colkley?

Fields alone raised a single question:

10. Did the trial court impose an illegal sentence on Fields, giving him a greater sentence than he had received at his first trial?

Held: Affirmed.

The Court first addressed the admission of the prior testimony of William Courts. Because of his intervening conviction for perjury, Courts could not testify at the retrial. At the retrial, the appellants offered into evidence Courts's recorded testimony from the first trial. The trial judge ruled that it was inadmissible. The Court discussed the difference between inculpatory and exculpatory testimony. The Court stated that exculpatory testimony was such that tended to clear the accused of guilt. The Court concluded that Courts's recorded testimony was not exculpatory. The Court then addressed whether or not there was testimonial incompetence in Courts's prior testimony because of his perjury conviction. The Court noted that a witness is incompetent only upon an actual conviction for perjury. Since Courts's conviction for perjury did not occur until after the first trial, the Court stated that his prior testimony would be admissible if it otherwise qualified.

To determine if the evidence otherwise qualified for admissibility, the Court looked to the five exceptions to the general hearsay rule for when a declarant is unavailable. The exception applicable here was Rule 5-804(b)(5)(B) which provides as an exception to the hearsay rule that if a witness is unavailable because of a party's wrongdoing, it will be admissible is the court

finds by clear and convincing evidence that the party against whom the statement is offered engaged in, directed, or conspired to commit the wrongdoing that procured the unavailability of the declarant. The appellants argued, at trial, that Courts's prosecution for perjury was the "wrongdoing" by the State, a party, that procured Courts's unavailability at the retrial of the appellants. The Court concluded that the State's goal in prosecuting Courts for perjury was not to procure his absence from the retrial of Colkley and Fields. Thus, the Court determined that Courts's testimony was not admissible as a hearsay exception pursuant to Rule 5-804(b)(5).

The Court noted that, had the appellants argued that Rule 5-804(b)(1), the hearsay exception for "former testimony," they would likely have been successful. The Court concluded, however, that because the appellants did not argue this point at trial, it was not preserved for appellate review.

The Court then turned to the appellants' ineffective assistance of counsel claim based on the non-preservation of the Rule 5-804(b)(1) argument. The Court noted that generally, ineffective assistance of counsel claims should be reviewed on post-conviction review and not on direct appellate review. The Court, however, decided to review the claim in the interests of judicial resource conservation. The Court concluded that because Courts's testimony was not exculpatory and would not materially have helped the appellants at their retrial, the prejudice prong of the *Strickland v. Washington* test was not satisfied. The performance prong would also not have been satisfied because a lawyer's disinclination to push for the admissibility of testimony which was not exculpatory would not fail the threshold requirements.

The Court next addressed the appellants' contention that a jury instruction should have been given regarding the missing witness status of William Courts. The Court noted that because appellant Fields never requested an instruction on this at trial, his claim was unpreserved for appellate review. The Court then discussed the merits of this claim as to Colkley. While either party could have physically summoned Courts to testify at the retrial, he would not have been permitted, as a matter of law, to testify. The Court noted that this is not the situation contemplated by the missing witness rule and that the State bore no responsibility for the unavailability of Courts and thus the missing witness rule was not before the Court on review. The Court noted, however, that this claim would fail on the merits. It stated that Courts was not peculiarly available to one side or the other and that it was highly doubtful that Courts's testimony could be characterized as important. The Court also noted that it is never an abuse of discretion for a trial court not to give a missing witness instruction.

The Court then discussed the contention of jury misbehavior. At one point during jury deliberations, the jury requested a dictionary. Before a dictionary could be given to the jury, the jury sent a note stating that it had already looked up the term on which it needed clarification, presumably on an electronic device. The trial judge then reminded the jury that it was not permitted to use any electronic devices. Each appellant moved for a mistrial, which the trial court rejected. The Court determined that there was no error when the trial judge rejected the mistrial motions. While the Court conceded that the jury did err, it noted that not all juror misconduct implicates the need for a mistrial.

The Court addressed the appellants' pre-trial motion to subpoena for files of the Baltimore Police Department Internal Investigation Division pertaining to an alleged investigation into an instance of possible improper behavior by two officers. The Police Department responded with a motion to quash, which was granted in a pre-trial hearing. The Court found no abuse of discretion by the trial court in so granting.

The Court next discussed Colkley's contention that testimony of a now-unavailable witness was inadmissible and not subject to the hearsay exception found in Rule 5-804(b)(5). The State argued that it was entitled to rely on this exception to admit into evidence the recorded interview of Edwin Boyd, arguing that it was through Colkley's own wrongdoing, namely murdering Boyd, that caused his unavailability to testify. The Court affirmed the trial court judge's finding that Colkley conspired to procure Boyd's unavailability during a hearing held pursuant to Courts and Judicial Proceedings Article § 10-901(b) and thereby Boyd's testimony was admissible.

The Court also upheld a police officer's testimony expressing an opinion as to the mental condition of another witness. The Court stated that the officer's testimony was controlled by Maryland Rule 5-701 which governs lay testimony. The Court noted that since the police officer had observed at close hand how the witness looked and spoke at the time of interviewing him, and because these observations would be helpful to the jury in forming a clear understanding of the witness's statement, this opinion testimony was admissible.

The Court then addressed Colkley's contention of an alleged discovery violation. Colkley argued that the State did not, pre-trial, disclose to the defense that Horsey had identified Colkley in photographic arrays to federal agents. The Court stated that the disclosure obligations of the State does not impose on the local prosecutor the duty to know about or to reveal information in the hands of federal agents who are not working closely with the State.

The Court then discussed the resentencing of Colkley. The Court concluded that Colkley's two sentences for a first-degree assault on Courts and a concurrent sentence for second-degree assault were illegal, as conceded by the State, because the jury foreperson's announcement of the verdict did not include mention of these and these offenses were not included in the hearkening of the verdict. The Court then also determined that the one legitimate conviction for wearing, carrying, or transporting a handgun needed to merge into the conviction for the use of a handgun because the unit of prosecution for that offense is the handgun itself and not the uses that are made of it. These decisions rendered moot Colkley's third contention that his resentencing included an impermissible increase of five years because with sentence now reduced to one of life imprisonment plus 20 years, it no longer exceeded, in aggregate, his initial sentence.

The Court finally turned to Fields's one solo contention that his resentencing was illegal because there was an increase in his second aggregate sentence. The Court determined that the sentence needed to be vacated for resentencing for a sentence not exceeding Fields's initial sentence.

Carlton Nicholas Henry v. State of Maryland, No. 952, September Term 2010, filed April 25, 2012. Opinion by Eyler, Deborah S., J.

http://mdcourts.gov/opinions/cosa/2012/0952s10.pdf

CONSTITUTIONAL LAW – FIFTH AMENDMENT PROTECTION AGAINST COMPELLED SELF-INCRIMINATION – STATEMENT BY SUSPECT AFTER INVOCATION OF RIGHT TO COUNSEL WHILE IN POLICE CUSTODY – FUNCTIONAL EQUIVALENT OF INTERROGATION – *EDWARDS V. ARIZONA* PRESUMPTION OF INVOLUNTARINESS – EVIDENCE NECESSARY TO REBUT *EDWARDS* PRESUMPTION – PRINCIPLES OF PROOF ESTABLISHED IN *STREAMS V. STATE* AND PROGENY IN CONTEXT OF MARYLAND NON-CONSTITUTIONAL LAW OF VOLUNTARINESS.

