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Table of Contents

COURT OF APPEALS

COURT OF SPECIAL APPEALS

COURT OF APPEALS

ATTORNEYS - ATTORNEY FEES - EFFECT OF STATUTES - WHERE STATUTE DELINEATING FEE-DETERMINING CRITERIA TO BE CONSIDERED IN THE DISCRETIONARY AWARD OF ATTORNEY'S FEES TO THE PREVAILING PARTY EXISTS, THE INITIAL USE OF A LODESTAR APPROACH TO CALCULATE AN INITIAL AWARD IS UNNECESSARY.

Facts: On December 23, 1993, Betty Flaa, respondent, ("Mrs. Flaa") filed a complaint with the Montgomery County Office of Human Rights ("MCOHR") alleging, *inter alia*, that Manor Country Club, petitioner, ("Manor"), of which respondent was a member, had engaged in unlawful marital status and sex discrimination toward respondent.

Following its investigation, MCOHR issued its initial finding on January 6, 1997, concluding that Manor was a place of public accommodation, an issue which Mrs. Flaa had raised as a case of first impression, and that Manor's actions had violated Montgomery County Code, § 27-8 (1987). The matter was referred to MCOHR's Public Accommodation Panel ("Panel") which then referred the matter to the Office of Zoning and Administrative Hearings ("OZAH") for an evidentiary hearing.

In July 1997, Mrs. Flaa, as the prevailing party, submitted an attorney's fees application seeking $11,699.20 in fees and $946.29 in expenses. Fourteen months later, in September 1998, she submitted a revised application seeking total attorney's fees of $32,579.50 and expenses of $1,836.46. After a ten-day public hearing that began May 17, 1999, Mrs. Flaa's attorney submitted a statement seeking damages of $1,000.00, as well as updated attorney's fees and expenses in the amounts of $138,024.00 and $4,282.31; respectively.

In September 1999, the OZAH hearing examiner issued a report in favor of Mrs. Flaa and recommended an award of $1,000.00 in damages (the statutory limit), $120,481.00 in attorney's fees, and $4,282.31 in expenses. The Panel then held a public hearing and issued an opinion and order on May 8, 2000, adopting the hearing examiner's finding that Manor was a place of public accommodation but stating that its membership practices had resulted in no disparate impact. The Panel looked to Montgomery County Code § 27-7 in awarding Mrs. Flaa $750.00 (of a maximum $1,000.00) in damages and generally invoked the criteria of former Montgomery County Code § 27-7 (k)(1), which consisted of nine factors to apply in

determining the reasonableness of attorney's fees claimed by a complainant, in awarding attorney's fees of $3,000.00. Both parties filed petitions for judicial review in the Circuit Court for Montgomery County of the Panel's conclusion. Following oral argument, the circuit court on August 10, 2001, affirmed the Panel's decision, but vacated the attorney's fees award and remanded that portion of the decision to the Panel for a detailed examination of the criteria contained in Montgomery County Code § 27-7 (k)(1).

Following remand, and the Panel's request that the parties narrow the scope of their requests, Mrs. Flaa's attorney revised the figures downward in March 2002 to a total of $202,520.14, *i.e.*, $131,476.10 based on 757.17 hours spent on the issue of "place of public accommodation" plus $71,044.04 based on 436.17 hours spent litigating the attorney's fees issue.

On October 10, 2002, the Panel issued a revised order and opinion addressing each criterion of Montgomery County Code § 27-7 (k)(1), and awarded to Mrs. Flaa $22,440.00 in attorney's fees but no expenses.

Mrs. Flaa filed a second petition for judicial review in the circuit court in November 2002, and in July 2003, the circuit court affirmed the Panel's award. Mrs. Flaa then appealed to the Court of Special Appeals which vacated the circuit court's decision and ordered a remand to the Panel for it first to determine a lodestar figure and *then* to apply the criteria of Montgomery County Code § 27-7 (k)(1) as adjustment factors. Manor then filed a Petition for Writ of Certiorari to the Court of Appeals which the Court granted on December 17, 2004.

Held: Reversed. Where delineated criteria for the calculation of reasonable attorney's fees are provided in a fee-shifting statute, those criteria should be used in lieu of the lodestar approach, which otherwise is generally the correct method for calculating such awards. In this case, the criteria in former Montgomery County Code § 27-7 (k)(1) provided sufficient basis for the calculation of a discretionary award of attorney's fees to the prevailing party and made unnecessary the initial use of a lodestar approach to determine an initial award figure. The Court of Special Appeals' decision was reversed with instructions to affirm the circuit court's decision.

Manor Country Club v. Betty Flaa. No. 111, September Term, 2004, filed May 18, 2005. Opinion by Cathell, J.

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CONSUMER PROTECTION — REMEDIES OF CONSUMER — CIVIL ACTIONS ON BEHALF OF PUBLIC - THE CONSUMER PROTECTION DIVISION NEED NOT ELICIT TESTIMONY FROM EACH CONSUMER TO ESTABLISH AN UNFAIR OR DECEPTIVE PRACTICE AND NEED NOT PROVE CONSUMER RELIANCE TO PROVE A VIOLATION OF THE CONSUMER PROTECTION ACT.

CONSUMER PROTECTION — REMEDIES OF CONSUMER — CIVIL ACTIONS ON BEHALF OF PUBLIC — FOR THE CONSUMER PROTECTION DIVISION TO ORDER A VIOLATOR TO PAY RESTITUTION TO A PARTICULAR INDIVIDUAL, THE DIVISION MUST DETERMINE THAT THE CONSUMER RELIED UPON THE MISREPRESENTATION.

CONSUMER PROTECTION — REMEDIES OF CONSUMER — CIVIL ACTIONS ON BEHALF OF PUBLIC — WHEN A CONSUMER PROTECTION ACT VIOLATOR'S MISREPRESENTATIONS AND DECEPTIONS AFFECT A NUMBER OF SIMILARLY SITUATED INDIVIDUALS, THE CONSUMER PROTECTION DIVISION MAY ISSUE A GENERAL ORDER OF RESTITUTION. THE DIVISION MAY ISSUE GENERAL ORDERS OF RESTITUTION WITHOUT CONSUMER TESTIMONY. IN ORDER TO AWARD RESTITUTION TO INDIVIDUAL CONSUMERS, THE DIVISION THEN MUST ESTABLISH A PROCEDURE TO DETERMINE WHETHER INDIVIDUAL CONSUMERS RELIED ON THE MISREPRESENTATIONS.

CONSUMER PROTECTION — REMEDIES OF CONSUMER — CIVIL ACTIONS ON BEHALF OF PUBLIC — THE CONSUMER PROTECTION DIVISION COULD NOT AWARD RESTITUTION TO CONSUMERS IN THE ABSENCE OF EVIDENCE OF CONSUMER RELIANCE. THE DIVISION MAY INITIATE A PROCEDURE FOR AWARDING RESTITUTION BASED ON DETERMINATIONS OF WHETHER THE INDIVIDUAL CONSUMERS RELIED ON THE MISREPRESENTATIONS.

CONSUMER PROTECTION — REMEDIES OF CONSUMER — CIVIL ACTIONS ON BEHALF OF PUBLIC — UNDER THE CONSUMER PROTECTION ACT, THE CONSUMER PROTECTION DIVISION MAY AWARD RESTITUTION JOINTLY AND SEVERALLY.

