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ADMINISTRATIVE LAW - DEFERENCE

Facts: Appellant Adventist is a merged asset hospital system that wished to relocate part of its existing cardiac surgery program from one hospital to another. It sent a letter of intent to relocate to the Maryland Health Care Commission, along with a separate letter detailing that it was not asking for a Certificate of Need (CON) for a new cardiac surgery program, but rather, was requesting relocation pursuant to Policy 6.0 in the 2004 State Health Plan. The Commission wrote Adventist, stating that it interpreted Adventist's request as a request for a new program. Adventist filed a "Petition for Acceptance of Letter of Intent for Partial Relocation of an Existing Cardiac Surgery and Percutaneous Coronary Intervention Program." The Commission took Adventist's petition and two previous letters and submitted to the comparative review process typically used for evaluating CON requests for new cardiac surgery programs. The Commission then released a decision stating that it was appropriate to consider Adventist's proposal in the typical CON review process. Adventist filed a petition for judicial review in the Circuit Court for Baltimore City, complaining that the Commission's interpretation of Policy 6.0 was improper. The Circuit Court found for the Commission, holding that great deference will be given to the interpretation given the statute by the officers or agency charged with its administration.

Held: Affirmed. The Court was faced, specifically, with a situation involving an administrative agency interpreting its own regulations in the context of its quasi-judicial role. Administrative agencies possess an "expertise" and, thus, have a greater ability to evaluate and determine the matters and issues that regularly arise, or can be expected to be presented, in the field in which they operate or in connection with the statute that they administer. Consequently, the interpretation of a statute by the agency charged with administering the statute is entitled to great weight. When an administrative regulation is ambiguous, in order to resolve that ambiguity, deference is appropriately given to the interpretation of that regulation by the administrative agency promulgating it.

Adventist Health Care Inc. v. Maryland Health Care Commission, No. 73, September Term, 2005, Filed April 12, 2006. Opinion by Bell, C.J.

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CONSTITUTIONAL LAW - FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION

EVIDENCE - CROSS-EXAMINATION - RELEVANCY

Facts: Appellant McKim McKenney Simmons was tried by a jury in the Circuit Court for Howard County and convicted of child abuse, second degree assault, and reckless endangerment of his daughter, Nyah Simmons. On the morning of March 18, 2003, appellant called 911, stating that his daughter was injured by a fall from her bed. Shortly before calling 911, he called his wife, Patricia Dockery, who had left for work approximately an hour earlier. Dockery advised appellant to call 911. Paramedics responded to the 911 call, and transported Nyah to Howard County General Hospital. Subsequently, Nyah was transferred to Johns Hopkins Hospital.

At trial, the State offered the expert testimony of Dr. Allen Walker, a physician at Johns Hopkins who treated Nyah. Dr. Walker testified that Nyah's injuries were of a sort that is almost exclusively caused by violent shaking, and that, given the nature of her injuries, her symptoms would have manifested almost immediately after infliction.

Prior to trial, Dockery sent letters to the State's Attorney Office and to defense counsel indicating that she would assert her Fifth Amendment privilege against self-incrimination if called to testify at appellant's trial. At trial, appellant did not call Dockery as a witness. Rather, appellant requested leave of court to ask Dr. Walker whether his opinion as to the timing of the manifestation of Nyah's symptoms would change if he knew that Dockery intended to assert her Fifth Amendment privilege against self-incrimination, and proffered Dockery's letters as a basis for his proposed line of cross-examination. The trial court denied appellant's request.

Held: Affirmed. The Court held that Gray v. State, 368 Md. 529, 796 A.2d 697 (2002), was inapplicable to the facts of this case. In Gray, the Court held that, under certain circumstances, a criminal defendant may call a witness to the stand in the presence of the jury in order to have the witness assert his or her Fifth Amendment privilege against self-incrimination, in order to permit the jury to draw the negative inference that the witness was the perpetrator of the crime with which the defendant is charged, but only after the trial court has determined outside the presence of the jury that the witness is entitled to assert the privilege. Since appellant never sought to have Dockery called to the stand to assert her Fifth Amendment privilege, the Court rejected appellant's claim that the trial court violated Gray by prohibiting

appellant's proposed cross-examination of Dr. Walker.

The Court also held that the trial court correctly excluded appellant's proposed cross-examination of Dr. Walker on relevancy grounds. Dr. Walker's opinion as to the timing of the manifestation of Nyah's injuries was based on his opinion concerning the nature of the injuries, and was not based on any assumption regarding the identity of the person who inflicted the injuries. Thus, evidence of Dockery's intention to assert her Fifth Amendment privilege against self-incrimination if called to testify was not relevant to challenge the bases of Dr. Walker's expert opinion.

McKim McKenney Simmons v. State of Maryland, No. 57, September Term, 2005, filed April 14, 2006. Opinion by Raker, J.

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COURTS – PERSONAL JURISDICTION – GENERAL JURISDICTION – DUE PROCESS – FOREIGN LIMITED PARTNERSHIP – SERVICE OF PROCESS UPON RESIDENT AGENT OF DOMESTIC CORPORATE GENERAL PARTNER

Facts: The Court of Appeals considered whether a Maryland state court may exercise personal jurisdiction over a foreign limited partnership whose only connection to Maryland consists of its corporate managing general partner's re-incorporation in Maryland. The Court considered also whether that general partner itself may be held liable for the actions of the foreign limited partnership entity, occurring outside of Maryland, in a contractual dispute among the partners of a second, distinct foreign limited partnership of which the first foreign limited partnership is the general partner.

Hellyer Avenue Limited Partnership ("HALP") was established in California in the summer of 2000, pursuant to the California Uniform Limited Partnership Act, for the purpose of developing, constructing, and managing a headquarters building in California for a communications company. The principal office and place of

business of HALP also is in California. HALP consists of: Mission West Properties, L.P. ("MWLP"), the managing general partner and registered agent of HALP; Republic Properties Corporation ("Republic"), also a general partner of HALP; and Steven Grigg ("Grigg"), David Peter ("Peter"), and Mentmore Partners LLC ("Mentmore"), the three limited partners of HALP. The present action was brought by Republic, Grigg, Peter, and Mentmore (collectively the "Suing HALP Partners") against MWLP, the managing general partner of HALP, and Mission West Properties, Inc. ("MWINC"), the general partner of MWLP.

MWLP was formed as a limited partnership under Delaware law, but maintains its principal place of business in California. MWINC, the general partner of MWLP, was incorporated initially under the laws of California as a real estate investment trust, but later was re-incorporated in 1999 under the laws of Maryland. As required under Maryland law, MWINC named a registered agent in Maryland as part of its re-incorporation under Maryland law.

The Suing HALP Partners filed a complaint in the Circuit Court for Baltimore City alleging that MWLP, acting through its general partner MWINC, breached the HALP partnership agreement by improperly diluting the interests of the Suing HALP Partners in HALP and failing to make owed distributions. The complaint named as defendants MWLP and MWINC. The Circuit Court denied MWLP's and MWINC's motions to dismiss for lack of personal jurisdiction. After a week-long bench trial, the trial judge concluded that, under California law, MWLP and MWINC breached the partnership agreement. Accordingly, judgments for damages were entered in favor of the Suing HALP Partners against both defendants.

The Court of Special Appeals, in a reported opinion, *Mission West Properties, L.P. v. Republic Properties Corporation*, 162 Md. App. 17, 873 A.2d 372 (2005), vacated the judgments against MWLP and MWINC. The intermediate appellate court determinated that the Circuit Court lacked personal jurisdiction over MWLP. Because MWLP was not domiciled in Maryland, and although "MWLP was properly served with process in Maryland," it "never conducted *any* activity of any kind in Maryland." (Emphasis in original). Derivative of its conclusion regarding MWLP, the Court of Special Appeals vacated the judgment against MWINC as "MWINC face[d] liability only by virtue of its status as corporate general partner of MWLP."

The Court of Appeals granted the petition for certiorari of the Suing HALP Partners. *Republic v. Mission West*, 388 Md. 97, 879 A.2d 42 (2005).