Facts:

The appellant was arrested on suspicion of rape. The appellant immediately invoked his right to counsel. He was detained in an interview room equipped with an audiotape recording device that was operating at all times. He was removed from the interview room for a bathroom break. Two detectives, one male and one female, escorted him down a hallway to the bathroom. There was no recording equipment in the hallway or the bathroom. The male detective accompanied the appellant into the bathroom and the two detectives then escorted him back into the interview room. After the appellant was returned to the interview room, he said he wanted to speak, signed a waiver of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), and made inculpatory oral and written statements.

The appellant moved to suppress his statements. He testified at the suppression hearing that, during the bathroom break, the male detective told him the police had evidence pointing to him, including a witness statement placing him at the scene; that he would never see his girlfriend or children again; and that it was best for him to tell his side of the story. The appellant further testified that he decided to give a statement without counsel because of what the male detective had told him. The male detective was not present for the suppression hearing. The female detective testified that, during the trip to the bathroom, the appellant asked what he was going to be charged with (as he had been told he was being charged), and said that he wanted to give a statement. The female detective further testified, however, that, during that trip, there was a conversation between the male detective and the appellant, but that she could not remember what the male detective had said to the appellant. The audiotape in the interview room recorded the male detective saying, as the detectives and the appellant were reentering the room, "it's better that you don't give us your statement because all the evidence points to . . . is all ours."

The suppression court found the appellant's testimony not to be credible and denied the motion to suppress. Ultimately, the appellant was convicted of second-degree assault.

Held: Reversed.

Under *Edwards v. Arizona*, 451 U.S. 477 (1981), when a suspect in custody invokes his right to counsel and then gives an inculpatory statement without counsel present, a presumption arises that the statement is involuntary, which includes a presumption that a waiver of the previously invoked right to counsel was not voluntarily made. The State bears the burden to prove otherwise. Here, as a matter of law, the State failed to meet its burden to rebut the *Edwards* presumption. The evidence showed that the appellant invoked his right to counsel (more than once) before being taken to the bathroom; and that, after returning from the bathroom trip, during which the male detective led a conversation with the appellant, the appellant said he wanted to make a statement and waived his *Miranda* rights. Under the circumstances, a presumption arose under *Edwards* that neither the *Miranda* waiver nor the subsequent statements by the appellant were voluntarily made. Absent testimony by the male detective that the appellant initiated a voluntary waiver of his previously invoked right to counsel by asking -- not in response to interrogation or its functional equivalent -- to speak without counsel present, the State could not rebut the presumption of involuntariness. The principles of proof established in *Streams v. State*, 238 Md. 278 (1965), and its progeny, under Maryland non-constitutional law of voluntariness, are designed to protect the same interests as those protected by *Edwards*, and apply equally in this situation.

Aaron Dickerson v. State of Maryland, No. 2977, September Term, 2010, filed March 30, 2012. Opinion by Moylan, J.

http://mdcourts.gov/opinions/cosa/2012/2977s10.pdf

INCONSISTENT VERDICTS – FIRST-DEGREE ASSAULT – CRIMINAL CASE – FACTUAL INCONSISTENCY – LEGAL INCONSISTENCY – USE OF FIREARM IN ASSAULT – JURY REINSTRUCTION

Facts:

Aaron Dickerson ("Dickerson") appealed his conviction by a jury in the circuit court for Prince George's County of first-degree assault, second-degree assault, and reckless endangerment.

Kevin Artis ("Kevin") was the assault victim. As he got out of his car and walked toward his apartment building, he was approached by the appellant and two other two young males. The appellant challenged Kevin verbally. As Kevin turned to walk into his apartment building, he heard the appellant state, "We are going to get him."

As Kevin left his apartment and returned to his car a few minutes later, the appellant again confronted him. The appellant then entered another apartment building in the complex. As one of his companions, Darius Reed, then held open the apartment building's door, the appellant began shooting a revolver at Kevin. Kevin ducked into his car, a convertible with the top down, and remained down, as six shots rang out. All six shots missed Kevin but one of them hit the passenger side tire of Kevin's car. After the last shot was fired, Kevin reversed his car down the street and out of the line of fire.

The jury acquitted Dickerson of using a handgun in the commission of a crime of violence and of wearing or carrying a handgun.

On appeal, Dickerson alleged the following:

1. The conviction for first-degree assault was fatally inconsistent with the acquittals on the handgun charge; and
2. The trial court judge erred when she answered a jury question regarding first-degree assault by repeating her original first-degree assault instruction to the jury.

Held: Affirmed.

The Court first noted that the only evidence of assault was that Dickerson opened the door of the apartment building, pointed a silver revolver out the door, and fired six shots at Kevin. The Court summarized Dickerson's argument as being that because the assault consisted of firing

shots at Kevin, a conviction for such an assault was inconsistent with an acquittal of using a handgun in the commission of such an assault and an acquittal for carrying a handgun.

The Court then discussed the current landscape of the Maryland law regarding inconsistent jury verdicts. It stated that, prior to 2008, inconsistent jury verdicts in criminal cases were permitted. However, *Price v. State*, 405 Md. 10, 949 A.2d 619 (2008), held that inconsistent jury verdicts in criminal cases is impermissible.

The Court turned its attention to the difference between a legally inconsistent verdict and a factually inconsistent verdict. The former occurs when a jury renders different verdicts on crimes with distinct elements, where the latter occurs when a jury acts contrary to a trial judge's proper instructs regarding the law. The Court pointed out that only legally inconsistent jury verdicts are no longer permitted in Maryland.

The Court noted that there are two aggravating modalities to first-degree assault: the first involving only the *mens rea* of the assault and the second involving the use of a firearm during the commission of the assault. The Court stated that had the first-degree conviction been based only on the second aggravating modality, it would have been an impermissibly legally inconsistent verdict. The Court concluded, however, that there was sufficient evidence in this case to support a finding of either aggravating modality and that therefore the jury verdicts were merely factually, and not legally, inconsistent. The first-degree assault conviction was therefore permissible.

Therefore, the second-degree assault conviction could also stand.

The Court next addressed the jury reinstruction issue. The jury, during its deliberations, requested clarification from the trial judge on first-degree assault. The trial court judge simply repeated the instruction that it had initially given to the jury regarding first-degree assault. The Court noted that this was the *verbatim* Maryland Criminal Pattern Jury Instruction on first-degree assault. The Court determined that it was not an abuse of discretion for the trial court judge to have the jury rely on the original legal definition of first-degree assault.