CONSUMER PROTECTION — REMEDIES OF CONSUMER — CIVIL ACTIONS ON BEHALF OF PUBLIC — THE CONSUMER PROTECTION DIVISION MAY HOLD INDIVIDUALS JOINTLY AND SEVERALLY LIABLE FOR RESTITUTION FOR THE CONSUMER PROTECTION ACT VIOLATIONS OF CORPORATIONS, WHEN THE DIVISION PROVES THAT THE INDIVIDUAL PARTICIPATED DIRECTLY IN OR HAD AUTHORITY TO CONTROL THE DECEPTIONS OR MISREPRESENTATIONS, AND THE INDIVIDUAL HAD KNOWLEDGE OF THE PRACTICES.

CONSUMER PROTECTION — REMEDIES OF CONSUMER — CIVIL ACTIONS ON BEHALF OF PUBLIC — THE CONSUMER PROTECTION DIVISION MAY HOLD VIOLATORS OF THE CONSUMER PROTECTION ACT WHO HAVE ACTED IN CONCERT JOINTLY AND SEVERALLY LIABLE FOR RESTITUTION, BUT THE DIVISION MAY NOT HOLD CONCURRENT VIOLATORS OF THE CONSUMER PROTECTION ACT JOINTLY AND SEVERALLY LIABLE FOR RESTITUTION.

CONSUMER PROTECTION — IN GENERAL — CONSTITUTIONAL PROVISIONS — THE RIGHT TO A JURY TRIAL UNDER THE MARYLAND CONSTITUTION DOES NOT APPLY TO ADMINISTRATIVE PROCEEDINGS UNDER THE CONSUMER PROTECTION ACT.

CONSUMER PROTECTION — ADMINISTRATIVE REGULATION — IN GENERAL — THE CONSUMER PROTECTION DIVISION DOES NOT VIOLATE THE DUE PROCESS PROVISIONS OF THE MARYLAND OR FEDERAL CONSTITUTIONS WHEN IT INVESTIGATES, PROSECUTES, AND ADJUDICATES A CASE. AN APPRAISER ACCUSED OF VIOLATING THE CONSUMER PROTECTION ACT WHO DID NOT PRESENT OR ALLEGE ANY EVIDENCE OF SPECIAL FACTS AND CIRCUMSTANCES POSING AN INTOLERABLY HIGH RISK OF UNFAIRNESS DID NOT MEET THE BURDEN TO OVERCOME THE PRESUMPTION OF HONESTY AND INTEGRITY IN THOSE SERVING AS ADJUDICATORS.

CONSUMER PROTECTION — ADMINISTRATIVE REGULATION — IN GENERAL — AN AGENCY OFFICIAL MAY MAKE FINDINGS AND ISSUE AN ORDER BASED ON THE WRITTEN RECORD ALONE.

CONSUMER PROTECTION — ADMINISTRATIVE REGULATION — IN GENERAL — WHERE RESOLUTION OF THE ISSUES BY THE ADMINISTRATIVE LAW JUDGE DID NOT TURN ON A DEMEANOR-BASED CREDIBILITY ASSESSMENT, THE CONSUMER PROTECTION DIVISION COULD DETERMINE BASED ON THE WRITTEN RECORD ALONE WHETHER TWO APPRAISERS VIOLATED THE CONSUMER PROTECTION ACT.

CONSUMER PROTECTION — ADMINISTRATIVE REGULATION — JUDICIAL REVIEW — SUBSTANTIAL EVIDENCE EXISTED TO SUPPORT THE CONSUMER PROTECTION DIVISION'S FINDINGS THAT APPRAISERS VIOLATED THE CONSUMER PROTECTION ACT THROUGH THEIR FAILURE TO REPORT PRIOR SALES HISTORIES OR THEIR INAPPROPRIATE SELECTION OF COMPARABLE SALES.

Facts: Appellant Consumer Protection Division appealed the Circuit Court for Baltimore County's reversal in part of the Division's Final Order against appellees Lee M. Shpritz, L&R Properties, Inc., West Star Properties, Inc., West Star Company, LLC, Michael Almony, Almony Appraisal Services, LLC, and John M. Morgan, Jr. Morgan cross-appealed the Circuit Court's affirmance in part.

The Division brought an enforcement action charging a property-investor (Shpritz and his companies), a mortgage lender (Lee P. Woody, III, John D. Hall, and their company American Skycorp), and two appraisers (Almony and Morgan) with using unfair and deceptive practices to take advantage of unsophisticated, first-time home buyers in Baltimore City.

The Administrative Law Judge (ALJ) held hearings and issued a Proposed Findings of Fact and Order finding the defendants in

violation of the Consumer Protection Act (the Act), except Almony.[1] The Division ruled on exceptions and issued Findings of Fact and an Order, finding all the defendants in violation of the Act and ordering them to Cease and Desist and pay restitution and civil penalties.

Shpritz, Morgan, and Almony filed a petition for judicial review in the Circuit Court for Baltimore County. The Circuit Court held a hearing and issued an opinion affirming in part and reversing in part, remanding the matter to the agency. The Circuit Court struck the restitution calculations for the consumers who did not testify before the ALJ and held that the Division erred by not reducing its restitution calculations against Shpritz by the amount Shpritz contributed to the transactions. The Circuit Court held that the Division could not hold violators of the Act jointly and severally liable for restitution. The Circuit Court affirmed the ALJ's denial of Shpritz, Morgan, and Almony's request for a trial and the Division's role as investigator, prosecutor, and adjudicator. The court reversed the Division's findings that were based solely on the paper record and remanded to the agency for a demeanor-based credibility assessment. The Circuit Court affirmed the Division's imposition of civil penalties against Morgan and the Division's determination that Morgan had violated the Act by misrepresenting the prior sales history of appraised properties. The court reversed the Division's findings that Morgan had violated the Act by misrepresenting the neighborhood predominant values and comparable sales of appraised properties. The court reversed the Division's findings that Almony had violated the Act.

The Division noted a timely appeal to the Court of Special Appeals. Morgan cross-appealed. Before the Court of Special Appeals considered the issues, the Court of Appeals granted certiorari on its own initiative.

Held: Affirmed in part and reversed in part. The Court held that the Division need not elicit testimony from each consumer to establish an unfair or deceptive practice and need not prove consumer reliance to prove a violation of the Consumer Protection Act. The Consumer Protection Division could not award restitution to consumers in the absence of evidence of consumer reliance. The Division may initiate a procedure for awarding restitution based on determinations of whether the individual consumers relied on the misrepresentations.

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[1]Hall settled with the Division during the course of the administrative hearings.

The Court held that the Division was required to deduct Shpritz's expenses from its restitution calculation. The Court reasoned that restitution involves the disgorgement of unjust enrichment.

The Court held that the Division may award restitution jointly and severally under the Act. In reaching this conclusion, the Court reviewed the purpose of the Act, afforded the Act a liberal construction as required by the General Assembly, and considered federal practice. The Court held that the Consumer Protection Division may hold individuals jointly and severally liable for restitution for the Consumer Protection Act violations of corporations, when the Division proves that the individual participated directly in or had authority to control the deceptions or misrepresentations, and the individual had knowledge of the practices. Applying this rule, the Court held that the Division could hold Shpritz and his companies and Almony and his company, respectively, jointly and severally liable. The Court next held that the Division may hold violators of the Consumer Protection Act who have acted in concert jointly and severally liable for restitution, but the Division may not hold concurrent violators of the Consumer Protection Act jointly and severally liable for restitution. The Court then held that the Division could hold all the defendants jointly and severally liable as concerted actors, except Almony.