Held: The Court of Appeals AFFIRMED the judgment of the Court

of Special Appeals. The Suing HALP Partners asserted two theories, under § 6-102(a) of the Courts and Judicial Proceedings Article of the Maryland Code (1973, 2002 Repl. Vol.), by which a Maryland court could acquire and exercise personal jurisdiction over the foreign limited partnership (MWLP). Section § 6-102(a) provided that "[a] court may exercise personal jurisdiction as to any cause of action over a person domiciled in, served with process in, organized under the laws of, or who maintains his principal place of business in the State."

Recognizing that, through its statutes, Maryland follows the "entity" theory approach to partnerships and limited partnerships, the Court concluded that the state of incorporation of the corporate entity (MWINC) that was the general partner (managing or otherwise) of a foreign limited partnership (MWLP) is not the domicile of the limited partnership for the purpose of determining personal jurisdiction in Maryland's courts. The Court concluded also that service of process upon the Maryland resident agent of the corporate general partner (MWINC) of the foreign limited partnership, as outlined under Maryland Rule 2-124(f), does not confer, by itself, personal jurisdiction over the foreign limited partnership (MWLP) in a Maryland court. Because, on the record in the present case, the foreign limited partnership had no contacts with Maryland other than the fact that its corporate managing general partner re-incorporated in the State, the Suing HALP Partners failed to satisfy the requisite constitutional requirements of demonstrating the foreign limited partnership's minimum contacts with the forum where in personam jurisdiction was sought.

Additionally, because there was no evidence that MWINC, the domestic corporate general partner of the foreign limited partnership, was itself the alleged wrongdoer with regard to the alleged harm to the Suing HALP Partners, the Court vacated the judgment against the domestic corporate general partner as well.

Republic Properties Corporation v. Mission West Properties, LP, et. al., No. 41, September Term, 2005, filed April 10, 2006. Opinion by Harrell, J.

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COURTS - SPECIFIC PERSONAL JURISDICTION - LONG-ARM STATUTE - DUE PROCESS - MINIMUM CONTACTS - OUT-OF-STATE ATTORNEY - LEGAL ADVICE BY TELEPHONE AND LETTER

Facts: Petitioner filed suit against Respondent, an attorney admitted to practice in Ohio, in the Circuit Court for Baltimore City alleging professional malpractice stemming from legal representation undertaken, and advice given, by Respondent from Ohio to Petitioner in Maryland by written and telephonic communications in 1985, 1986, and 1994 regarding the need for expungement of Petitioner's Ohio juvenile records following Respondent's "successful" representation in 1981 of the then juvenile Petitioner in a prosecution of Petitioner for the murder of his father. Respondent filed a Motion to Dismiss for Lack of Personal Jurisdiction, which the Circuit Court granted. Petitioner appealed. The Court of Special Appeals affirmed the judgment of the Circuit Court in a reported opinion, *Bond v. Messerman*, 162 Md. App. 93, 873 A.2d 417 (2005). The Court of Appeals granted Petitioner's writ of certiorari, 388 Md. 404, 879 A.2d 1086 (2005).

Petitioner asserted that Respondent gave him incorrect legal advice regarding the non-disclosability of his prior commitment to a mental institution as a result of the 1981 juvenile proceedings in Ohio, which caused Petitioner to be prosecuted by the State of Maryland in two criminal cases for answering relevant questions falsely on several gun permit applications in Maryland. Relying upon the Maryland long-arm statute, §§ 6-103(b)(1) and (3) of the Courts and Judicial Proceedings Article of the Maryland Code (1973, 2002 Repl. Vol.), Petitioner argued that Respondent established minimum contacts with Maryland sufficient to justify asserting personal jurisdiction over him because harm caused by the alleged malpractice was experienced by Petitioner in Maryland and because Respondent corresponded with Petitioner knowing that Petitioner resided in Maryland.

In response, Respondent contended that he did not establish minimum contacts with Maryland by responding to two of Petitioner's letters and answering two telephone calls placed by Petitioner to Respondent, stating that he lacked any other contact with the State of Maryland. Respondent noted that he initiated contact with Petitioner twice only by replying to one letter in 1986 and one letter in 1994 sent by Petitioner, the content of which strictly concerned Ohio law and events occurring in Ohio. Respondent did not solicit business or advertise his professional services in Maryland. He maintained no office or agents in Maryland and made no trips to Maryland related to the action. He derived no additional income from the alleged provision of legal advice by telephone and letter in 1985, 1986, and 1994.

Held: Judgment affirmed. Focusing on Respondent's contacts with Maryland, rather than relying on a site of the "effect of the injury" analysis, and noting that Respondent initiated contact relevant to this action only twice and did so by mode of interstate communications, the Court concluded that Respondent did not establish purposefully minimum contacts in Maryland sufficient, in a constitutional sense, for Maryland to exercise jurisdiction.

The Court held that to exercise personal jurisdiction over Respondent, under such circumstances, would violate the Due Process Clause. Hence, the Court did not find it necessary to resolve whether Respondent satisfied either § 6-103(b)(1) or (3) of the long-arm statute (whether a lawyer, or other professional, has transacted business or performed a service in Maryland under Courts and Judicial Proceedings Article, § 6-103(b)(1), or "causes tortious injury in the State by an act or omission in the State" under § 6-103(b)(3), for purposes of establishing personal jurisdiction) because the Court construed the long-arm statute as not authorizing the exercise of personal jurisdiction over a defendant if to exercise specific jurisdiction in a given case would violate Due Process.

Bond v. Messerman, No. 48, September Term, 2005, filed 7 April 2006. Opinion by Harrell, J.

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CRIMINAL LAW - CONDUCT OF JUDGE - TRIAL - COURSE AND CONDUCT OF TRIAL - REMARKS AND CONDUCT OF JUDGE - URGING OR COERCING JURY

JURY - RIGHT TO TRIAL BY JURY - DENIAL OR INFRINGEMENT OF RIGHT - NUMBER OF JURORS - CONCURRENCE OF LESS THAN WHOLE NUMBER

Facts: Anthony H. Butler and Donald N. Lowery, petitioners, were charged with distribution of a controlled dangerous substance, possession with intent to distribute a controlled dangerous substance, possession of a controlled dangerous substance, and

three counts of conspiracy. The case was tried before a jury. During deliberations, the judge received a note from the jury which stated: "We have one juror who does not trust the police no matter the circumstance." In response to the note, the judge told the jury that "anybody who had felt that way should have said so in voir dire so a challenge could have occurred, and if anybody deliberates with that spirit now, I suggest they might be violating their oath." The judge then denied defense counsels' motion for a mistrial. The jury subsequently found Butler guilty on all counts and Lowery guilty of only the conspiracy counts. The Court of Special Appeals affirmed the convictions in an unreported opinion.

Held: Reversed and remanded for a new trial. A judge has great influence upon the jury as a central figure in a trial. His or her comments carry great weight in the jurors' minds. Judges, therefore, must be very careful in the way they address the jury to avoid improper influence. In situations such as the one present in this case the judge has a number of options. He or she could simply allow the jury to continue deliberations; conduct voir dire to determine whether the alleged bias is present and a mistrial should be granted; or give the jury Maryland Pattern Jury Instruction-Criminal 2:01 on the unanimity requirement and continue deliberations. The judge must not, however, make comments which would tend to influence a juror's opinion as to the facts of the case. The judge's comment stating that a juror's firmly held belief may be a violation of his or her oath implies that adherence to that belief could result in punishment. It sends a message to the juror that he or she should abandon the position held and join the majority of the jury. Such implications are improper.

Anthony H. Butler and Donald N. Lowery v. State of Maryland, No 83, September Term, 2005, filed April 13, 2006. Opinion by Cathell, J.

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CRIMINAL LAW - DUTY TO DISCLOSE EXCULPATORY EVIDENCE

Facts: Appellee Williams was charged and convicted of murder.

The conviction was based, in large part, on the testimony of a jailhouse informant. At trial, the informant maintained that no promises had been made to him. In reality, the informant had a history of exchanging information for benefits. The informant's status as a paid and registered informant was not made known to defense counsel at trial, because the State's Attorney prosecuting Williams claimed ignorance as to the informant's status, despite his status being known to others within the State's Attorney's Office. The defendant filed a post conviction motion upon learning of the informant's status. It was denied, the post conviction court holding that Maryland Rule 4-263 (g), the rule governing the disclosure of exculpatory evidence, and Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), did not apply to those state officials unconnected with the case. The Court of Special Appeals reversed, holding that Brady did extend beyond the individual prosecutor, encompassing exculpatory or mitigating information known to any prosecutor in the office.