Mark Charles Morris v. State of Maryland, No. 1705, September Term 2010, filed April 25, 2012. Opinion by Hotten, J.

http://mdcourts.gov/opinions/cosa/2012/1705s10.pdf

CRIMINAL LAW AND PROCEDURE – JURIES AND JURORS – VOIR DIRE – QUESTIONS TO VENIRE PANEL

CRIMINAL LAW AND PROCEDURE – ACCOMPLICES

CRIMINAL LAW AND PROCEDURE – ACCOMPLICES – DETERMINATION OF FACT OR MATTER OF LAW

Facts:

Appellant, Mark Charles Morris, was charged with first and second degree assault in the Circuit Court for Baltimore County and elected a jury trial. Before *voir dire*, the court requested proposed jury instructions from appellant and the State. Appellant objected to the State's proposed "CSI" question. The court overruled the objection, and during *voir dire* posed the following:

> Ladies and gentlemen, television shows such as *C. S. I.*, *Crossing Jordan* and some of the like are fiction. They are not true. Many of the scientific methods used in those kinds of television shows are exaggerated or do not even exist. If you are selected as a juror in this case[,] you will be required to base your decisions solely on the evidence presented in court. Would any potential juror be unable to ignore the so called crime dramas they have been seeing on television, the movies and Internet or such and putting that aside in making your decision based solely on the evidence that you hear in court and not through some expectation of something that you've seen through the media or television? Is there anyone who would be so persuaded by such a show that they would not be able to judge this case fairly and impartially? Please rise if that applies to you. Let the record reflect that there is no such response.

The jury convicted appellant of both charges, and appellant timely appealed, challenging the *voir dire* question discussed above and the sufficiency of the evidence against him.

Held: Affirmed.

The Court noted that, in the absence of a statute or rule to the contrary, *voir dire* questions are left to the discretion of the trial court. Relying on *Charles and Drake v. State*, 414 Md. 726 (2010), and *Stringfellow v. State*, 199 Md. App. 141 (2011), *rev'd*, *State v. Stringfellow*, No. 62, September Term, 2011, slip op. 1 (filed April 23, 2012), appellant argued that the court abused

its discretion when it posed the above *voir dire* question. The Court pointed out that the Court of Appeals recently decided *State v. Stringfellow*, No. 62, September Term, 2011, slip op. 1 (filed April 23, 2012), in which it held that by accepting the jury as empaneled, a defendant waives his or her objection to *voir dire* questions. Because the Court of Appeals in *Stringfellow* assumed that the *voir dire* question was improperly propounded, the Court in this case believed that the principles regarding proper *voir dire* questions discussed in *Stringfellow*, 199 Md. App. at 146-54, remain applicable.

While it is impermissible to commit a potential juror to a decision in advance, a court may question potential jurors about their attitudes concerning key issues to be raised at trial, including whether prospective jurors would be so affected by television crime dramas that often use nonexistent or exaggerated scientific methods that they would not be able to judge the case fairly and impartially. Unlike the "CSI" questions posed in *Charles and Drake*, 414 Md. at 739, and *Stringfellow*, 199 Md. App. at 151-53, the Court ruled that the *voir dire* question in this case did not in any way "suggest[] that finding [appellant] 'guilty' was a foregone conclusion[]" or "fail to lay out any alternative" other than guilt. Moreover, the *voir dire* question "use[d] neutral language, asking the venire if they would 'give either more weight or less weight,' or whether they 'have strong feelings,' or whether they have beliefs that might affect their ability to 'render a fair and impartial verdict.'" *Stringfellow*, 199 Md. App. at 153. Accordingly, the Court discerned that the circuit court did not abuse its discretion in posing the *voir dire* question.

Appellant also claimed that the evidence was insufficient to convict him because two witnesses who were present when the crime was committed were accomplices. The victim was unsure who or how many individuals attacked him, and the two witness were the only ones to identify appellant as the attacker. It is well-established that, in Maryland, uncorroborated accomplice testimony is insufficient to convict. *See, e.g.*, *Silva v. State*, 422 Md. 17 (2011). However, "'the mere fact that a person witnesses a crime and makes no objection to its commission, and does not notify the police, does not make him [or her] a participant in the crime.'" *Id.* (quoting *State v. Foster*, 263 Md. 388, 394 (1971)). The Court held that the two witnesses were not accomplices as a matter of law, so it was up to the jury, as fact-finder, to determine whether the witnesses were accomplices. The Court ruled that appellant's challenge to one witness was waived, and that the circuit court properly instructed the jury as to its role in determining whether the other witness was an accomplice and the need for corroboration. Therefore, the circuit court did not err.

John Doe v. Allegany County Department of Social Services, No. 2354, September Term 2010, filed April 26, 2012. Opinion by Berger, J.

http://mdcourts.gov/opinions/cosa/2012/2354s10.pdf

FAMILY LAW – FAMILY PROTECTION & WELFARE – CHILDREN – ABUSE, ENDANGERMENT & NEGLECT

Facts:

On September 23, 2008, the Allegany County Department of Social Services ("local department") received an allegation of child neglect involving M.C., who at that time was seventeen years old. M.C. and his brother E.C. lived with their aunt, J.C., and her live-in boyfriend, John Doe ("Doe"). J.C. was M.C. and E.C.'s blood relative and their adoptive parent. Nonetheless, Doe and J.C. assumed equal responsibility for the care of both M.C. and E.C. Approximately five months prior to the incident in question, M.C. was paralyzed from the waist down in a car accident.

On the morning of the incident, M.C. reported the alleged events to a counselor when he arrived at school. The counselor called the local department which started an investigation into the incident. M.C. explained to the local department officer that Doe and M.C. had an altercation concerning how he would get to school. During the argument, M.C. alleged that Doe grabbed him by the upper arms, lifted him up, shook him, and pushed him back on the bed. M.C. called for E.C.'s assistance but Doe blocked the door to prevent E.C. from helping M.C.

Thereafter, the local department officer had a brief conversation with Doe at work. During that conversation, Doe presented nearly the same course of events as M.C. One major difference between the two versions of the events was that Doe stated his actions were in response to taunting gestures and disrespectful actions by M.C. Prior to the local department officer having a more complete conversation with Doe, an agent from the Allegany County Health Department's Disabled Adults Unit ("Disabled Adults Unit") called the local department officer to inform him that Doe had called the Disabled Adults Unit. Doe had told the Disabled Adults Unit that he could no longer care for M.C., and that someone from the Disabled Adults Unit needed to get involved.

When the local department officer spoke with Doe later in the day, Doe reiterated that M.C. was no longer welcome at home. The local department officer explained to Doe that the local department was not prepared to make a finding of neglect in connection with this incident. Additionally, the local department officer offered the local department's services to Doe and M.C. Doe, however, declined the services and insisted that he did not want M.C. to return home. Thereafter, the local department officer contacted J.C. who agreed with Doe that M.C. was no longer welcome in their home. J.C. requested that M.C. be placed in a foster home until his

eighteenth birthday. The local department officer followed the request and placed M.C. in a foster home.

The local department filed a Child in Need of Assistance ("CINA") petition after M.C. was placed in a foster home. Doe and J.C. both attended the CINA hearing where they reiterated that M.C. was not allowed to return to their home and requested that he remain in foster care. After this hearing, M.C. was found to be a child in need of assistance. Additionally, the local department officer found that Doe and J.C. were responsible for indicated neglect of M.C. The local department officer found that John Doe and J.C.'s actions placed M.C.'s welfare in substantial risk of harm because M.C. had nowhere else to go and he needed extensive attention and medication due to his accident.