The Court held that the right to a jury trial under the Maryland Constitution does not apply to administrative proceedings under the Consumer Protection Act.

The Court held that the Division does not violate the Due Process provisions of the Maryland or Federal Constitutions when it investigates, prosecutes, and adjudicates a case. The Court held that Morgan did not present or allege any evidence of special facts and circumstances posing an intolerably high risk of unfairness and thus did not meet his burden to overcome the presumption of honesty and integrity in those serving as adjudicators.

The Court held that the Division properly could determine based on the record whether Morgan and Almony had violated the Consumer Protection Act through their selection of comparable sales and calculation of neighborhood predominant values. The Court reviewed well-established Maryland and federal case law to determine that an agency official may make findings and issue an order based on the written record alone. The Court noted that an exception exists when the agency decision depends necessarily upon a demeanor-based assessment, but the Court concluded that the Administrative Law Judge's resolution of the issues involving the appraisers did not turn on a demeanor-based credibility assessment.

The Court held that there was substantial evidence to support the Division's findings that Morgan and Almony violated the Act and the Division's decision to fine Morgan $1,000 per transaction.

Consumer Protection Division v. John Morgan, Michael Almony, Lee M. Shpritz, et al., No. 4, September Term, 2004, filed May 13, 2005. Opinion by Raker, J.

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CRIMINAL LAW - HOMICIDE – KILLING IN COMMISSION OF OR WITH INTENT TO COMMIT OTHER UNLAWFUL ACT – INTENT OR MENS REA IN GENERAL

HOMICIDE – INSTRUCTIONS – SUFFICIENCY – KILLING IN COMMISSION OF OR WITH INTENT TO COMMIT OTHER UNLAWFUL ACT – INTENT OR MENS REA IN GENERAL

Facts: Respondent Allen stabbed John Butler to death in the latter's residence, then drove off in Butler's automobile. Allen was indicted in the Circuit Court for Charles County and convicted of, *inter alia*, first degree felony-murder predicated on the felony of robbery with a dangerous or deadly weapon. Evidence was introduced at trial from which the jury could have concluded that Allen formed the intent to take the car as an afterthought to the killing. Under the instructions given at trial, the jury was permitted to find Allen guilty of first degree felony-murder so long as it concluded that he had intentionally robbed Butler and that Butler's death had resulted from the robbery.

Allen noted a timely appeal to the Court of Special Appeals. That court reversed, holding that "an 'afterthought' robbery . . . cannot support a conviction for felony murder." *Allen v. State*, 158 Md. App. 194, 246-47, 857 A.2d 101, 132 (2004). The Court of Appeals granted the State's petition for writ of certiorari.

Held: Affirmed. The Court of Appeals agreed with the Court of Special Appeals and held that an afterthought robbery cannot be the

predicate for first-degree felony murder. The Court stated that in order to sustain a first degree felony-murder conviction under Md. Code (2002, 2004 Cum. Supp.), § 2-201(a)(ix) of the Criminal Law Article, the State needed to prove, beyond a reasonable doubt, a robbery or attempted robbery, and a murder "committed in the perpetration of or an attempt to perpetrate" a robbery or attempted robbery.

The Court examined cases from around the country and observed that the majority "narrow" view prohibits conviction of felony-murder unless the defendant intended to commit the underlying felony at the time the killing occurred. This view tends to stem from the deterrence justification underlying the modern felony-murder rule. It is variously stated that the felony-murder rule deters felonies altogether by holding out the risk of a murder conviction in the event an accidental killing occurs; that it encourages determined felons to commit their felonies by the least dangerous means possible; or that it discourages felons from killing intentionally by removing the possibility of defenses that would eliminate or mitigate liability. The Court agreed with the majority view.

The Court noted that the issue *sub judice* had been discussed but not answered in *Metheny v. State*, 359 Md. 576, 755 A.2d 1088 (2000). In *Metheny*, a capital case, the Court held that an "afterthought" robbery did not qualify as a death-eligible aggravating circumstance under Maryland's death penalty statute, currently codified at § 2-303 of the Criminal Law Article. In determining whether Metheny had murdered his victim "while committing, or attempting to commit" a robbery, the Court cited with approval those cases around the country that had embraced the majority "narrow" view of felony murder. But the Court acknowledged in *Metheny* that it was not presented with, and would not decide, the question of whether an "afterthought" to commit a felony could underlie a felony-murder conviction. The Court overruled *Higginbotham v. State*, 104 Md. App. 145, 158-59, 655 A.2d 1282, 1288 (1995), which it had disapproved but not overruled in *Metheny*.

State of Maryland v. Jeffrey Edward Allen, No. 104, September Term, 2004, filed June 10, 2005. Opinion by Raker, J.

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CRIMINAL LAW - SENTENCE - LIFE WITHOUT THE POSSIBILITY OF PAROLE — NOTICE — The court may not impose a sentence of life without the possibility of parole unless the record reveals that the State gave timely written notice to the defendant of the intention to seek that sentence, in accordance with § 2-203 of the Criminal Law Article.

VOLUNTARINESS OF STATEMENT — Although the police questioned the defendant in the defendant's hospital room, while he was recovering from serious injuries, the court did not err by determining that the defendant gave his statement voluntarily. A review of the totality of the circumstances and the detective's uncontroverted testimony regarding the defendant's demeanor and conversation supported a finding of voluntariness.

Facts: In October, 2001, Mr. Gorge and his girlfriend, Dorothy Brooks ("Dorry" or "Ms. Brooks"), were living in his car. Both were addicted to drugs. On October 27, 2001, Mr. Gorge and Ms. Brooks attempted to commit suicide by overdosing. The following morning, they both awoke extremely "drug sick." Mr. Gorge told Ms. Brooks that he was going to go to his mother's house to ask for money so they could "get well." Ms. Brooks testified that she fell asleep and when she woke up, Mr. Gorge was back with a van that he said he had borrowed from his grandfather. They drove to a hotel in Pennsylvania and consumed more drugs. Ms. Brooks testified that Mr. Gorge confessed to her that he hit his grandfather over the head, punched him, and strangled him. Mr. Gorge attempted to kill himself by cutting his throat and wrists and by stabbing himself seventeen times. The police apprehended him on October 30, 2001, and took him to a hospital in Pennsylvania for emergency surgery.

The court held a suppression hearing on May 29, 2002. Chief Wesley M. Haverkamp testified that Mr. Gorge was in and out of consciousness and that he seemed to be in pain. Officer Lawrence Burger described Mr. Gorge's injuries, noting that he had stitches on his neck from "ear to ear" and puncture wounds. Officer Burger also testified that Mr. Gorge was restrained with shackles on one ankle and straps on both wrists.

Detective Kurt Wilhelm testified that he contacted the police department in Pennsylvania and they informed him that Mr. Gorge was conscious and could be interviewed. Detective Wilhelm testified that Mr. Gorge was calm, alert, quiet, and subdued. Detective Wilhelm read Mr. Gorge his rights and Mr. Gorge initialed each right and signed the form. Mr. Gorge admitted fighting with his grandfather and hitting him on the head with a bottle. At the end of the interview, Mr. Gorge read his statement and signed it, indicating that he understood what it said and that it was given

voluntarily. Defense counsel did not call any witnesses at the suppression hearing, but did admit Mr. Gorge's medical records into evidence for the purpose of showing that he was hospitalized with very serious injuries. The trial judge denied the motion to suppress, stating that the Miranda warnings were given in detail, that Mr. Gorge was alert and lucid during the interview, and that the statement was voluntarily given.