Held: Affirmed. Maryland Rule 4-263 (g) extends not only to exculpatory or mitigating information pertaining to State's witnesses known by the Assistant State's Attorney actually prosecuting a specific criminal case and the related officers participating in that prosecution, but also to such information known to the other Assistant State's Attorneys in the same office. Brady v. Maryland has the same reach.

State v. Tony Williams, No. 97, September Term, 2003, Filed April 14, 2006. Opinion by Bell, C.J.

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REAL PROPERTY - EASEMENTS - EXTENT OF RIGHT, USE AND OBSTRUCTION - RELATION BETWEEN OWNERS OF DOMINANT AND SERVIENT TENEMENTS IN GENERAL - TRADITIONAL EASEMENT LAW APPLIES TO CONDOMINIUMS.

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CONDOMINIUM - COMMON ELEMENTS; MANAGEMENT AND CONTROL - IMPROVEMENTS AND ALTERATIONS - WHERE AN INHERENT PROBLEM RESULTS FROM AN INITIAL CONSTRUCTION DEFECT AND WHERE THE CONDOMINIUM DECLARATION CONTAINS AN EXPRESS EASEMENT AND THERE IS A BYLAW EXCEPTION PERMITTING REPAIR WITHOUT PRIOR APPROVAL, SUCH REPAIR MAY BE MADE.

Facts: In 1991, Danetta Garfink, petitioner, purchased a model condominium unit at the regime known as The Cloisters at Charles Condominiums in Baltimore County ("Condominium"). The Cloisters at Charles, Inc. ("Respondent" or "Council") is a duly organized corporation, serving as the Condominium's council of owners.

The original construction provided installed household appliances, including a clothes dryer. The clothes dryer in question, as originally installed, was vented into the furnace room of the house, rather than to the exterior, as required by the pertinent building codes and regulations. This created a potentially dangerous situation, as the dryer was venting exhaust, heat, lint and moisture into the furnace room where two furnaces and a hot water heater, each of which were fired by gas burners, were located.

In 2000, the clothes dryer stopped working. Petitioner contacted Sears Roebuck & Co. for a replacement. Sears, however, refused to install a new clothes dryer after inspecting the venting and discovering the potential fire hazzard.

Petitioner then had the venting system re-routed to comply with building codes and regulations. The resulting dryer exhaust venting system passed through the exterior wall of her garage and vented exhaust material through a standard exterior vent outside. Petitioner did not seek or obtain permission from respondent to install the exterior vent. Petitioner's neighbor complained to respondent about the vent, as its location was approximately 17 feet directly across from his front door.

On July 1, 2003, respondent filed a Complaint for Permanent Injunction in the Circuit Court for Baltimore County against petitioner, seeking a court order for removal of the exterior dryer exhaust vent in question. On June 28, 2004, petitioner filed a Motion for Summary Judgment, which was denied. The Circuit Court found in favor of respondent and on August 18, 2004, issued a Memorandum Decision and Order entering a declaratory judgment and

a mandatory injunction compelling petitioner to remove the aforementioned exhaust vent.

The Circuit Court based its decision on a review of the Condominium's Declaration and Bylaws and found "that it was the intention of the Unit Owners to permit individual unit owners to maintain the services to their units in a manner that does not alter the exterior appearance of their unit. In the event that some alterations are necessary, the unit owners must adhere to the proper procedures as outlined in the Bylaws." The Circuit Court found that petitioner neither notified nor obtained consent from the respondent concerning her plans to install a dryer vent on the outside wall of her condominium unit in contravention of the terms of the Bylaws.

On September 8, 2004, petitioner filed a Notice of Appeal to the Court of Special Appeals. In response, on September 9, 2004, the Circuit Court stayed the injunction pending resolution of the appeal.

The Court of Special Appeals, in an unreported opinion, affirmed the judgment of the Circuit Court. Petitioner filed a petition for writ of certiorari, which the Court of Appeals granted. *Garfink v. The Cloisters at Charles, Inc.*, 389 Md. 398, 885 A.2d 823 (2005).

Held: Reversed. The Court of Appeals found that the Condominium's Declaration provides for an express easement for maintenance and repair of ducts and vents passing through the common elements of the Condominium and that the Bylaws provide an exclusion from the requirement of obtaining prior Board approval under the specific circumstances of the case. Traditional easement law applies to condominiums and if there is any question of the location of an easement, courts should look to the intention of the parties at the time of the grant and then to what is reasonable and necessary for the proper enjoyment of the easement. The Court of Appeals found that the specific provisions of the Condominium's Declaration and Bylaws allow petitioner to repair the inherent construction defect that relates to the safe use of her premises without prior approval.

Danetta Garfink v. The Cloisters at Charles, Inc., No. 79 September Term, 2005, filed April 13, 2006. Opinion by Cathell, J.

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TIME - ARTICLE 1 § 36 - RULES OF CONSTRUCTION

MUNICIPAL CORPORATIONS - ANNEXATION - ARTICLE 23A § 19(d) - TIME WHEN PUBLIC HEARING CAN BE HELD ON ANNEXATION RESOLUTION

MUNICIPAL CORPORATIONS - ANNEXATION - ARTICLE 23A § 19(e) - EFFECTIVE DATE OF ANNEXATION RESOLUTION

Facts: Petitioner Oakland introduced an annexation resolution at a regular meeting of the Oakland Town Council to enlarge its corporate boundaries by annexing unincorporated land on March 16, 2004. After issuing the requisite public notices pertaining to the resolution, Oakland held a hearing on the annexation resolution on April 23, 2004, and the resolution was enacted following the public hearing, and it provided that it would be effective on June 8, 2004.

Respondent Mountain Lake Park introduced an annexation resolution at a special meeting of the Mountain Lake Park Town Council to enlarge its corporate boundaries by annexing unincorporated land, including some of the same land Oakland sought to annex, on March 17, 2004. After issuing the requisite public notices pertaining to the resolution, Mountain Lake Park held a hearing on the annexation resolution on April 28, 2004, and the resolution was enacted following the public hearing, and provided that it would be effective on June 13, 2004.

On a petition submitted by residents of the area to be annexed on April 29, 2004, Mountain Lake Park held a referendum election on May 22, 2004. By operation of law, Mountain Lake Park's resolution would then be effective two weeks after the election on June 5, 2004, assuming that it had adhered to other requirements of the annexation statute.

Mountain Lake Park filed a Complaint for Declaratory Relief in the Circuit Court for Garrett County, seeking a declaration that the Oakland resolution was void because it did not comply with the notice requirement of Article 23A § 19(d). Oakland's Counter-Complaint sought a declaration, *inter alia*, that the referendum election on the Mountain Lake resolution was void, and had no impact on the effective date of the Oakland resolution.

The Circuit Court ruled that Oakland did not comply with the requirements of Article 23A § 19(d) because the hearing that Oakland held on April 23, 2004 was "not less than 15 days after the fourth publication of the notices" under the statute. Oakland noted a timely appeal to the Court of Special Appeals, and the Court of Appeals granted Oakland's petition for certiorari, while

the case was pending before the intermediate appellate court.

Held: Reversed and remanded for judgment consistent with the opinion. The Court of Appeals concluded the hearing Oakland held on April 23, 2004 complied with the requirements of Article 23A § 19(d). The Circuit Court calculated the time required under the annexation statute improperly, because it did not apply the uniform method for time computation set out in Article 1 § 36 and Maryland Rule 1-203. The Circuit Court erred by not excluding the day on which the fourth publication of notices occurred (April 8, 2004) and including the day on which the public hearing was held (April 23, 2004) in its time computation, as required by Article 1 § 36. Pursuant to Article 1 § 36, the calculation of time should have commenced on April 9, 2004, the day after the fourth publication of notices occurred. Fifteen days from April 9, 2004 is April 23, 2004, which is neither a Sunday nor a legal holiday, and thus Oakland properly held the public hearing on the annexation resolution on that day. The Court concluded further that the General Assembly's use of the phrase "not less than" in Article 23A § 19 was an insufficient indicia of intent to depart from the general statutory rule for computation of time.