Doe challenged the finding of indicated neglect in a contested hearing before an Administrative Law Judge ("ALJ"). The ALJ rejected the local department officer's finding of indicated child neglect, and instead, ruled out child neglect. This decision was predicated on the fact that M.C. was at all times in the custody and care of either John Doe and J.C. or the local department. When the local department ascertained that M.C. was no longer allowed to return home, it had no choice but to act and take custody and care of M.C. Because there was no lapse in time between when M.C. was not allowed to return home and when the local department took custody, the ALJ determined that M.C.'s health and welfare were never in substantial risk of harm. Additionally, the ALJ noted that Doe and J.C. did everything they could to help M.C. while he was in their custody.

Subsequently, the local department filed a petition for judicial review. The Circuit Court for Allegany County reversed the ALJ's decision and reinstated the finding of indicated child neglect. The circuit court found that the ALJ's decision was predicated on the actions of the local department rather than the conduct of Doe and J.C. which resulted in the local department taking M.C. into its custody.

Held: Affirmed.

The ALJ's decision that neglect could be ruled out was incorrect as a matter of law. A court does not need to wait until a child suffers physical or mental injury prior to determining that neglect occurred. Neglect can be found if a child is placed in a significant risk of harm.

The ALJ based his finding on the actions and abilities of the local department. Instead, the focus should have been on the impact the actions of Doe and J.C. could have had on M.C. had the local department not taken charge of M.C. The actions or capabilities of the Department of Social Services ("DSS") to take care of a child after an incident occurred are irrelevant in determining whether a child was placed at a substantial risk of harm due to an incident.

If the court agreed with the legal findings of the ALJ, so long as the local DSS (or the equivalent governmental agency) was able to care for a child, it would be nearly impossible to find a child

in substantial risk of harm. DSS is tasked with protecting children from situations nearly identical to those presented in the instant case. Accordingly, it is a rare occasion when a child is not allowed to return home in which DSS does not immediately take charge of the child to ensure his or her health and well being.

In re Adoption of Sean M., No. 1836, September Term 2011, filed May 27, 2012. Opinion by Berger, J.

http://mdcourts.gov/opinions/cosa/2012/1836s11.pdf

FAMILY LAW – INDEPENDENT ADOPTION – EFFECT OF FAILURE TO TIMELY OBJECT – FAMILY LAW ARTICLES § 5-3B-1 TO 5-3B-32 – MARYLAND RULE 9-105 – MARYLAND RULE 9-107

Facts:

Sean M., a minor child, was born to Moira K. on July 14, 2009. Since his birth, Sean has resided exclusively with his mother, and since his mother and stepfather's marriage on October 16, 2010, Sean has resided with both his mother and stepfather. Sean's stepfather, Jeffrey K., filed a petition for stepparent adoption of a minor on March 30, 2011 in the Circuit Court for Queen Anne's County, to which Moira consented. On April 15, 2011, the circuit court issued a show cause order and notice of objection to Sean's purported father, William H. The show cause order and notice of objection indicated clearly that if William did not make sure the court received his notice of objection within thirty days, his parental rights would be terminated. William was personally served on April 29, 2011, and any objection was due to be received by the circuit court thirty days later. The thirtieth day fell on Sunday, May 29, and the thirty-first day fell on Monday, May 30, which was Memorial Day. Therefore, any objection was due to be received by the trial court by May 31, 2011.

William's objection was not received by the circuit court until June 1, 2011, one day beyond the thirty-day deadline. Jeffrey filed a motion to strike William's late objection, which the circuit court granted. The circuit judge further ordered that the adoption proceed in the normal course, as uncontested. On August 18, 2011, William filed a motion to alter and amend judgment and an emergency motion to stay the adoption proceeding, which the circuit court denied on September 12, 2011.

Held: Affirmed.

The Court of Special Appeals held that the circuit court did not err in striking William's late notice of objection as untimely. The Court held that failure to timely object to an independent adoption constitutes an irrevocable deemed consent. The Court applied the reasoning of prior cases construing nearly identical language governing objection to guardianship proceedings. It is well established that failure to object to guardianship proceedings constitutes an irrevocable deemed consent. *In re Adoption/Guardianship No. 9321005*, 344 Md. 458, 486, 687 A.2d 681, 694 (1997)*; In re Adoption/Guardianship of Audrey B., Adriana H., and Eric H.*, 186 Md. App. 454, 463, 974 A.2d 965, 970 (2009). The Court looked to the language of the statute and the

legislative history and concluded that failure to timely object also constitutes an irrevocable deemed consent to an independent adoption.

The Court further held that the court need not definitively establish paternity before a father's consent can be deemed due to failure to timely object. Section 5-3B-20 of the Family Law article provides that a court may enter an order for adoption only if each of the child's living parents consents. Section 5-3B-05(a) of the Family Law Article defines "father" as including seven different categories of potential fathers, only some of whom have conclusively been adjudicated to be the father. The Court held, therefore, that the statute does not contemplate that a purported father's paternity be conclusively determined before he has standing to consent or object to a proposed independent adoption.

Last, the Court of Special Appeals held that the deemed consent scheme in the context of independent adoptions does not deprive natural parents of any due process right. Parents have a fundamental liberty interest in the care, custody, and management of their children. The Court held that the process provided to natural parents is fundamentally fair and is consistent with the process due under *Matthews v. Eldridge*, 424 U.S. 319 (1976). In reaching this conclusion, the Court balanced the father's private interest in the care and custody of his child, the government interest in timely providing permanent and safe homes for children consistent with their best interests, and the risk of error presented by the procedure. The Court noted that both the private and government interests in an independent adoption case are strong, but stressed that the risk of error was quite limited given that the show cause order must be personally served upon the parent, explains clearly the right to object and the consequence of failing to file an objection, and includes a form notice of objection. The Court noted that William had presented no extreme circumstances to justify his late filing. The Court ultimately concluded that William's due process rights were not offended by the deemed consent scheme.

Estate of Steven Click, et al. v. Estate of Joanne Click, et al., No. 2430, September Term 2010, filed March 30, 2012. Opinion by Watts, J.

http://mdcourts.gov/opinions/cosa/2012/2430s10.pdf

CONSTRUCTION OF WILLS – LATENT AMBIGUITY – PATENT AMBIGUITY – EXTRINSIC EVIDENCE – PER STIRPES DISTRIBUTION

Facts:

This case involves the construction of the last Will and Testament of a testator who prepared the Will with a computer program purchased at a local retail store, and without the assistance of an attorney. Specifically, the case concerns interpretation of the language "any such property" contained in the phrase "I give all my jewelry, clothing, household furniture and furnishings, personal automobiles and other tangible articles of a personal nature, or my interest in any such property not otherwise disposed of by this Will" in the third paragraph of the Will, and the language "surviving members in order of succession" contained within the fifth paragraph of the Will.

Appellants, the Estate of Steven William Click and Bret William Click, argued before the circuit court and on appeal that the third and fifth paragraphs of the Will are ambiguous and that the testator intended to leave her real property, a home which she and her son, Steven William Click resided, to Steven. Appellants maintained that because the terms of the Will are ambiguous, evidence of the testator's intent is admissible. In contrast, appellees, Elizabeth Smith, Rebecca Maberry, and Teresa Talley, the testator's grandchildren (the children of a different son) argued that the Will is not ambiguous and that the testator's real property must be distributed equally among the legatees listed in the Will. The circuit court agreed with appellees and found that the language of the Will was not ambiguous, and that the phrase "any such property" in the third paragraph of the Will referred only to personal property described in the preceding clause and did not include real property not otherwise disposed of by the Will. The circuit court also found that the phrase "surviving members in order of succession" in the fifth paragraph was not ambiguous and evidenced an intent for per stirpes distribution of the testator's residuary estate, including her real property.