On November 12-14, 2002, Jason Harry Gorge was tried by a jury in the Circuit Court for Baltimore County and convicted of one count of first-degree felony-murder, one count of premeditated murder, and one count of robbery. On March 3, 2003, Mr. Gorge was sentenced to life without the possibility of parole for the first-degree murder conviction and to fifteen years for the robbery. At the sentencing hearing, defense counsel questioned whether the State filed a written notice of an intention to seek a life sentence without the possibility of parole. Defense counsel stated that she knew "early on" that the State was going to seek that sentence. She also stated, however, that neither she, nor the State could locate a copy of any written notice to that effect in their files. The State did not produce a copy of a timely written notice.

The trial judge reviewed the docket entries and noted that nothing indicated that any notice had been filed. The Court concluded that it would sentence Mr. Gorge "on the basis that the Defendant did have notice." The Court sentenced Mr. Gorge to life without the possibility of parole for the first degree murder conviction and to fifteen years for the robbery. Mr. Gorge appealed and the Court of Special Appeals affirmed the circuit court judgment.

Held: Judgment of the Court of Special Appeals reversed in part and remanded with directions to reverse the judgment of the Circuit Court for Baltimore County and to vacate the sentence imposed of life without the possibility of parole, and remand to that court for a new sentencing.

The plain language of § 2-203 of the Criminal Law Article requires the State to provide the defendant with timely written notice of the intent to seek the sentence of life without the possibility of parole. "A defendant found guilty of murder in the first degree may be sentenced to imprisonment for life without the possibility of parole only if: (1) at least 30 days before trial, the State gave written notice to the defendant . . . ." We do not see how the words "only if" can be interpreted any other way.

Defense counsel admitted having actual notice of the State's intent more than 30 days before trial. Neither the State, nor the

court, however, could locate the original or a copy of a timely written notice. The statute places the burden for supplying the written notice to the defendant on the State. The fact that defense counsel admitted to receiving oral notice of the State's intent does not satisfy the requirements of the statute.

In view of the seriousness of the sentence and the unambiguous language of the statute, construing the statute to require timely written notice is the most reasonable construction. The language of the statute provides no exception for oral notice, and we will not add one. To fall back on the general purpose of the notice statute and hold that actual notice will suffice, ignores the plain language of the statute we must construe. Section 2-203 describes what constitutes fair notice - written notice at least 30 days before trial. Simply stated, we are not permitted to ignore the language of the statute.

In view of the holding that the notice provided in this case did not comply with the requirements of § 2-203 of the Criminal Law Article, the Court reversed and struck the sentence of life without the possibility of parole, and remanded the case for a new sentencing. In a case involving a sentence as serious as life without the possibility of parole, it is entirely reasonable to require the State to follow the letter of the law.

Regarding the voluntariness of Mr. Gorge's statement, we note that our review of the circuit court's denial of Appellant's motion to suppress is limited to the record of the suppression hearing. We must look at the totality of the circumstances in order to decide the voluntariness of a statement. Based upon our review of the record of the suppression hearing and consideration of the totality of the circumstances, the trial court did not err by finding Mr. Gorge's statement voluntary. Although the interrogation took place in Mr. Gorge's hospital room, while he was recovering from serious injuries, the detective's uncontroverted testimony regarding his discussion with Mr. Gorge supports a finding of voluntariness. Mr. Gorge's answers to Detective Wilhelm were lucid and accurate. Mr. Gorge signed a written statement, indicating that he understood what he was signing and that he gave his statement voluntarily. Moreover, Mr. Gorge did not testify at the suppression hearing and state anything to the contrary. In this case, there was no direct evidence of involuntariness and the trial court did not err by finding that the State met its burden of proving the statement was freely and voluntarily given.

Jason Harry Gorge v. State of Maryland, No. 54, September Term, 2004, filed May 10, 2004, Opinion by Greene, J.

MUNICIPAL CORPORATION - CONVEYANCE OF PUBLIC STREET BEDS -HOME RULE - EXPLICIT POWER TO CONVEY GOVERNMENT PROPERTY - CONVEYANCE OF PUBLIC STREET BEDS - RECUSAL - PERMISSIVE - STANDARD REQUIRING OTHER JUDGE TO HEAR MOTION

Facts: This case concerns the power of a municipal corporation to close a public street bed and convey it to a private entity for a subsequent public benefit and, as a secondary issue, the standard requiring a judge other than the trial judge to hear a motion to recuse filed in accordance with *Surratt v. Prince George's County*, 320 Md. 439, 578 A.2d 745 (1990).

On 20 October 2003 the Town Council of the Town of Easton (the "Town") held a joint public hearing to consider a proposed zoning amendment to accommodate the proposed expansion of the Easton Memorial Hospital (the "Hospital") requested by Shore Health Systems, Incorporated ("SHS"), a Maryland non-profit, non-stock corporation which operates the Hospital. In addition to the zoning amendment, SHS proposed the closure and conveyance of the street bed of Adkins Avenue, an adjacent public street of the Town, to accommodate the expansion of that part of the Hospital addressing emergency room services. The existing emergency room, designed originally to accommodate 13,000 patients annually, received approximately 41,000 patients annually and it was estimated that 50,000 patients would be received annually by the year 2015.

Adkins Avenue is a nine hundred foot long public street which borders the western boundary of the Hospital campus and runs in a north/south direction. SHS submitted a traffic study documenting that five to six cars per hour drove the length of Adkins Avenue during peak time periods. The Hospital and a synagogue (which did not oppose the road closure) are the sole owners of the property abutting Adkins Avenue. The proposed emergency room expansion would cover approximately 250 feet of the street bed, leaving the remainder of Adkins Avenue as a stub street serving only the Hospital and the synagogue.

The South Easton Neighborhood Association, Incorporated ("SENA") opposed the closing and conveyance to SHS of Adkins Avenue. Purporting to be acting on behalf of the residential property owners on the several other streets in the neighborhood, SENA claimed that the closure of the road would leave impractical alternatives for local residents traveling from their homes into and out of downtown Easton. SENA also explained that the on-going public use of the road would foreclose the Town's discretion to close the street pursuant to Md. Code, Article 23A, § 2 (b) (24).

On 5 January 2004, the Town Council enacted Amended Ordinance

No. 466, closing and conveying the relevant part of the street bed of Adkins Avenue to SHS. The Ordinance, and its incorporated Findings of Fact, stated that: 1) Adkins Avenue was used as a convenience by area residents; 2) the Town Charter authorized the Town Council to close public streets; 3) The Town Council had the authority to convey the street bed pursuant to Article 23A, § 2(b)(24); and, 4) closing Adkins Avenue would benefit the public by providing improved emergency room facilities and reducing the need of publicly maintaining the stub portion of Adkins Avenue remaining after construction of the emergency room. Included in the record before the Town Council prior to enacting Ordinance No. 466 were a letter from the Town Engineer, a staff report, and two letters from the Chairman of the local Planning and Zoning Commission recommending the closure of Adkins Avenue. These town agencies and officials all recommended the closure and conveyance of Adkins Avenue without any identifying any other future public use or purpose for the to-be-closed road.