The Court of Appeals concluded also that the Mountain Lake Park annexation resolution was invalid for two reasons. First, Mountain Lake Park held a referendum election on the petition submitted by residents of Parkwood Village East, an apartment complex within the area to be annexed, prior to the conclusion of the forty-five days provided by Article 23A § 19 (f) - (h) for the submission of referendum petitions by each constituency possibly affected by the annexation. Second, Mountain Lake Park's argument that its resolution was effective on June 5, 2004, prior to the effective date of Oakland's resolution, must be rejected by operation of the annexation statute. Article 23A § 19(e) provides in pertinent part that "[t]he resolution shall not become effective until at least forty-five (45) days following its final enactment." The Mountain Lake resolution could not have been effective on June 5, 2004 because that was less than forty-five days after it was enacted by Mountain Lake Park's Town Council.

Mayor and Town Council of Oakland v. Mayor and Town Council of Mountain Lake Park, *Et. Al.*, No. 60, September Term, 2005, filed April 17, 2006. Opinion by Raker, J.

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COURT OF SPECIAL APPEALS

ADMINISTRATIVE LAW - JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS - PETITION OR APPLICATION - THE BURDEN IS ON THE PETITIONER TO ENSURE THAT ITS PETITION FOR REVIEW OF AN ADMINISTRATIVE AGENCY DECISION IS PROPERLY PRESENTED FOR DECISION, BUT IF THE FAILURE TO ACHIEVE THAT IS NOT CAUSED BY THE PETITIONER, THE PETITIONER SHOULD NOT SUFFER THE CONSEQUENCES OF DISMISSAL.

ANIMALS - LICENSES - REGULATION IN GENERAL - THE CIRCUIT COURT COULD NOT SUMMARILY REVERSE THE DIRECTOR OF THE ANIMAL SERVICES DIVISION'S DETERMINATION THAT OWNER'S DOG WAS POTENTIALLY DANGEROUS AND HAD TO BE MUZZLED UNDER CERTAIN CIRCUMSTANCES, WHERE THE ANIMAL MATTERS HEARING BOARD FAILED TO SEND NOTICE OF THE PETITION FOR REVIEW TO THE PARTIES BEFORE IT AND FAILED TO TRANSMIT THE RECORD TO THE COURT.

Facts: The Director declared appellee's dog "potentially dangerous," based on a finding that the dog attacked and injured another animal, and ordered appellee "to keep [the dog] muzzled and on a non-retractable nylon or leather leash when off [appellee's] premises." Appellee appealed to the Board.

On March 22, 2004, the Board held a hearing and, on April 27, 2004, issued an opinion and order affirming the Director's decision.

On May 4, 2004, appellee filed a petition for judicial review in circuit court. The circuit court mailed a copy of the petition to the Board, as required by Rule 7-202(d)(1).

The Board did not give written notice to all parties to the proceedings before it, as required by Rule 7-202(d)(3), and did not file a certificate of compliance with section (d), as required by Rule 7-202(e).

By letter dated May 17, 2004, the circuit court mailed a letter to counsel for appellee and to the Animal Services Division, but not to the County Attorney's office, counsel for the Director, advising that the case had been specially assigned to a particular judge.

Rule 7-206(c) provides that "the agency shall transmit to the clerk of the circuit court the original or a certified copy of the

record of its proceedings within 60 days after the agency receives [a]... petition for judicial review." The record "shall include the transcript of testimony and all exhibits and other papers filed in the agency proceeding . . . ." Rule 7-206(a). The agency may require the petitioner to pay the expense of transcribing testimony, which "shall be taxed as costs." Id.

The Board did not transmit the record to the circuit court, as required by Rule 7-206(c).

On September 10, 2004, appellee filed, in circuit court, a motion to reverse the Board's decision, based on the Board's failure to transmit the record. According to the certificate of service, appellee's counsel mailed a copy of the motion to the Director but not to the County Attorney's office. No response was filed to the motion.

On October 14, 2004, the circuit court mailed notice of a hearing, scheduled for October 28, to counsel for appellee and to the Animal Services Division but not to the County Attorney's office. On October 28, 2004, the court held a hearing and, by order bearing the same date, reversed the Board's decision.

The circuit court mailed copies of the October 28 order, but it is not clear to whom they were mailed. At some point, the Board and the County Attorney's office apparently received the order. The Board caused a transcript of testimony to be prepared at its expense and, on December 1, 2004, forwarded the record, including the transcript, to the circuit court. On December 2, 2004, appellant, through the County Attorney, filed, in circuit court, a response to the petition for judicial review and a motion for reconsideration. Appellant asserted that the Board's staff had failed to take action, but contended that reversal of the Board's decision was not an appropriate remedy.

On December 14, 2004, appellee filed an opposition to the motion. On March 23, 2005, the court held a hearing and, by order bearing the same date, denied the motion, based on the Board's untimeliness.

Held: Reversed. A court on judicial review of an administrative decision cannot summarily reverse the agency's decision for failing to transmit timely the record of its proceedings. Our governmental structure prevents the judiciary from reversing an administrative agency unless the agency's decision fails to pass muster under the applicable standard of review. When the Board failed to send notice of the petition for judicial review to the parties before it and failed to transmit the

record, the court, under Rule 7-206, had the authority to dismiss the petition for judicial review or to extend the time for transmitting the record. There is nothing in the Maryland Rules permitting summary reversal of such an agency's decision, without review of the record.

Montgomery County, Maryland v. Carter Post, No. 327, September Term, 2005, filed December 23, 2005. Opinion by Eyler, James R., J.

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CIVIL PROCEDURE - DEFAULT JUDGMENT - RULE 2-613 - DOMESTIC RELATIONS

Facts: The Circuit Court for Charles County entered an order of default against appellant Anita Wells, in a divorce and child custody action brought against her by appellee Michael Wells. After a master's hearing, which Anita did not attend, the court entered a default judgment of absolute divorce, granted custody of the parties' child to Michael, and ordered Anita to pay child support.

Anita filed a motion to vacate the order of default and a motion for new trial or to alter or amend the default judgment, to which she attached her own affidavit. She alleged that she had been served with a complaint and summons, but that Michael had told her to "tear up" the papers because he wanted to work on the marriage. She also alleged that she had never received any documents from the court relating to the divorce action, and that she was not aware of the divorce until a deputy sheriff arrived at the marital home and told her to vacate the premises. She claimed that Michael had committed fraud by usurping her mail and preventing her from participating in the divorce proceedings. Anita requested a hearing on her motions.

Michael opposed Anita's motions and denied the allegations contained therein. His opposition was supported by his own

affidavit. Without a hearing, the court denied Anita's motions.

Held: The Court of Special Appeals vacated the judgment on all issues except divorce. The Court remanded the case for an evidentiary hearing on the issue of fraud with respect to the judgment of divorce and for a new trial on all other issues. The default judgment on all issues except divorce was subject to the circuit court's broad revisory power under Md. Rules 2-535(a) and 2-534, and the court abused its discretion in denying Anita's motion to vacate the judgment on those issues. The default judgment of divorce was subject to revision under Rule 2-535(b) for fraud, and the court abused its discretion by failing to hold an evidentiary hearing on that issue.

Under Rule 2-613(g), a default judgment is not subject to the broad revisory power of the circuit court for unenrolled judgments, under Rule 2-535(a), except "as to the relief granted." In a divorce case, decisions on the issues of child custody, visitation, support, equitable distribution, alimony, and attorney's fees are decisions "as to the relief granted." Accordingly, a default judgment entered on any of those issues is subject to the court's revisory power under Rule 2-535(a). Because Anita made a sufficient showing of an actual controversy as to those issues, the court abused its discretion in denying her motion to vacate.

A decision on the issue of divorce is not a decision "as to the relief granted," and, therefore, a default judgment entered on divorce is not subject to the court's revisory power under Rule 2-535(a). Such a judgment is subject to revision only under Rule 2-535(b), for fraud, mistake, or irregularity. Because the court was presented with conflicting affidavit evidence on the question whether the default judgment of divorce was obtained by fraud, Anita requested a hearing, and resolution of the dispute depended upon a demeanor-based credibility assessment of Anita and Michael, the court should have held an evidentiary hearing in order to decide the motion to vacate judgment on the issue of divorce.