Held: Reversed

In construing a will, the paramount concern is to ascertain and effectuate the testator's expressed intent. In order to ascertain a testator's expressed intent, the intent is gathered from the four corners of the will itself, with the words used given their plain meaning and import. Words of legal significance will be construed in that sense unless the will clearly indicates otherwise.

If a layperson–rather than an attorney–draws up the will, the language used may be given the meaning it would commonly have to a person in his or her situation.

It is well-settled in Maryland that extrinsic evidence of the circumstances surrounding execution of a will is admissible in construing a will only if the will contains a latent ambiguity.

A latent ambiguity occurs within a will when the language of the will is "plain and single, yet is found to apply equally to two or more subjects or objects." Extrinsic evidence is generally admissible to resolve a latent ambiguity.

Where language within a will is susceptible to more than one interpretation or is "latently ambiguous," evidence of surrounding circumstances as to the testator's intent is admissible.

In this case, in the context of the language of the Will, the phrase "any such property not otherwise disposed of by the Will" is ambiguous based on the plain reading of the Will. The language is capable of more than one meaning.

The language "surviving members in order of succession" has not previously been interpreted by Maryland appellate courts and is latently ambiguous as the language on its face is capable of more than one meaning.

The language "surviving members in order of succession" alone does not unambiguously demonstrate the testator intended per stirpes distribution.

Per stirpes means "[p]roportionately divided between beneficiaries according to their deceased ancestor's share."

Felix L. Johnson, Jr., Deceased v. Mayor and City Council of Baltimore, No. 1707, September Term 2010, opinion filed March 28, 2012. Opinion by Davis, J.

http://mdcourts.gov/opinions/cosa/2012/1707s10.pdf

WORKERS' COMPENSATION ACT – SURVIVORS' BENEFITS – RETROACTIVE APPLICATION

Facts:

Maryland Annotated Code, Labor and Employment Article § 9-503 (e) (providing for the recovery of dual benefits, subject to the amount capped by the employee's weekly salary), reads as follows:

> (e) (1) Except as provided in paragraph (2) of this subsection, any paid firefighter . . . who is eligible for benefits under subsection (a), (b), (c), or (d) of this section *or the dependents of those individuals* shall receive the benefits in addition to any benefits that the individual or the dependents of the individual are entitled to receive under the retirement system in which the individual was a participant at the time of the claim.
>
> (2) The benefits received under this title shall be adjusted so that the weekly total of those benefits and retirement benefits does not exceed the weekly salary that was paid to the . . . firefighter[.]

In *Mayor & City Council of Baltimore City v. Ernest A. Johnson*, 156 Md. App. 569, 572-73 (2004), *aff'd*, 387 Md. 1 (2005), citing *Polomski v. Mayor and City Council of Baltimore*, 344 Md. 70 (1996), we held that a retired firefighter who is also disabled as a result of an occupational disease is entitled under the Maryland Workers' Compensation Act to collect both service pension benefits and compensation benefits, in a sum not to exceed the firefighter's weekly salary. Appellant, in this appeal from the decision by the Circuit Court for Baltimore City, reversing an award of survivor's benefits by a decision of the Workers' Compensation Commission, claimed that, pursuant to L.E. § 9-503(e), she is also entitled to collect workers' compensation benefits, so long as the total amount does not exceed Mr. Felix Johnson's average weekly wage at the time of his death.

Held:

The 2007 amendment to LE § 9-503(e) may not be applied retrospectively. The change in LE § 9-503(e) was intended by the General Assembly to address the Court's decision in (*Ernest*) *Johnson* and to clarify the law to provide for dual benefits to the surviving dependents of certain public employees who are presumed to have died because of their occupational disease. The

Court of Special Appeals does not divine an intent from the General Assembly that the amendment should apply retrospectively.

Gregg Daniel Bacon v. Paul Arey, et al., No. 2339, September Term 2010, filed March 29, 2012. Opinion by Watts, J.

http://mdcourts.gov/opinions/cosa/2012/2339s10.pdf

REAL PROPERTY – EASEMENTS GENERALLY – EXPRESS EASEMENTS – IMPLIED EASEMENTS BY NECESSITY – STATUTE OF LIMITATIONS – DISCOVERY RULE – FRAUDULENT CONCEALMENT – CONTINUING HARM THEORY – DUTY OF CARE – CONTENTS OF PLEADINGS – MOTION TO STRIKE – AMENDMENT OF PLEADINGS – DISCOVERY

Facts:

This case involves an action for entitlement to an easement for access to property. Appellant alleged entitlement to an easement as means of ingress and egress to his property, a two acre lot in Montgomery County, Maryland, and claimed that absent the easement, the property would be landlocked.

Appellant filed a complaint, an amended complaint, a second amended complaint, and a third amended complaint seeking declaratory judgment as to the establishment of the easement and other claims. Various defendants moved to dismiss the third amended complaint on the grounds that appellant failed to state a claim upon which relief could be granted. The circuit court dismissed the third amended complaint. Appellant noted an appeal.

The Court of Special Appeals of Maryland remanded the case to the circuit court without affirmance or reversal, finding that there was no final judgment to appeal from and that the circuit court must address the claims for declaratory relief in the third amended complaint and adjudicate a cross-claim. On remand, the circuit court ordered the parties to submit proposed forms of declaratory judgment with respect to the third amended complaint. Appellant instead filed a fourth amended complaint and a motion for declaratory judgment. The circuit court granted motions to strike the fourth amended complaint, issued a nunc pro tunc order dismissing the third amended complaint and cross-claim as to all appellees, and entered declaratory judgment in appellees' favor as to appellant's claims for an easement. In the declaratory judgment order, the circuit court found that appellant took title to the property after all of the pertinent events averred in the third amended complaint, and that the third amended complaint failed to include averments establishing a *prima facie* claim for an express easement or an implied easement by necessity. Following issuance of an order denying a motion for *in banc* review, appellant noted an appeal.

Held: Affirmed.

An express easement by grant or reservation is created through a written instrument complying with the Statute of Frauds containing "the names of the grantor and grantee, a description of the property sufficient to identify it with reasonable certainty, and the interest or estate intended to be granted." In construing the language of a deed of easement, "a court should ascertain and give effect to the intention of the parties at the time the contract was made, if that be possible."

A party fails to establish the existence of an express easement where the party fails to allege the existence of a written instrument expressly granting or reserving an easement for his property.

That other deeds between other parties may have referenced the alleged easement as a boundary or that historic tax maps showed the alleged easement is insufficient to create an express easement servicing a party's property.

An implied easement by necessity "arise[s] from a presumption that the parties intended that the party needing the easement should have access over the land."

There are three necessary requirements for creation of an implied easement by necessity: (1) initial unity of title of the parcels of real property, meaning the dominant and servient estates must have belonged to the same person at some point in time; (2) severance of the unity of title by conveyance of one of the parcels; and (3) the easement must be necessary in order for the grantor or grantee to be able to access the property, with the necessity existing both at the time of the severance of title and at the time of the exercise of the easement. The necessity must exist at the time of the severance of the unity of title, and cannot be established by a subsequent necessity.