SENA filed in the Circuit Court for Talbot County a two count complaint against the Town seeking a declaratory judgment that Amended Ordinance No. 466 violated Article 23A, § 2 (b) (24) and judicial review of the Town Council's decision to enact the ordinance. SENA followed its initial complaint with a motion to recuse the sole sitting judge in the Circuit Court, the Honorable William S. Horne, because he and his immediate family relied upon SHS for medical care, the only emergency medical services provider in a four-county area. SHS intervened as a party defendant and moved for summary judgment, along with the Town.

On 30 July 2004, Judge Horne held a hearing to consider the motion for recusal and the motions for summary judgment. He denied the motion for recusal, stating that the issue of whether a judge relied upon SHS for medical services was irrelevant to his or her ability to decide fairly the matter. He also granted summary judgment to SHS and the Town, declaring Amended Ordinance No. 466 a lawful exercise of the Town Council's authority pursuant to Article 23A, § 2 (b) (24), to convey government property. SENA filed a motion for a new trial, citing *Surratt v. Prince George's County*, 320 Md. 439, 578 A.2d 745 (1990). SENA's counsel alleged that Judge Horne had demonstrated a "rather remarkable and offensive pattern of judicial misconduct." Judge Horne denied the motion, without a hearing.

SENA appealed to the Court of Special Appeals, seeking appellate review of the Circuit Court's decision and alleging that the Town violated an alleged implied fiduciary relationship to the general public by closing and conveying Adkins Avenue. The Court of Appeals issued a writ of certiorari, on the petition of SHS and

the Town (not objected to by SENA), before the intermediate appellate court considered the appeal. The Court denied SENA's cross-petition without prejudice to raise any issues it may have raised properly before the Court of Special Appeals.

Held: Judgment affirmed. The Court held that the Circuit Court did not abuse its discretion in issuing the declaratory judgment in favor of SHS and the Town. Municipal corporations must satisfy two conditions before closing and conveying a public street. First, the municipal corporation's ability to close and convey a street bed is delegated from the State. The State, as sovereign, has plenary power to close and convey street beds, limited solely by the principle prohibiting a conveyance determined to be solely for the private benefit of another. *Inlet Assocs. v. Assateague House Condo. Assoc.*, 313 Md. 413, 425, 545 A,2d 1296, 1302 (1988). Second, a municipal corporation only may convey real property used for government purposes pursuant to the express "ordinance-making powers" of Article 23A, § 2 (b) (24).

In this case, the Town closed and conveyed properly the street bed of Adkins Avenue to SHS. The Town, in the express terms of the local ordinance and the actions of the town officials approving the street closure without recommendation for any other future public use or public purpose, satisfied the statutory requirement of a determination by the Town that the street bed was no longer needed for any public use or purpose. Although SENA proposed that any current use of the road (as a public thoroughfare) prevented the Town from conveying the street bed, Article 23A, § 2 (b) (24) required merely that the Town determine that the street bed was no longer needed (and not actual non-use) as a prerequisite to exercising its authority pursuant to Article 23A, § 2 (b) (24). Furthermore, the future use of the closed street bed was for an expanded emergency room facility that clearly promoted the public welfare and provided emergency medical treatment to all individuals entering the Hospital with an emergency medical condition. SENA's contention that the road was held by the Town in an implied fiduciary relationship to the general public did not place any additional burden upon the Town.

In a motion for recusal, the moving party bears the "heavy burden" to overcome a presumption of judicial impartiality. *Attorney Grievance Comm'n v. Blum*, 373 Md. 275, 297, 818 A.2d 219, 232 (2003). In addition, to compel that such a motion be heard by a judge other than the trial, the moving party must allege sufficient personal misconduct between the trial judge and the moving party's counsel. In the present case, SENA could proffer only examples of adverse rulings and decisions rendered by the judge in a judicial setting. This was an inadequate showing.

South Easton Neighborhood Association v. Town of Easton, No. 120, September Term, 2004, filed June 3, 2004. Opinion by Harrell, J.

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TORTS - CARRIERS – CARRIAGE OF PASSENGERS – PERSONAL INJURIES – CARE REQUIRED AND LIABILITY OF CARRIER IN GENERAL – MOTOR CARRIERS; TAXICABS AND BUSES – COMMON CARRIER METROBUS CANNOT AVAIL ITSELF OF LIABILITY UNDER BOULEVARD LAW WHERE EVIDENCE TENDED TO SHOW THAT THE METROBUS DRIVER, EVEN THOUGH A FAVORED DRIVER UNDER THE BOULEVARD LAW, BREACHED THE HIGHER DUTY OF CARE OWED TO PASSENGERS OF COMMON CARRIERS WHEN HE RAPIDLY ACCELERATED BEFORE COMING TO A SUDDEN STOP TO AVOID A COLLISION WITH A PHANTOM VEHICLE.

Facts: On August 25, 2001, Ms. Josephine Seymour boarded a Washington Metropolitan Area Transit Authority ("WMATA") Metrobus at a service stop near the intersection of University Boulevard and Riggs Road in Prince George's County, Maryland. Seymour, who was sixty-four-years-old at the time, was seated in the bench-like area of the bus situated directly behind the bus driver and facing the right side of the bus.

As the bus left the service stop and traveled eastbound on University Boulevard, nearing the Riggs Road intersection, the Metrobus driver observed a "phantom vehicle" approaching an exit from a parking lot to his right but believed that this vehicle was going to stop. The Metrobus driver continued to accelerate. The phantom vehicle did not stop, however, and the Metrobus driver was forced to brake abruptly in order to avoid a collision with the phantom vehicle as it suddenly pulled out in front of the Metrobus and onto University Boulevard.

Because of the sudden stop of the Metrobus, Seymour was violently thrown from her seated position and fell to the floor of the bus, causing her to suffer a fracture to her right leg. Aware that Seymour, and at least one other passenger, appeared to have been injured by the sudden stop, the Metrobus driver proceeded to

drive the Metrobus onto Riggs Road and stop alongside the curb to wait for emergency services to arrive. Seymour remained on the floor of the Metrobus until paramedics assisted her off it and into an ambulance.

Seymour thereafter filed suit in the District Court sitting in Prince George's County against WMATA and the Maryland Automobile Insurance Fund – Uninsured Division ("MAIF") for the injuries she sustained when the Metrobus came to a sudden stop. Trial was held in the District Court on April 21, 2003, and, at the conclusion of the trial, judgment was entered against both WMATA and MAIF, jointly and severally, in the amount of $20,000.00

On appeal to the Circuit Court for Prince George's County, the Circuit Court, on September 17, 2004, issued an Opinion and Order affirming the decision of the District Court. WMATA thereafter filed a Petition for Writ of Certiorari to the Court of Appeals. On December 17, 2004, the Court granted the petition.

Held: The Court of Appeals held that, because common carriers owe their passengers a heightened duty of care during transport, it was not improper for the District Court judge to find that the Metrobus driver neglected that higher duty of care when he improperly accelerated from the service stop when he was aware that the phantom vehicle was approaching University Boulevard from a parking lot driveway and this imprudent action by the Metrobus driver was a proximate cause of Seymour's injuries.

In reaching its conclusion, the Court of Appeals held that WMATA could not shield itself from liability to its passenger by use of the boulevard law, even though the Metrobus enjoyed favored status under the boulevard law, because of the higher duty of care a common carrier owes to its passengers.