Wells v. Wells, No. 845, September Term 2005, filed April 13, 2006. Opinion by Eyler, Deborah S., J.

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CONTRACTS – MATERIAL BREACH – RECISSION – "HIGH-LOW" SETTLEMENT AGREEMENT – "NO APPEALS" CLAUSE

Facts: Marina Maslow, appellant, sued Apparo Vanguri, M.D., appellee, for medical malpractice. During the course of a jury trial, the parties entered into a "High-Low" settlement agreement ("Agreement"), the terms of which were placed on the record and reduced to writing. Pursuant to the Agreement, both parties agreed, *inter alia*, not to appeal the jury's verdict. Nonetheless, after the jury returned a verdict in favor of appellee, appellant appealed to this Court, which affirmed ("*Maslow I*"). Thereafter, appellee refused to pay appellant the agreed-upon "low" of $250,000. Appellant then filed a "Motion to Enforce High/Low Settlement," which was denied by the Circuit Court for Baltimore County. This appeal ("*Maslow II*") followed.

Held: Affirmed. Settlement agreements are enforceable as independent contracts, subject to the same general rules of construction that apply to other contracts. Applying those principles, the Court determined that the Agreement constituted a clear and unambiguous contract, the terms of which barred an appeal of the jury's verdict, in exchange for the parties' commitment to pay or accept the high-low figures. In the absence of the Agreement, appellee would not have had any financial obligation to appellant. Under the Agreement, however, appellee would have owed appellant $250,000, despite the jury's exoneration of him. Yet, in breach of the Agreement, appellant pursued an appeal to this Court (*Maslow I*), and lost. The record indicates that, while appellant's first appeal was pending, appellee's insurance carrier agreed to abide by the Agreement, offering to pay the $250,000, conditioned on her abandonment of the appeal. Appellant refused to do so.

Appellant did not dispute that, under the Agreement, no appeal was permitted from the jury's verdict. However, she contended that her breach was not material. Therefore, she argued in *Maslow II* that appellee was merely entitled to damages, not recission. Moreover, she contended that recission was not appropriate because the parties never expressly agreed to the remedy of recission in the event of a breach.

In Maryland, the general rule is that where there has been a material breach of a contract, the non-breaching party has the right to rescind the agreement. The Court was satisfied that appellant's conduct constituted a material breach of the Agreement, thereby entitling appellee to recission. It reasoned that the "no appeals" provision was a central element of the Agreement, and appellant's appeal of the jury's verdict (*Maslow I*) constituted a material, substantial breach tending to defeat the object of the

contract. The point of a high/low settlement agreement was to limit the parties' exposure and to obtain finality. That purpose was not achieved because of the first appeal.

Marina Maslow v. Apparo Vanguri, No. 564, September Term, 2005, filed April 11, 2006. Opinion by Hollander, J.

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COURTS - PREVIOUS DECISIONS AS CONTROLLING OR AS PRECEDENTS - DECISION OF PENNSYLVANIA SUPERIOR COURT THAT STOP OF DEFENDANT IN THAT STATE LACKED PROBABLE CAUSE WAS BINDING ON COURT OF SPECIAL APPEALS IN CONSIDERING DEFENDANT'S APPEAL FROM CONVICTION FOR BURGLARY IN MARYLAND, WHICH WAS BASED IN PART ON EVIDENCE FOUND DURING STOP; SUPERIOR COURT APPLIED PENNSYLVANIA STATUTORY LAW IN REACHING ITS DECISION.

COURTS - PREVIOUS DECISIONS AS CONTROLLING OR AS PRECEDENTS - DECISION OF PENNSYLVANIA SUPERIOR COURT THAT REMEDY FOR ILLEGAL STOP OF DEFENDANT IN THAT STATE WAS EXCLUSION OF EVIDENCE OBTAINED DURING STOP WAS NOT BINDING ON COURT OF SPECIAL APPEALS IN CONSIDERING DEFENDANT'S APPEAL FROM CONVICTION FOR BURGLARY IN MARYLAND, WHICH WAS BASED IN PART ON EVIDENCE FOUND DURING STOP; SUPERIOR COURT'S REMEDY APPLIED FEDERAL EXCLUSIONARY RULE.

COURTS - PREVIOUS DECISIONS AS CONTROLLING OR AS PRECEDENTS - DECISION OF PENNSYLVANIA SUPERIOR COURT THAT STOP OF DEFENDANT IN THAT STATE LACKED REASONABLE SUSPICION WAS NOT BINDING ON COURT OF SPECIAL APPEALS IN CONSIDERING DEFENDANT'S APPEAL FROM CONVICTION FOR BURGLARY IN MARYLAND, WHICH WAS BASED IN PART ON EVIDENCE FOUND DURING STOP; SUPERIOR COURT'S DECISION APPEARED TO HAVE BEEN BASED SOLELY ON FEDERAL CONSTITUTIONAL REQUIREMENTS.

ARREST - GROUNDS FOR STOP OR INVESTIGATION - POLICE OFFICER DID NOT HAVE REASONABLE SUSPICION TO MAKE INVESTIGATORY STOP OF DEFENDANT, EVEN THOUGH OFFICER WAS AWARE THAT SUSPECT IN BURGLARY WAS BLACK MALE WEARING CHARCOAL GRAY CLOTHING AND DARK BLUE CAP AND THAT, SEVERAL WEEKS BEFORE, THERE WERE NUMBER OF BURGLARY AND

TRESPASS INCIDENTS IN SAME GENERAL AREA, DEFENDANT WAS BLACK MALE WALKING ALONG ROAD IN DARK CAP AND DARK CLOTHING AND APPARENTLY COVERED HIS FACE, ENTERED VEHICLE, AND DROVE AWAY; WEARING DARK CLOTHING WAS NOT UNCOMMON IN MIDDLE OF WINTER, WHICH WAS WHEN STOP WAS MADE, AND PRIOR REPORTED CRIMES OCCURRED ANYWHERE FROM ONE-HALF MILE TO TEN MILES AWAY FROM STOP AND ONE WEEK TO ONE MONTH BEFORE STOP.

CRIMINAL LAW - EVIDENCE - EFFECT OF ILLEGAL CONDUCT ON OTHER EVIDENCE - ILLEGAL STOP OF DEFENDANT BEFORE SEARCH INCIDENT TO ARREST ON OUTSTANDING WARRANT DID NOT REQUIRE EXCLUSION OF EVIDENCE OBTAINED DURING SEARCH; POLICE OFFICER DID NOT STOP DEFENDANT FOR PURPOSE OF ENFORCING WARRANT BUT, RATHER, FOR PURPOSE OF INVESTIGATING WHETHER DEFENDANT WAS INVOLVED IN BURGLARY, AND NEITHER DEFENDANT'S PERSON NOR HIS IDENTITY WAS A FRUIT OF ILLEGAL STOP.

Facts: The charge and conviction in this case was based on the theft of property, taken on October 11, 2002 from the residence of Joseph Marinelli, in Washington County.

On February 12, 2003, prior to the filing of charges in Washington County, Officer Clifford Weikert, with the Carroll Valley Borough Police Department in the Commonwealth of Pennsylvania, stopped appellant while appellant was driving a vehicle. Subsequently, Pennsylvania charged appellant with the theft of property stolen from William Welsh in Pennsylvania in October 2001. Appellant filed a motion to suppress evidence obtained as a result of the stop of his vehicle. The Court of Common Pleas, Adams County, the trial court, denied the motion. A jury convicted appellant of theft, and appellant appealed to the Superior Court of Pennsylvania. The Superior Court, in an opinion dated June 7, 2004, labeled "non-precedential," reversed the trial court's ruling on the motion to suppress and "vacated" the "judgment of sentence." The facts, in pertinent part, as set forth in the Superior Court's opinion (quoting from the trial court's opinion) are as follows.