A party fails to establish a *prima facie* case for an implied easement by necessity where the party fails to allege any of the three elements required for finding such an easement, including unity of title, how unity of title was severed, and that usage of the alleged easement was necessary at the time of severance.

A trial court is not required or permitted to presume the existence of an implied easement by necessity where a party contends that property is landlocked but has not demonstrated the circumstances necessary to establish an easement by necessity. In this case, appellant failed to establish an easement by necessity or an express easement.

For purposes of the statute of limitations, when a cause of action accrues in a civil case is determined by application of the "discovery rule," which provides that "the action is deemed to accrue on the date when the plaintiff knew or, with due diligence, reasonably should have known of the wrong."

Under the "discovery rule," the statute of limitations begins to run when a plaintiff "gains knowledge sufficient to put her on inquiry. As of that date, [the plaintiff] is charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation."

One general exception to the accrual of the statute of limitations occurs in situations in which a defendant fraudulently conceals the cause of action from the plaintiff "so as to prevent its discovery by the exercise of due diligence." In order for this exception to apply and extend the applicable statute of limitations, a plaintiff must plead fraud or fraudulent concealment with particularity, and the complaint must "contain specific allegations of how the fraud kept the plaintiff in ignorance of a cause of action, how the fraud was discovered, and why there was a delay in discovering the fraud, despite the plaintiff's diligence." The burden of proof lies on the plaintiff.

Another general exception to the accrual of the statute of limitations is the continuing harm theory, which provides that violations that are continuing in nature are not barred by the statute of limitations because one or more of them occurred earlier in time. The continuing harm theory requires that a tortious act–not simply the continuing effects of a prior tortious act–fall within the applicable limitations period.

The statute of limitations is not tolled under the continuing harm theory where a party makes bare assertions that there is a continued course of conduct among the defendants and where the party's allegations concern the continuing effects of a single earlier act rather than repeated new tortious acts daily or periodically.

A party is not required to demonstrate prejudice before raising the defense of the statute of limitations.

The existence of a legal duty of care is a question of law. There can be no negligence where there is no duty of care owed.

The mere licensing of land surveyors does not create a private cause of action by members of the general public against those surveyors.

A trial court properly exercised its discretion by striking a successive amended complaint where a plaintiff filed the amended complaint without leave of court after the defendants' motions to dismiss a prior amended complaint had been granted by the court.

Where there were numerous parties, claims, and preliminary motions and responses filed, raising significant legal issues as to parties the plaintiff could proceed against and the plaintiff's ability to bring the action, the trial court properly exercised its discretion and resolved legal questions presented in dispositive preliminary motions prior to the completion of discovery.

Paul Svrcek v. Diane S. Rosenberg et al., No. 988, September Term 2010, filed March 28, 2010. Opinion by Davis, J.

http://mdcourts.gov/opinions/cosa/2012/0988s10.pdf

FORECLOSURE SALE OF REAL PROPERTY – MARYLAND CODE ANN., COMMERCIAL LAW ARTICLE ("C.L.") § 3-203 (a)-(b) – C.L. § 3-309 – MARYLAND RULES 14-204 AND 14-207 – *ANDERSON V. BURSON*, 424 MD. 232 (2011)

Facts:

On November 4, 2005, appellant executed an adjustable rate promissory note in the amount of $486,000 to Taylor, Bean & Whitaker Mortgage Corp. for the purpose of refinancing his real estate property. The note was secured by a deed of trust, executed on the same date, to Taylor, Bean & Whitaker Mortgage Corp. The deed of trust contained a power of sale provision. On or before June 1, 2006, appellant's loan was sold or transferred into a pool of securitized trust and, on January 29, 2010, the property was sold at public auction to Citibank, N.A. as Trustee. Thereafter, appellees/Substitute Trustees filed a report of sale with the court.

Notwithstanding their claim that the original note was in a document vault belonging to EMC Mortgage Corp., at a motions hearing, appellees/Substitute Trustees produced a "Lost Note Affidavit" in which EMC Mortgage Corp., as Attorney in Fact for Citibank, asserted that (1) the original Note was dated November 4, 2005 in the original principal amount of Four Hundred Eighty-Six Thousand and 00/100 Dollars ($486,000) bearing interest at a rate of 5.875% per cent per annum and secured by that certain Deed of Trust executed by Paul Svrcek and recorded in the Land Record Office for Queen Anne's County, Maryland; (2) that the original Note has been lost, but a copy is attached; (3) that the holder of the Note is EMC Mortgage Corporation . . .; (4) and that the Note is in default.

Appellant contended, generally, that appellees/Substitute Trustees did not have the legal right to initiate the foreclosure proceeding under the Maryland Rules and, therefore, he was entitled to have the sale stayed and the foreclosure proceeding dismissed. More specifically, he argued that appellees failed to meet their burden of proving that they possessed the promissory note currently and lawfully.

Held:

Whether a negotiable instrument, such as a deed of trust note, is transferred or negotiated dictates the enforcement rights of the note transferee. A transfer has two requirements: the transferor (any person that transfers the note, except the issuer) must intend to vest in the transferee the right to enforce the instrument (thieves and accidental transferees are excluded) and must deliver the instrument so the transferee receives actual or constructive possession. C.

L. §3-203(b). Citibank, N.A. as Trustee failed to establish that it was a holder of the Svrcek note, but established, instead, that it was a person not in possession of an instrument who is entitled to enforce it pursuant to §3-309 of the Commercial Law Article.

Montgomery County, Maryland v. Maryland Economic Development Corporation, No. 2673, September Term 2010, filed March 30, 2012. Opinion by Watts, J.

http://mdcourts.gov/opinions/cosa/2012/2673s10.pdf

GOVERNMENTS – LOCAL GOVERNMENTS – LEGISLATION – INTERPRETATION – PUBLIC HEALTH & WELFARE LAW – SOCIAL SERVICES – ECONOMIC DEVELOPMENT – FINANCE – TAX LAW – STATE & LOCAL TAXES – RECORDATION TAX – TAX EXEMPTIONS

Facts:

This is an administrative appeal from a decision of the Maryland Tax Court regarding a request for a refund of State recordation tax paid by appellee, the Maryland Economic Development Corporation ("MEDCO"). Appellant, Montgomery County, Maryland (the "County") denied the request for a refund and MEDCO appealed to the tax court. The tax court agreed with the County that no exemption applied and affirmed the denial of the refund. MEDCO petitioned for judicial review in the Circuit Court for Montgomery County. The circuit court reversed the tax court and remanded for further proceedings consistent with the circuit court's conclusion that the recordation tax falls within an exemption. On appeal, the County argues that the tax court properly interpreted the law, finding that MEDCO was not exempt from paying recordation tax on a deed of trust, where the tax is imposed on the privilege of recording the document and not on a particular party to the transaction.

Held: Reversed

The Court of Special Appeals affirmed the tax court, reversing and vacating the decision of the Circuit Court for Montgomery County with instructions to affirm the judgment of the Maryland Tax Court.