Washington Metropolitan Area Transit Authority v. Josephine Seymour and Maryland Automobile Insurance Fund. No. 106, September Term 2004, filed May 13, 2005. Opinion by Cathell, J.

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WILLS – ADEMPTION BY SATISFACTION

Facts: In 1992, Dr. Jan Karski entered into an agreement with YIVO Institute for Jewish Research to establish an endowment fund to provide an annual award of $5,000 to authors whose works focused on or otherwise described contributions to Polish culture and Polish science by Poles of Jewish origin. Dr. Karski reduced to writing his pledge in a letter dated November 25, 1992 ("Letter Agreement"). The Letter Agreement provided, in pertinent part:

> The endowment will consist of a gift of $100,000.00 in cash to be made by me to YIVO in my will, or in cash and/or marketable securities of the same total market value during my lifetime[.]

A second letter, identical to the November 25, 1992, letter, was signed February 25, 1993.

On October 25, 1993, eight months after writing the second Letter Agreement, Dr. Karski executed his Will. Article SECOND of the Will provides:

> I hereby give and bequeath to YIVO - Institute for Jewish Research (tax exempt organization Dr. Lucjan Dobroszycki and Dr. Ludwik Seidenman) - all my shares of Northern States Power (N.St.Pw.) of which 400 share certificates are located in Riggs National Bank, Friendship Branch (4249 block of Wisconsin Avenue), Safe Deposit Box 240, and the rest approximately 1,780 shares, is held by Northern States Power as automatic reinvestment. All these shares (approximately 2,180) should be transferred (not sold) to YIVO.

At the time the Will was executed, Northern States Power Company shares had a value of about $100,000.00.

During the period November 28, 1995, to January 22, 1996, Dr. Karski made a series of lifetime gifts of utility stocks to YIVO consisting of 1,809 shares of New York State Electric & Gas Corporation, 2,300 shares of Ohio Edison Company, and cash. The value of these stock gifts totaled $99,997.69. On February 7, 1996, Dr. Karski made a further gift of $2.31, bringing the total value of the gifts to YIVO to exactly $100,000. Dr. Karski did not amend his Will to reflect the *inter vivos* transfer of utility stock and cash to YIVO.

Dr. Karski died on July 12, 2000. On September 25, 2002, the Orphans' Court for Montgomery County denied YIVO's, request to

receive distribution of the bequest in the Will. The Orphans' Court concluded that Dr. Karski's *inter vivos* gifts to YIVO were intended by Dr. Karski as a fulfillment of the legacy under his Will. YIVO appealed to the Court of Special Appeals seeking reversal of the decision of the Orphans' Court arguing that the legacy was not adeemed by the lifetime gifts and challenging the admission of testimony by Dr. Hanna-Kaya Ploss ("Dr. Ploss") regarding oral statements made by Dr. Karski regarding the pledge to YIVO. The intermediate appellate court affirmed the decision of the Orphans' Court stating that the Orphans' Court was not clearly erroneous in its conclusion that Dr. Karski intended for his bequest to YIVO to act only as security for his obligation to the organization. It also affirmed the admission of Dr. Ploss's testimony, deferring to the trial court's evidentiary rulings and factual findings.

By petition for writ of certiorari to this Court, YIVO challenges the judgment of the Court of Special Appeals asserting that the lower courts erred in failing to require written evidence of intent to adeem, misapplied the presumptions of prior case law regarding ademption by satisfaction, and improperly admitted and/or credited the testimony of Dr. Ploss.

Held: Affirmed. The Orphans' Court for Montgomery County did not err in finding that Dr. Karski's *inter vivos* gift of stocks and cash to the YIVO Institute for Jewish Research was intended by Dr. Karski to adeem the legacy granted to YIVO in Dr. Karski's Will. Thus, the legacy was adeemed by satisfaction. The critical question in an ademption by satisfaction case is what was the intent of the testator at the time the *inter vivos* gift was made. Intent may be shown by extrinsic or parole evidence and need not be demonstrated by a contemporaneous writing. Here, the testator gave to YIVO stocks and cash equal to the value of the legacy at the time it was created. The gift being of a similar kind and for the same purpose as the legacy, the legacy was adeemed.

YIVO Institute for Jewish Research v. Personal Representative of the Estate of Jan Karski, et al., No. 56, September Term, 2004, filed May 11, 2005. Opinion by Greene, J.

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WORKERS' COMPENSATION BENEFITS- PAYMENT OF DEATH BENEFITS TO DEPENDENTS OF DECEASED CLAIMANT – Dependents of deceased firefighters who died from occupational diseases covered under § 9-503 are not entitled to receive dual benefits under § 9-503 (e) because § 9-610 limits workers' compensation death benefits that may be paid to dependents who are also receiving the deceased employee's retirement benefits.

Facts: Both Ernest Johnson (Mr. Johnson) and Daniel Luster (Mr. Luster) were Baltimore City Firefighters who died of cancers that were caused by their repeated contact with toxic substances in the line of duty. The cancer prevented both men from performing their duties as firefighters. Both Mr. Johnson and Mr. Luster are survived by their wives and both women receive benefits from their husbands' service pension plans. Both women were wholly dependent on their husbands when their husbands died.

Both Mrs. Johnson and Mrs. Luster filed workers' compensation claims for death benefits, which were heard by the Workers' Compensation Commission, the Circuit Court for Baltimore City, and the Court of Special Appeals. The Commission and the Circuit Court agreed in both cases that the widows were eligible for benefits and that they were permitted to receive a combination of workers' compensation and retirement benefits. In both cases, the Circuit Court granted motions for summary judgment filed by the claimants and denied motions for summary judgment filed by the City. The City appealed in both cases to the Court of Special Appeals.

In a reported opinion, the Court of Special Appeals held that Mrs. Johnson was eligible for benefits, but that her workers' compensation death benefits must be reduced by the amount of service pension benefits that she received. *Mayor & City Council of Baltimore City v. Johnson,* 156 Md. App. 569, 596 (2004). Similarly, in an unreported opinion, the Court of Special Appeals held that Mrs. Luster was eligible for workers' compensation death benefits, but that they must be reduced by the amount of service pension benefits that she received. We granted *certiorari* in both cases.

Held: The statute does not permit the dependents to collect full workers' compensation death benefits in addition to service pension benefits. Section 9-503 of the Labor and Employment Article gives special treatment to employees in particular professions who are suffering from particular occupational diseases. Section 9-503 affords those employees the benefit of a presumption that their condition is a compensable occupational disease. In addition, § 9-503 (e) permits those employees to collect workers' compensation benefits in addition to retirement

benefits, up to the amount of the employee's weekly salary.

Section 9-503 (e) makes no mention of dependents. Rather, the language reads as if it only pertains to the individuals mentioned in the statute; namely, firefighters (and other public safety personnel) who are eligible for benefits because they suffer from particular occupational diseases. Those individuals shall receive the workers' compensation benefits "in addition to any benefits that the *individual* is entitled to receive under the retirement system in which the individual was a participant at the time of the claim." By contrast, § 9-610 of the Labor & Employment Article specifically mentions dependents and provides for the usual offset of workers' compensation benefits that applies to covered governmental employees and their dependents. By providing only a single recovery for a single injury for governmental employees and their dependents who are covered by both a pension plan and workmen's compensation, the offset provision minimizes the burden on the public treasury that would result from providing duplicate benefits.