> On February 12, 2003, at approximately [6:40 p.m.], Officer Clifford Weikert of the Carroll Valley Borough Police Department, while in a marked vehicle on routine patrol, observed a red Dodge Sundance unoccupied and parked in a no-parking zone along Northern Pike Trail. As he proceeded down the roadway past the vehicle, Officer Weikert observed a black male individual wearing a dark stocking cap and dark clothing walking toward the vehicle. As

Officer Weikert passed this individual, Officer Weikert observed this individual bend over and apparently cover his face from Officer Weikert's view. Alerted by these actions, Officer Weikert proceeded down the road, immediately turned his vehicle around and returned towards the area where he observed the individual and the vehicle. As he headed towards the parked vehicle, Officer Weikert observed the red Dodge Sundance pass him at high rate of speed. Based upon the distance between the location where Officer Weikert initially observed [appellant], the location of the parked vehicle and the amount of time that passed while Officer Weikert turned his vehicle around, Officer Weikert opined that the individual must have sprinted to the vehicle since the time of his initial observation. When the Dodge Sundance passed the police vehicle, Officer Weikert once again turned his vehicle around in order to follow the Dodge Sundance. While following the vehicle, he estimated it was traveling at a rate of speed of 40 miles per hour in a 25 mile per hour zone.

Officer Weikert indicated that at the time he observed the individual walking along the roadway, he was aware of a description of a suspect from a February 5, 2003 incident, in which a known eyewitness described a person involved in an attempted burglary. Specifically, Officer Weikert was aware that the suspect involved in the February 5, 2003, incident was wearing charcoal gray clothing, a dark blue cap, and was a black male between 5'6" and 5' 10" in height. Officer Weikert was also aware that several weeks prior to this incident there were a number of burglary or criminal trespass related incidents occurring in the Carroll Valley Borough area....

. . . .

Prior to the stop of the individual's vehicle, Officer Weikert was also aware that the investigation into the criminal incidents . . . revealed that each of the incidents occurred

> between 6:00 p.m. and 9:00 p.m., which was a time consistent with the time of Officer Weikert's observation of the subject in dark clothing. According to Officer Weikert, the recent number of burglaries within the Carroll Valley area was excessive and unusual based upon his experience as a Carroll Valley police officer and his familiarity with the area. . . . Officer Weikert initiated a traffic stop of the vehicle. At the time of the traffic stop, Officer Weikert observed in plain view a large screwdriver within the vehicle, which appeared to him to be consistent with a screwdriver capable of making pry marks [similar to those] found at [the other recent burglaries]. Officer Weikert identified the driver as appellant and took him into custody on outstanding warrants from a neighboring jurisdiction. As a result of a search incident to his arrest, several items of rare United States Currency and a savings bond titled in another person's name were recovered from [his] person. The screwdriver was seized, the vehicle was impounded, and a search warrant was obtained for a search of the vehicle. During the subsequent search, a number of pieces of jewelry were found in the front console and seized as evidence.

Held: Affirmed. The Court of Special Appeals affirmed the trial court's ruling denying appellant's motion to suppress evidence based on (1) the alleged illegality of his arrest and (2) the legal sufficiency of the evidence to sustain his conviction, on slightly different grounds than those argued by the parties, and affirmed the trial court's judgment.

The first issue the Court addressed was whether the decision by the Pennsylvania Superior Court was binding with respect to its holding that the stop of appellant was illegal. The issue turned on whether the decision was premised on Pennsylvania state law or federal constitutional law. The Court concluded that the Pennsylvania decision relating to the illegality of the stop, to the extent it concluded there was no probable cause to believe a traffic violation had occurred, was binding on this court because it was premised on state statutory law (the motor vehicle code). The Court found that the remedy of suppression was not binding, however, because it was premised on federal law, not a state rule of suppression. The decision was also not binding with respect to

its conclusion that there was no reasonable articulable suspicion of criminal activity.

The Court reasoned that the Superior Court did not reference any exclusionary rule that might exist under Pennsylvania law for violation of the vehicle code. Additionally, no such exclusionary rule had been called to the Court's attention, and its own check revealed none. Consequently, the Court concluded that the Superior Court determined that there was no valid stop under federal constitutional law because there was no probable cause for a traffic stop under Pennsylvania statutory law. Thus, the Superior Court applied the federal exclusionary rule as a remedy, and that portion of the decision was not binding on the Court of Special Appeals. The Court also found that the Superior Court's conclusion that the officer lacked reasonable articulable suspicion of criminal activity was based solely on federal constitutional requirements. Thus, it was likewise not binding on the Court.

The Court of Special Appeals then went on to agree with the Pennsylvania court, that the stop was unlawful under federal constitutional law, based on lack of reasonable articulable suspicion. Absent a warrant or probable cause, the forced stop of a motorist may be had under the Fourth Amendment when the police officer is able to point to specific and articulable facts which, taken together with rational inferences from these facts, reasonably warrant the intrusion. To determine whether an officer had reasonable articulable suspicion to justify a Terry stop, courts must look at the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing.

The Court held that, despite any similarities between the vague description of the burglary suspect and appellant, the officer lacked reasonable articulable suspicion to stop and detain appellant. The Court pointed out that wearing dark clothing is not uncommon in the middle of the winter, and does not alone give rise to reasonable articulable suspicion. Additionally, the Court found that, aside from appellant's race and the color of his clothing, the other factors giving rise to reasonable suspicion were "too tenuously corroborated, or not corroborated at all."

Finally, the Court held that the illegal stop was attenuated because the arrest was pursuant to an outstanding warrant; thus, the circuit court was correct in denying appellant's motion to suppress evidence.

The Court of Special Appeals declined to apply the exclusionary rule in this situation. The Court reasoned that the

exclusionary rule does not apply if the connection between the illegal conduct and the discovery of evidence has become sufficiently attenuated. The Court explained that there was an illegal stop, but there was a preexisting arrest warrant. The officer did not make the stop for the purpose of enforcing the warrant, and in fact, did not know that the then-unidentified person in the vehicle was subject to an outstanding warrant. Thus, the Court held that the exclusionary rule did not require that the evidence obtained as a result of the search incident to a valid arrest on an outstanding warrant be suppressed.

Ernest James Myers v. State of Maryland, No. 233, September Term, 2005. Opinion by Eyler, J., decided November 4, 2005.

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CRIMINAL LAW - CONFESSIONS - DELAY IN PRESENTMENT AS FACTOR IN VOLUNTARINESS OF CONFESSION - EFFECTIVENESS OF WAIVER OF RIGHT OF PROMPT PRESENTMENT - SECTION 10-912 OF COURTS AND JUDICIAL PROCEEDINGS ARTICLE - RULE 4-212.

Facts: Appellant Robert Angel Perez was arrested for two murders on August 9, 2000, at 12:31 a.m. and was confined to an interview room during his detention. Appellant was 18 years old and had a tenth-grade education; was able to read, write, and speak English; had been before a Commissioner in another case some 90 days before his arrest; was not under the influence of drugs or alcohol; and was not restrained in the interview room. The appellant signed an Advice of Rights and Waiver ("ARW") Form at 1:03 a.m. on August 9 and was questioned about his background. He signed a second ARW Form at 9:15 a.m., and was questioned again. He completed a written statement at 2:00 p.m., admitting involvement in the murders and implicating one Thomas Gordon. The appellant signed a third ARW Form at 3:01 p.m. and completed a second written confession at 5:01 p.m.. At 7:00 p.m., he signed another ARW Form and agreed to undergo a lie detector test. Gordon arrived at the police station around 11:00 p.m. On August 10, at 12:08 a.m., the appellant signed a fourth ARW Form. At 12:10 a.m., he signed a

"Commissioner's Waiver," waiving his "right to be presented before a District Court Commissioner within 24 hours of [his] apprehension." The Commissioner's Waiver contained no further explanation of his prompt presentment rights. The appellant signed a fifth ARW Form at 12:05 p.m. and signed another "Commissioner's Waiver" at 12:10 p.m. The detectives then used a walkie-talkie so the appellant could hear Gordon implicating him in the murders. The appellant completed another written confession at 4:40 p.m. and gave an oral confession at 5:30 p.m. He was taken before a Commissioner at 12:35 a.m. on August 11. The appellant was convicted at his first trial in the Circuit Court for Prince George's County. His conviction was vacated in *Perez v. State*, 155 Md. App. 1 (2004) (*en banc*), and the case remanded to the circuit court for further proceedings, including a new suppression hearing. After another suppression hearing, the circuit court denied the appellant's motion to suppress the four confessions, finding that they were given voluntarily. Thereafter, the appellant was convicted.