The Maryland Tax Court is an administrative agency, and as such, final orders of the tax court are subject to judicial review. The standard of review for Tax Court decisions is generally the same as that for other administrative agencies–a reviewing court is under no statutory constraints in reversing a Tax Court order which is premised solely upon an erroneous conclusion of law, but legal interpretations of the statute it administers are entitled to some deference. Where the Tax Court's decision is based on a factual determination, and there is no error of law, the reviewing court may not reverse the Tax Court's order if substantial evidence of record supports the agency's decision.

Tax exemption statutes are to be strictly construed in favor of the taxing authority and to doubt an exemption is to deny it. No tax exemption will be held to result from any language of a statute which does not show an unmistakable intention of the General Assembly to make the stipulated payment a substitute for the particular taxes for which the exemption is claimed.

Pursuant to Md. Ann. Code, Econ. Dev. Art. § 10-105, the Maryland Economic Development Corporation ("MEDCO") is an instrumentality of the State. MEDCO's tax exempt status is set forth in Md. Ann. Code, Econ. Dev. Art. § 10-129(a), which provides, in pertinent part that "the Corporation is exempt from any requirement to pay taxes or assessments on its properties or activities, or any revenue from its properties or activities."

A review of the plain language of Econ. Dev. § 10-129(a) demonstrates that the General Assembly sought to exempt MEDCO from any requirement to pay taxes or assessments on its properties or activities, or any revenue from its properties or activities. If MEDCO is required to pay a tax or assessment on its properties or activities or revenue therefrom, then MEDCO is exempt; conversely, if MEDCO is not required to pay the tax, it is not exempt.

A review of the statute from 1984, Article 41 § 567, to the 2008, Econ. Dev. § 10-129, reveals that MEDCO is exempt only from taxes it is **required** to pay upon its properties or activities. From the language of Tax-Prop. § 12-111, MEDCO is clearly not mandated or required to pay the recordation tax, as the tax "may be paid by any person."

The State recordation tax is an excise tax imposed upon the privilege of recording certain instruments, including, among other things, the transfer of title to real property, and is not a tax on the property itself. It is a general rule that exemptions from taxation ordinarily do not apply to excises or taxes which are upon the enjoyment of a privilege.

Pursuant to Md. Ann. Code, Tax-Prop. Art. § 12-108(a), an instrument of writing is not subject to recordation tax, if the instrument of writing transfers property to or grants a security interest to the United States, the State, an agency of the State or a political subdivision in the State. Pursuant to Md. Ann. Code, Tax-Prop. Art. § 12-116, a county may enact its own law exempting from the recordation tax an instrument of writing that transfers property from or grants a security interest from a State or State agency. Montgomery County has not enacted a law exempting from the recordation tax an instrument of writing that transfers property from or grants a security interest from a State agency.

Maryland appellate courts have previously held that a tax exemption does not apply when the legal incidence of the tax fails to fall on the party who has the exempting tax status. The Court of Appeals held in *Vournas v. Montgomery Cty., Md.*, 53 Md. App. 243, 244 (1982), *aff'd*, 300 Md. 123 (1984), that "[t]he United States Constitution immunizes the United States and its property from taxation by the States, but it does not forbid a tax whose legal incidence is upon a person doing business with the United States, even though the economic burden of the tax, by contract or otherwise, is ultimately borne by the United States." In this instance, the legal incidence of the tax fell upon the bank, that was the beneficiary of the deed of trust.

Nicole Leake, et al. v. Dondi Johnson, Jr., No. 2607 September Term 2010, filed March 30, 2012. Opinion by Graeff, J.

http://mdcourts.gov/opinions/cosa/2012/2607s10.pdf

CIVIL LAW – DAMAGE CAPS – LOCAL GOVERNMENT TORT CLAIMS ACT – PUBLIC OFFICIAL IMMUNITY – PRESERVATION – WRONGFUL DEATH – INDIVIDUAL CLAIMS

Facts:

Dondi Johnson, Sr. was arrested for public urination, handcuffed, and placed into a police van by three Baltimore City police officers. The officers failed to secure Mr. Johnson with a seatbelt. During the drive from the site of arrest to the police station, Mr. Johnson suffered severe injuries and subsequently died at a hospital as a result of his injuries.

Mr. Johnson's estate and his two sons, appellees, filed a wrongful death and survivorship action in the Circuit Court for Baltimore City against the officers, Officers Sendy Ferdinand, Michael Riser, and Nicole Leake, appellants. A jury found in favor of appellees, and returned a verdict of $7,405,000. The circuit court, reduced the verdict pursuant to the cap on damages in the Local Government Tort Claims Act and entered judgment in the amount of $416,500. Each of the parties appealed from the judgment.

Held:

The right to file a motion for JNOV is relinquished if the party failed to raise the ground asserted in a motion for judgment at the close of all the evidence.

The Local Government Tort Claims Act limits liability of a local government to "$200,000 per an individual claim" and "$500,000 per total claims that arise from the same occurrence." A wrongful death claim is aggregated with the survival claim of the injured person in applying the limitation of liability to $200,000 per an "individual claim."

Marjorie Gayle Hendrix v. Charles Robert Burns, et ux., No. 2039, September Term, 2010, filed March 29, 2012. Opinion by Eyler, Deborah S., J.

http://mdcourts.gov/opinions/cosa/2012/2039s10.pdf

TORTS – CIVIL BATTERY – INTENT – TRANSFERRED INTENT – EMOTIONAL DISTRESS DAMAGES – EXCLUSION OF FACTS UNDERLYING NEGLIGENT ENTRUSTMENT CLAIM WHEN LIABILITY IS CONCEDED.

Facts:

The defendant's car collided with the plaintiff's car in an intersection when the defendant drove through a red light. The plaintiff did not see the defendant's car before it hit hers. At the time of the accident, the defendant was drunk, had been engaged in a "road rage" incident with another driver, attempted to flee the scene, and had a prior history of drunk driving offenses.

The plaintiff sued the defendant for battery and negligence and sued the defendant's wife, the owner of the vehicle the defendant had been driving, for negligent entrustment. The court granted summary judgment in favor of the defendant on the battery count for lack of proof of intent to cause a harmful or offensive contact with the plaintiff. The defendants each admitted liability on the negligence counts and trial was held on the issue of damages. The jury awarded the plaintiff $85,000.

Unhappy with the damages award, the plaintiff challenged on appeal the court's grant of summary judgment on the battery claim, certain of its rulings precluding evidence at trial, and its grant of a motion to strike an amendment to the plaintiff's complaint.

Held: Affirmed.

On the summary judgment record, considering the evidence in the light most favorable to the plaintiff, the evidence was legally insufficient to prove that the defendant intended to cause a harmful or offensive contact with the plaintiff. The doctrine of transferred intent can apply to a civil battery claim if the evidence supports it. The plaintiff argued that the defendant intended to cause a harmful or offensive contact with the driver that was the object of the defendant's "road rage." The plaintiff's evidence on summary judgment showed that the defendant was enraged at the other driver, but it did not show that he intended to cause a harmful or offensive contact with that driver. Accordingly, even if the defendant's intent toward the other driver in the "road rage" incident were transferred to the plaintiff, it would be legally insufficient to satisfy the intent element of battery, and summary judgment was properly granted.