While the Court is required to construe the Workers' Compensation Act liberally in order to effectuate its benevolent purposes, the Court may not disregard the plain meaning of the statute. The Court may not read language into a statute that does not exist. The dependents of deceased firefighters, along with living firefighters, are entitled to the statutory presumption of compensability if the firefighters suffer from one of the diseases mentioned in § 9-503. The dependents of deceased firefighters are not entitled, however, to the dual benefits explicitly provided to firefighters and others by § 9-503 (e). As previously noted, § 9-503(e) does not mention dependents. The Legislature has imposed a general restriction on collecting dual benefits (§ 9-610) and a limited exception to that restriction for certain public safety workers suffering from particular occupational diseases (§ 9-503). The Court is not permitted to amend § 9-503(e) to include dependants in that limited exception.

It is clear that the Legislature found it acceptable to treat living firefighters suffering from certain cancers and other occupational diseases differently than the dependents of those firefighters. While that result may seem unfair to some, the Court is not free to ignore the statutory requirements in order to remedy any perceived unfairness. The Court will not violate the statutory mandate in any particular case in an attempt to avoid a perceived unjust result.

Ernest A. Johnson v. Mayor, No. 60, Daniel T. Luster, No. 77, September Term 2004, filed May 12, 2005, Opinion by Greene, J.

ZONING - CONSTRUCTION, OPERATION AND EFFECT - CONSTRUCTION OF REGULATIONS IN GENERAL - TWO LOTS WHICH HAD BEEN IN COMMON OWNERSHIP AND WERE USED IN SERVICE OF ONE ANOTHER DURING THE TIME OF THAT COMMON OWNERSHIP HAD MERGED FOR ZONING PURPOSES AND, ABSENT FURTHER ZONING ACTION, ONE LOT COULD NOT BE CONVEYED SEPARATE AND APART FROM THE OTHER.

Facts: Husband and wife, Ralph J. Duffie and Violette P. Duffie, purchased two lots in the Woodside Park section of Silver Spring. Specifically, they purchased a lot denominated Lot 12, a corner lot, in 1951, and in 1954 they purchased the adjacent parcel of land, denominated Lot 11. The elder Duffies constructed a home on Lot 12 to which they later made several additions, and on Lot 11 they constructed a pool, which was specified as an accessory use to the Lot 12 home. Following the deaths of Mrs. Duffie in 1988 and of Mr. Duffie in 1999, their son, Jonathan C. Duffie, obtained Lots 11 and 12. He executed a deed dated January 15, 2003, to convey Lot 11 to Design-Tech Builders, Inc. ("Design-Tech"), respondent, and this transfer was recorded in the Land Records of Montgomery County on January 30, 2003.

On January 8, 2003, petitioner, David H. Remes, owner of a home located adjacent to the Duffie property, brought a challenge before the Montgomery County Board of Appeals contesting a December 2002 building permit that was issued by the Montgomery County Division of Permitting Services ("DPS") to Design-Tech for construction of a home on Lot 11. Remes sought to establish, *inter alia*, that Lot 11 and 12, had merged for zoning purposes under the principles described in *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 352 Md. 645, 724 A.2d 34 (1999), and that Lot 11 was unavailable for construction.

On May 29, 2003, the Board of Appeals denied the administrative appeal and concluded that Lot 11 and 12 had not merged. Remes filed a timely petition for judicial review in the Circuit Court for Montgomery County in which the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission ("MNCPPC") was permitted to intervene.

The circuit court issued an order on April 5, 2004, affirming the Board of Appeals' decision. Mr. Remes appealed to the Court of Special Appeals, but before that court could hear the case, the Court of Appeals, of its own initiative, issued a writ of certiorari. *Remes v. Montgomery County*, 384 Md. 581, 865 A.2d 589 (2005).

Held: Reversed. Lot 11 and 12, which were held in common ownership by the elder Duffies, had been used in service to one

another during the period of that ownership, and, therefore, had merged for zoning purposes. Thus, without further zoning action, a permit for construction of a home on Lot 11 should not have issued. In order for the lots to be used separately and apart, there would have to be a resubdivision of the combined Lot 11 and 12, creating two lots both of which must meet the requirements of both the zoning ordinance and the subdivision regulations, or must be granted appropriate relief.

David H. Remes v. Montgomery County, Maryland, et al. No. 122, September Term, 2004, filed May 12, 2005. Opinion by Cathell, J.

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COURT OF SPECIAL APPEALS

ARBITRATION - WAIVER OF CONTRACTUAL RIGHT TO ARBITRATE; MECHANIC'S LIEN ACTION

Facts: In 1999, B. Diane Brendsel entered into a construction contract with Winchester Construction Company, Inc. ("Winchester") to repair and renovate "Wye Hall," an historic plantation house in Queen Anne's County owned by Brendsel and her husband ("the Agreement"). Under the Agreement, Winchester was to submit applications for payment as the work was performed.

The Agreement contained an arbitration clause wherein all claims or disputes between the parties would be decided by arbitration under the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA"). Also, notice of a demand for arbitration was to be filed with the other party and with the AAA, within a "reasonable time" after the dispute arose.

Winchester began work and submitted several pay applications that the Brendsels paid. In 2001, disputes arose between the parties over Winchester's billing practices and its work quality. In 2002, the parties executed a Memorandum of Understanding ("MOU"), which stated that, when Winchester submitted its final accounting of all costs, Mrs. Brendsel had 45 days to review the submission and, if she disagreed with the amount, the matter would be resolved through negotiation or arbitration. The MOU also permitted Mrs. Brendsel to terminate the Agreement for convenience, in which event Winchester would be paid for the work performed up to the date of termination.

Winchester continued to submit pay applications, and the Brendsels paid some of them. In May of 2003, Mrs. Brendsel terminated the Agreement for convenience. In response, Winchester submitted its final accounting, showing $815,877.27 due and owing. Counsel for the Brendsels then wrote to Winchester to say that they were reviewing the final accounting and hoped to resolve any disputes without litigation.

In October, because the Brendsels' accounting review was not completed, the parties entered into an agreement tolling the deadlines in the Agreement, the MOU, and any statutory or common law limitations periods.

On November 14, 2003, in the Circuit Court for Queen Anne's County, Winchester filed a petition to establish and enforce a

mechanic's lien, naming the Brendsels as property owners and defendants. The petition did not mention the arbitration clause in the Agreement.

Notwithstanding the filing of the mechanic's lien action, the parties, through counsel, continued to discuss their disputes in an effort to resolve them through negotiation. In December, the Brendsels' lawyer responded to the final accounting, saying that due to surcharges and defective work, Winchester owed the Brendsels $871,872.28. He suggested meeting to resolve the matter.

In January of 2004, as directed by the court, Winchester filed an amended mechanic's lien petition. In its prayer for relief, it sought a stay of proceedings after the interlocutory mechanic's lien was established pending the outcome of an arbitration proceeding.

The parties continued to negotiate. On March 4, the Brendsels filed a verified answer and a counterclaim for breach of contract and consumer protection violations. On March 5, the negotiations culminated in the parties filing a consent motion for continuance of the mechanic's lien proceedings ("Consent Motion"). In the Consent Motion, the parties agreed that Mrs. Brendsel would have a limited discovery period to explore her counterclaim; the Brendsels would not oppose the entry of an interlocutory mechanic's lien, but could move to strike it at the end of the discovery period; and that nothing in the Consent Motion would waive any party's right to argue for or against arbitration. The court then entered an order granting the Consent Motion and establishing an interlocutory mechanic's lien for $815,877.27 ("Interlocutory Order").