Held: Reversed and remanded. Motion court did not err in determining that the appellant's first two written confessions, given at hour 14 and hour 17 of custodial detention, were voluntary. The court's finding that the delay in presentment was unnecessary but not for the sole purpose of obtaining a confession was supported by the evidence. The court was not required to give very heavy weight to that delay. The total circumstances, including the delay, supported the court's finding that the confessions were made voluntarily. Motion court erred in ruling that "Commissioner's Waivers" were made knowingly, and hence effective. The waivers did not adequately inform the appellant of the right to prompt presentment. There was no other evidence to show that the appellant otherwise was adequately advised of that right. The appellant's experience before a Commissioner in another case was insufficient to make the waivers effective. Motion court's finding that, during the period the appellant gave two additional confessions, at hour 41+ and hour 42+ of custodial detention, the delay was unnecessary, deliberate, and for the sole purpose of obtaining a confession was supported by the evidence. The motion court erred in considering the "Commissioner's Waivers" in determining the voluntariness of those confessions. Under the total circumstances, without the waivers, and applying very heavy weight to the delay in presentment at the times pertinent to those confessions, the confessions were involuntary, as a matter of law.

Perez v. State, No. 495, September Term, 2005, filed April 11, 2006. Opinion by Eyler, Deborah S., J.

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CRIMINAL LAW - SEARCH AND SEIZURE – CANINE SCAN

Facts: On February 15, 2005, a Maryland State Police officer stopped a vehicle, driven by Oscar E. Cruz, appellant, southbound on Interstate 95. During the course of a canine scan of the exterior of the vehicle, the drug dog, without instruction or encouragement from his police officer handler, instinctively jumped up on the vehicle's passenger door, placing his front paws on the vehicle's window sill and sticking his head through the window. The scan was captured on the officer's in-car camera. The dog immediately alerted. Subsequently, a package containing 11.9 pounds of cocaine was found during a search of the vehicle. Claiming the canine scan violated the Fourth Amendment, appellant moved to suppress. The circuit court denied the motion, finding that the scan did not violate the Fourth Amendment. Appellant subsequently tendered a plea of not guilty pursuant to an agreed statement of facts, and was convicted of importing a controlled dangerous substance into Maryland.

Held: Affirmed. The motion court did not err in finding that the canine scan did not violate the Fourth Amendment. The dog's brief and instinctive intrusion into the open window of the vehicle, with no encouragement from its handler, did not transform the scan into an illegal search of the interior of the vehicle.

Oscar E. Cruz v. State of Maryland, No. 1417, September Term, 2005, filed April 4, 2006. Opinion by Hollander, J.

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MUNICIPALITIES - *ULTRA VIRES* ACTS BY THE MAYOR - MD. CODE (2005 REPL. VOL.) ART. 23A, §§ 2 (a) AND (b); CITY CHARTER OF FREDERICK, ARTICLE II, SECTION 7; *INLET ASSOCS. v. ASSATEAGUE HOUSE CONDO. ASS'N*, 313 MD. 413 (1988); *COHEN v. BALTIMORE COUNTY*, 229 MD. 519 (1962); CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF APPELLEES WHO, PURSUANT TO AN AGREEMENT BETWEEN THE PARTIES, HAD RECEIVED A WAIVER FOR ANY "ADDITIONAL FEE FOR THE SPECIAL

ASSESSMENT . . . OR CONTRIBUTION REQUIRED," IN EXCESS OF THE AGREED UPON FEE OF "ONE DOLLAR PER SQUARE FOOT OF GROSS FLOOR AREA TO BE CONSTRUCTED ON THE [SUBJECT] PROPERTY"; FORGIVENESS OF ADDITIONAL FEES WAS TO BE IN CONJUNCTION WITH THE APPROVAL OF FUTURE PERMITS FOR THE SUBJECT PROPERTY UNLESS SQUARE FOOTAGE OF THE GROSS FLOOR AREA OF THE BUILDING INCREASES, SAID PROVISION TO BE BINDING UPON "ALL PURCHASERS ON THE PROPERTY AND/OR SUCCESSORS TO [OR ASSIGNS OF] THE PROPERTY OWNER"; NOTWITHSTANDING THE ORIGINAL, FORMAL AGREEMENT BETWEEN THE PARTIES, REAFFIRMED IN AN AGREEMENT TO DEFER PUBLIC IMPROVEMENTS EXECUTED ALMOST FOUR YEARS LATER, THE ACTIONS OF THE CITY EXECUTIVES, *I.E.*, TWO SUCCESSIVE MAYORS, IN EXECUTING THE AGREEMENTS WERE *ULTRA VIRES* IN CONTRAVENTION OF REQUIREMENT THAT RELINQUISHMENT OF THE SUBJECT FEES COULD ONLY BE AUTHORIZED BY A LEGISLATIVE ENACTMENT.

Facts: Appellees' predecessors-in-title entered into two agreements with appellants, more specifically, two successive mayors of the City of Frederick, as part of a commercial property development plan. Appellants, in exchange for receiving rights-of-way to widen a main thoroughfare within the City, agreed to charge appellees and other subsequent owners, a one dollar ($1.00) per square foot fee on newly constructed buildings. Appellants also agreed not to seek additional fees. The one dollar fee was imposed upon building owners submitting applications for construction for the proposed buildings.

The terms of the agreement were reaffirmed four years later and, subsequently, appellees submitted applications for permit approval with payment of the special fee. Appellants rejected the applications, claiming appellees were required to pay additional impact fees, enacted by the City's Board of Aldermen and approved by the Mayor, after execution of the initial Agreement and prior to the signing of the Agreement that reaffirmed the terms. Appellees filed a complaint in the Circuit Court for Frederick County seeking a writ of mandamus and specific performance and moved for summary judgment. Concluding that the Agreements were clear and unambiguous and finding that there were no material facts in dispute, the circuit court entered judgment in favor of appellees.

Held: Reversed. Mayoral administrations' executing of agreements that permitted the waiver of statutory impact fees and established the collection of the one dollar fee without enactment of legislation by the City's Board of Aldermen constituted *ultra vires* acts. Pursuant to the Maryland Annotated Code and the City's Charter, the City, as a municipal corporation, could only waive or collect such fees by the enactment of a bill waiving or imposing such fees.

Roger Twigg, et al. v. Riverside Apartments, LLC, et al., No. 1047, September Term, 2005, decided April 12, 2006. Opinion by Davis, J.

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TORTS - WRONGFUL DEATH - SUICIDE - GENERALLY, A NEGLIGENT PARTY IS NOT LIABLE FOR THE WRONGFUL DEATH OF ANOTHER WHO COMMITS SUICIDE. PURSUANT TO THE RESTATEMENT (SECOND) TORTS SECTION 455, HOWEVER, IF A NEGLIGENT PARTY CAUSES ANOTHER PERSON TO BE INSANE, THE NEGLIGENT PARTY MAY BE LIABLE FOR SUICIDE BY THE INSANE PERSON IF THE INSANITY PREVENTED THE PERSON FROM UNDERSTANDING THE NATURE OR CONSEQUENCES OF THE CONDUCT RESULTING IN DEATH OR THE PERSON ENGAGED IN THE CONDUCT BECAUSE OF AN IRRESISTIBLE IMPULSE WHICH PREVENTED REASON FROM CONTROLLING THE PERSON'S ACTION.

THE EVIDENCE WAS NOT SUFFICIENT TO CREATE A FACT QUESTION IN THIS CASE, AND SUMMARY JUDGMENT WAS PROPERLY ENTERED IN FAVOR OF DEFENDANTS.