The court also did not err in its *in limine* rulings. The only issue for the jury to decide was damages. Sometime after the accident, the plaintiff learned that the defendant had been driving

while drunk, had a history of drunk driving, had been in the "road rage" incident, and had attempted to flee the scene. The plaintiff claimed that she experienced additional emotional distress upon learning this information, beyond the distress associated with the accident itself. The court properly ruled that the plaintiff could not recover damages for emotional distress for later learning information about the defendant as any such distress was not connected to the accident or her injuries. The court also properly ruled that, given the admissions of liability, the plaintiff could not introduce evidence about the assertion or precise nature of the negligent entrustment claim against the defendant wife, because that would elicit evidence that was not relevant to damages and, even if relevant, would be unfairly prejudicial as it would serve only to inflame the jurors against the defendants.

Finally, the court did not err in striking amendments to the negligent entrustment claim when liability had been admitted and when the amendments were allegations of intentional misconduct that were not relevant to any element of the tort of negligent entrustment.

East Star, LLC et al. v. The County Commissioners of Queen Anne's County, Maryland, No. 2616, September Term 2010, filed March 1, 2012. Opinion by Zarnoch, J.

http://mdcourts.gov/opinions/cosa/2012/2616s10.pdf

ZONING & PLANNING – PREEMPTION

Facts:

In April of 2009, the Queen Anne's County Commissioners adopted County Ordinance 08-20, which amended the County Zoning Ordinance by adding a new Section 18:1-95E(9), dealing with "[m]ajor extraction operations." The adopted ordinance prohibited major extraction operations from exceeding 20 acres, other than by expansion in 20-acre increments; limited an operation from exceeding five years, renewable in five-year increments; precluded expansion from occurring until the previously disturbed area was reclaimed; and required any expansion or renewal to be approved by the Board of Appeals in Queen Anne's County as a conditional use.

In February 2010, excavation operators East Star, LLC, Shore Sand and Gravel LLC, and David A. Bramble, Inc., (collectively "East Star") filed a complaint in the Circuit Court for Queen Anne's County against the County Commissioners seeking declaratory and injunctive relief. East Star asserted that the new ordinance was preempted by provisions of the State surface mining laws, specifically those which gave the Maryland Department of the Environment the right to determine the operation's maximum size, allow extraction operations to last up to 25 years, and provide operators with up to two years to reclaim the land after mining it. East Star additionally contended that the ordinance violated the excavators' substantive due process rights by denying the exercise of a lawful business and the use of property without a valid public interest. In response, the County argued that its more onerous requirements were permissible zoning regulations. The circuit court judge agreed, prompting an appeal.

Held: Reversed

The Court of Special Appeals reversed on preemption grounds, declined to address the due process rights contention, and remanded the case with instructions to issue a declaratory judgment declaring invalid the provisions of the ordinance at issue. In its analysis, the Court observed that preemption of a local law by state law can be express or implied or can occur when local law conflicts with State law. East Star argued only preemption by implication and conflict.

Acknowledging that State law required the Maryland Department of the Environment to process surface mining applications "concurrently with any local or county, land use and zoning reviews," the Court nonetheless found implied preemption because the relevant State law was

extensive, specific, and all-encompassing. Specifically, State law addressed maximum disturbance for surface mines, the time periods for mining activities, the reclamation process, and conditional use approval for renewal or expansion. Noting that the comprehensiveness with which the Legislature had spoken is the primary indicator of implied preemption, the Court concluded that the County went beyond its zoning powers and impermissibly entered the realm of a State law that impliedly preempted its authority.

The Court next considered whether the local ordinance prohibited an activity which was intended to be permitted by state law, or permitted an activity which was intended to be prohibited by state law – in other words, whether it was preempted by conflict. Portions of the ordinance, specifically those concerning reclamation, the maximum area disturbed by any major extraction, and the length of the permit's duration were in direct conflict with key provisions of State law. Because the ordinance placed additional and incompatible restrictions on the surface mining operations than those imposed by the State, it was also preempted by conflict.

Paul F. Kendall, et al. v. Howard County, No. 235, September Term 2010, filed April 11, 2012.Opinion by Zarnoch, J.

http://mdcourts.gov/opinions/cosa/2012/0235s10.pdf

ZONING & PLANNING – VOTING RIGHTS

Facts:

Appellants, Paul Kendall and three other residents of Howard County, filed suit in the Circuit Court for Howard County seeking a declaratory judgment that over 100 county land use resolutions, zoning ordinances, and administrative actions violated Howard County Charter § 202(g). Appellants argued that their right to vote had been violated when the county enacted the zoning decisions through resolutions, which are not subject to referendum, rather than ordinance, which are subject to referendum. In 2011, the residents lost a similar challenge brought in federal court. The circuit court granted the County's motion to dismiss, holding that the county residents lacked standing as voters to bring suit, had failed to join necessary parties, and failed to exhaust administrative remedies. The residents appealed.

Held: Affirmed.

The Court of Special Appeals held dismissal was not warranted based on a failure to join necessary parties or failure to exhaust administrative remedies. On the issue of joinder the Court held, "while many landowners would be adversely affected by invalidating prior land use decisions, requiring joinder under Md. Code Ann., Cts. & Jud. Proc. § 3-405(a) (2006), dismissal was not the ordinary remedy for a failure to join necessary parties." The Court rejected appellants' argument that when "public rights" are at stake, the traditional rules governing joinder do not apply. Additionally, dismissal for failure to exhaust was unwarranted, the Court said, explaining that although "many of the land use decisions challenged may have triggered exhaustion concerns, it seems unlikely that each and every one of them would."

However, the Court held that appellants lacked standing to challenge the county's actions based on voter standing. The right to vote was not implicated here because appellants had not, "initiated the referendum process for any of the challenged land use actions." Relying on *Baker v. Carr*, 369 U.S. 186 (1962), the Court held that a "concrete injury" to fundamental voting rights had not yet occurred. The sole remaining basis for voter standing was the appellants' "assertion of an abstract, generalized interest in the County's compliance with § 202(g) of the Charter," which was not a sufficient basis to confer standing.

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ATTORNEY DISCIPLINE

By an Opinion and Order of the Court of Appeals dated April 23, 2012, the following attorney has been disbarred:

BARRY S. BROWN

*

By an Opinion and Order of the Court of Appeals dated April 23, 2012, the following attorney has been disbarred:

CONSTANCE ANNE CAMUS

*

By an Order of the Court of Appeals dated April 23, 2012, the following attorney has been suspended for thirty days by consent:

PAUL BYRON ROYER

*

By an Order of the Court of Appeals dated April 24, 2012, the following attorney has been placed on inactive status by consent:

DEAN KNOWLES

*

By an Opinion and Order of the Court of Appeals dated April 24, 2012, the following attorney has been indefinitely suspended:

HENRY D. McGLADE, JR.

*

By an Order of the Court of Appeals dated April 25, 2012, the following attorney has been disbarred by consent effective May 24, 2012:

HARRY WALTER BLONDELL

*

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JUDICIAL APPOINTMENTS

On April 13, 2012, the Governor announced the appointment of **KAREN HOLLIDAY MASON** to the Prince George's County District Court. Judge Mason was sworn in on April 30, 2012 and fills the vacancy created by the elevation of the Honorable Hassan A. El-Amin

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