DISCOVERY SANCTIONS - A PARTY'S (1) FAILURE TO PROVIDE EXECUTED ANSWERS TO INTERROGATORIES, IN RESPONSE TO AN ORDER COMPELLING DISCOVERY, AND (2) REFUSAL TO SUBMIT TO RE-DEPOSITION AFTER EARLIER AGREEING TO DO SO, AFTER IT WAS TOO LATE TO OBTAIN AN ORDER, AND IN THE ABSENCE OF GOOD CAUSE FOR REVOKING CONSENT, GAVE THE COURT THE LEGAL AUTHORITY, UNDER THE MARYLAND RULES, TO IMPOSE DISCOVERY SANCTIONS.

Facts: In November 1997, Ms. Sindler and Dr. Sindler filed a complaint in circuit court against Ms. Litman and Mr. Litman, appellees. The suit contained a claim by Ms. Sindler for her personal injuries and a joint claim by the Sindlers for loss of consortium.

The Sindlers alleged that Ms. Sindler was stopped at a traffic signal when Ms. Litman collided with the rear of her vehicle.

In January 1998, appellees propounded interrogatories and a request for documents to the Sindlers. On September 14, 1998,

appellees filed a motion to compel and for sanctions, asserting that the Sindlers had not responded to the discovery requests, despite repeated oral and written demands. By order dated October 7, 1998, the court granted the motion and ordered the Sindlers to respond within 10 days of the order.

The Sindlers did not comply with the order. In September 1999, the Sindlers provided unexecuted answers to interrogatories and a response to the request for production. The Sindlers later supplemented the responses, but according to the court's rulings, the supplementation was incomplete and untimely. The Sindlers never served executed answers to interrogatories, as required by Rule 2-421.

In 2000, appellees filed motions to compel medical examinations of Ms. Sindler and motions to exclude expert witnesses who had not been identified in a timely manner. In April and July 2000, appellees took the deposition of Ms. Sindler.

On January 3, 2003, the Sindlers filed an expert witness list. In August 2003, appellees filed a motion to compel medical examinations of Ms. Sindler, which was granted by order dated October 8, 2003. In the same order, the court required the Sindlers to identify all expert witnesses by December 31.

In December 2003, the Sindlers served supplemental expert witness lists. On January 7, 2004, appellees filed a motion for protective order with respect to the designations. In the motion, appellees observed that the Sindlers had identified a total of 32 experts, which called into question the ability to keep the then scheduled trial date of March 22, 2004. Appellees requested that the court limit the number of experts and require them to submit to depositions. On January 16, 2004, the Sindlers filed a modified expert list, naming 12 experts, including an expert not previously identified. On January 20, appellees filed a motion to strike the new expert.

On January 22, 2004, the court held a hearing on the motions. The court limited the Sindlers to two medical experts per specialty or claim, plus an economist or life planning expert, to be identified by February 23, 2004, and ordered disclosure of all medical records expected to be introduced into evidence. The court also ordered appellees to file an amended expert witness list by March 23, 2004, and ordered that discovery would close on September 8.

Because of Ms. Sindler's continuing treatment and the increase in the nature and extent of her alleged injuries, appellees

requested to take a second deposition of the Sindlers. Counsel for the Sindlers agreed to the re-depositions and, for several months in 2004, appellees' counsel attempted to obtain agreed dates. In June, 2004, appellees' counsel filed formal notices of deposition for July 6 and 7. In a subsequent telephone conversation between an assistant in the office of the Sindlers' counsel and an assistant in the office of appellees' counsel, they agreed that the deposition of Ms. Sindler would occur on July 7 and that counsel for the Sindlers would get a new date for Dr. Sindler's deposition. On July 1, counsel for the Sindlers objected to the depositions, for the first time, on the ground that the Sindlers had been deposed in 2000. On July 6, the Sindlers' counsel advised appellees that, on July 5, Ms. Sindler had committed suicide.

On June 4, 2004, appellees filed a request for admission of facts and genuineness of documents directed to the Sindlers. The responses were due on or about July 6. The Sindlers did not, at any time, file a response, a motion for additional time, a motion to withdraw deemed admissions, or a motion seeking other relief.

Appellees filed a motion to dismiss the entire case based on discovery violations. Appellees asserted a history of discovery abuses but primarily relied on the refusal of the Sindlers to be re-deposed and their failure to supply complete medical records and bills by February 23, as required by the court's January 23, 2004 order.

On July 26, 2004, appellees filed a motion to dismiss the wrongful death claim on the ground that suicide is not a legally cognizable basis for a wrongful death claim because it is barred as a matter of law and/or that the evidence in this case did not support the claim.

On August 4, 2004, the court granted the motion to dismiss the wrongful death claim, reserved on the motion to dismiss based on discovery violations, denied appellant's motion to supplement his expert witness list, and granted appellees' motion to re-depose Dr. Sindler.

At trial, appellant testified and called several friends, acquaintances, and relatives, who described Ms. Sindler's ability to function before and after the accident, specifically, her deteriorating mental and physical health after the accident. Appellant also called treating physicians as expert witnesses, who testified that Ms. Sindler sustained a closed head injury in the accident, opined that her chronic pain and other symptoms were caused by the accident, and opined that her poor mental health was

caused by the accident.

On September 21, 2004, the jury returned a verdict in favor of appellant as personal representative of the estate for non-economic damages in the amount of $28,000 and for loss of consortium in the amount of $10,000.

On October 4, 2004, the court granted appellee's motion to dismiss.

Held: Affirmed. On appeal, Dr. Sindler challenged the dismissal of the wrongful death claim on substantive law grounds and the dismissal of the entire case based on discovery abuse. The Court of Special Appeals affirmed the trial court's rulings.

The Court of Special Appeals adopted the Restatement approach, which is simply a statement of proximate cause in a specific context. According to the Court of Special Appeals, the majority rule is that suicide, as a consequence of a negligent act, is not legally cognizable under general principles of proximate causation, because either it is a superseding intervening cause or otherwise not a proximate cause. Restatement Section 455, however, provides an exception to the general rule. Under Section 455, liability is imposed upon a defendant for another's suicide when the defendant's negligent conduct causes the insanity of another and (1) the insanity prevents the person from understanding the nature of the act and the certainty of harm, or (2) the insanity makes it impossible to resist an "uncontrollable impulse" that deprives the person of the capacity to govern the person's own conduct in a reasonable manner.

According the Court of Special Appeals, whether Ms. Sindler was insane or delirious and suicide resulted, not from her own voluntary conduct, but from lack of realization or an "uncontrollable impulse" that was the product of insanity created by appellees, was a jury question that required expert testimony. The Court found that, at the time of the ruling on the summary judgment motion, the evidence was insufficient to sustain a finding of liability for the suicide of Ms. Sindler under the Restatement.

The Court also determined that appellant's discovery violations were substantial. Second, the Court determined that counsel for the Sindlers repeatedly agreed, in 2003 and 2004, to make the Sindlers available for re-deposition but failed to follow through. Thus, the Court concluded that appellees were entitled to rely on that consent in the absence of an order compelling a second deposition. Third, the Court determined that the circuit court's

mistakes were not material to its decision to dismiss the case. Fourth, the Court concluded that the circuit court adequately exercised its discretion. Finally, the Court found no merit in appellant's argument that Dr. Sindler, individually, was improperly sanctioned because of Ms. Sindler's conduct. The court held that a loss of consortium claim is not an individual's claim, but a joint claim.

Bruce Sindler, Individually, etc. v. Honey Litman, et al., No. 1838, September Term, 2004, filed December 2, 2005. Opinion by Eyler, James R., J.

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ATTORNEY DISCIPLINE

The following attorney has been replaced upon the register of attorneys in the Court of Appeals of Maryland effective April 13, 2006:

AARON SCOTT SCHWARTZ
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By an Order of the Court of Appeals of Maryland dated April 26, 2006, the following attorney as been disbarred by consent from the further practice of law in this State:

ARTHUR J. FRANK
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JUDICIAL APPOINTMENTS

On February 16, 2006, the Governor announced the appointment of **H. JACK PRICE, JR.** to the District Court for Allegany County. Judge Price was sworn in on March 31, 2006 and fills the vacancy created by the retirement of the Hon. Paul J. Stakem.

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On February 14, 2006, the Governor announced the appointment of **MARY CECILIA REESE** to the District Court for Howard County. Judge Reese was sworn in on April 21, 2006 and fills the vacancy created by the elevation of the Hon. Louis A. Becker, III to the Circuit Court.