In April, Winchester filed an answer to the counterclaim. One of its affirmative defenses was that the claims were subject to arbitration pursuant to the Agreement.

Meanwhile, Mrs. Brendsel took the depositions of two subcontractors, and on June 16, 2004, at the close of the discovery period, she filed a motion for partial summary judgment on one of the breach of contract counts in her counterclaim. On June 22, Winchester responded with a petition to compel arbitration and to stay proceedings. In July, Winchester filed an opposition to the partial motion for summary judgment, noting that it believed the claims and disputes were subject to arbitration, and that it was only filing the opposition because the court directed it to do so.

On July 20, 2004, the court held a hearing on all open motions, beginning with the motion to compel arbitration. At the conclusion of argument on that motion, the court concluded that

under a totality of the circumstances, Winchester had not waived its right to arbitrate under the Agreement. The court granted the motion to compel arbitration and to stay proceedings and entered an order to that effect. It thus did not address the motion for summary judgment. The Brendsels appealed the order to the Court of Special Appeals.

Held: Affirmed. The Court of Special Appeals held that Winchester did not waive its right to arbitrate under the Agreement by filing a mechanic's lien petition in court. The Court explained that to waive the contractual right to arbitrate, a party's conduct must be so inconsistent with the continued assertion of that right as to reflect an intention to repudiate it. The Court observed that, under some circumstances, the filing of a lawsuit may evidence an intent to waive the right to arbitrate. However, the Court noted that a mechanic's lien proceeding is only a means to obtain priority to enforce a future award against the owner of the property, and is therefore not the same as a breach of contract action on the underlying dispute.

The Court also held that Winchester's engagement in the litigation process, under a totality of the circumstances, did not amount to a waiver of its right to arbitrate. The Court explained that such a waiver *vel non* is a question of fact for the court and is subject to clear error review. The Court observed that from the day the Agreement was terminated, through the day the mechanic's lien petition was filed, and up to when the interlocutory order was entered, the parties engaged in ongoing discussions to try to resolving their disputes through negotiation. The Court noted that if Winchester had not filed the mechanic's lien petition when it did, it would have risked losing that remedy, as the law requires the petition to be filed within 180 days of the completion of the work. Furthermore, Winchester's amended mechanic's lien petition stated that the merits of the dispute were subject to arbitration. Also, in response to Mrs. Brendsel's counterclaim, Winchester raised arbitration as an affirmative defense.

The Court then found the points the Brendsels advanced to support their clear error argument unpersuasive. First, the Court reasoned that Winchester did not delay unreasonably in filing its petition to compel arbitration, as good faith negotiations were ongoing both before and after the mechanic's lien petition was filed. The Court also reasoned that Winchester did not seek arbitration merely to avoid a negative ruling on the partial motion for summary judgment, as the petition to compel arbitration was in effect Winchester's third request for arbitration. The Court further found that the discovery taken in the case was solely for Mrs. Brendsel to explore the merits of her counterclaim. Finally,

the Court concluded that the Brendsels had suffered no prejudice from the time and resources they spent in defending the mechanic's lien proceeding.

Brendsel v. Winchester Construction Company, *Inc.*, No. 1324, September Term, 2004, filed June 7, 2005. Opinion by Eyler, Deborah S., J.

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CIVIL PROCEDURE - DISCOVERY - SANCTIONS

Facts: Corinne Gonzales, appellant, brought a civil action for battery against Lawrence Boas, M.D., appellee. During pre-trial discovery, Gonzales filed an untimely reply to Boas' request for admission of facts. Boas filed a motion to strike appellant's response as untimely, which was granted by the circuit court. The circuit court also denied Gonzales' motion to withdraw the deemed admissions. After holding that appellant was deemed to have admitted the facts contained in the request for admissions, which eliminated any genuine dispute as to material facts, the circuit court entered summary judgment in appellee's favor. Gonzales appealed.

The Court of Special Appeals issued its initial opinion in this case on December 29, 2004. After granting certiorari, the Court of Appeals vacated the judgment of the Court of Special Appeals and remanded the case for reconsideration in light of *Wilson v. Crane*, 385 Md. 185 (2005). The Court of Special Appeals reaffirms its prior decision.

Held: Reversed and remanded, Appellee's Motion to Dismiss Appeal denied. The circuit court abused its discretion by granting Boas' motion to strike Gonzales' untimely response, refusing to allow Gonzales to withdraw matters deemed admitted, and by granting Boas' motion for summary judgment on the basis of the deemed admissions. An untimely response does not automatically require that the response be stricken; nor does it prevent the court from

allowing withdrawal of any deemed admissions. Such admissions should be avoided when it will facilitate consideration of the case on its merits.

Gonzales' response to the requests was filed eight days late as a result of the oversight of her attorney. At the time the response was filed, the case had only been pending for three months, and was not near trial. There was a substantial dispute that the facts in the requests were directed to the core facts underlying the claim. Furthermore, Boas was unable to demonstrate that he suffered any prejudice other that incurring the time and expense of having to defend the claim. The sanction imposed by the circuit court for the late filing was unduly harsh and prevented consideration of the case on its merits.

Gonzales' alleged violations of appellate rules recited in Boas' motion to dismiss that appeal, did not warrant dismissal of appeal. The majority of the alleged violations were minor clerical and organizational errors which did not prejudice Boas in any way; therefore, dismissal of the appeal would be an inappropriate sanction.

Gonzales v. Boas, No. 2014, September Term 2003, filed May 17, 2005. Opinion by Eyler, James. R., J.

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CONTRACTS - SILENCE AS CONSTITUTING AMBIGUITY IN CONTRACT; WILLISTON ON CONTRACTS, § 30.4 (4TH ED. 1999); PAROLE EVIDENCE; LOWER COURT PROPERLY DETERMINED THAT ABSENCE, IN SEPARATION AGREEMENT, OF EXPRESS LANGUAGE WAIVING ANY RIGHT OR INTEREST IN LEASE OR OPTION TO PURCHASE CONTAINED THEREIN CONSTITUTED AMBIGUITY BECAUSE SUCH WAIVER INVOLVED A MATTER NATURALLY WITHIN THE SCOPE OF THE CONTRACT AS WRITTEN; APPELLEE AND HIS FORMER WIFE WERE, ACCORDINGLY, ALLOWED TO PRESENT PAROL EVIDENCE THAT IT WAS THEIR INTENTION, IN EXECUTING THE SEPARATION AGREEMENT, TO TRANSFER ALL RIGHTS AND LIABILITIES UNDER THE LEASE, INCLUDING THE PURCHASE OPTION, TO APPELLEE.

Facts: A tenant purported to exercise an option to purchase leased premises. Because the tenant spent time and money clearing cloud on the seller's title, he was not ready, willing and able to close on the property until after the purchase option expired under the terms of the contract. On the landlord's refusal to sell, the tenant sued for specific performance and ancillary damages in the Circuit Court for Montgomery County. The Circuit Court conducted a bench trial and granted specific performance, but the court declined to award damages.

Held: Affirmed. The trial court did not err in concluding that the tenant's separation agreement with his former wife, who had been his co-tenant, effected an assignment to the tenant of all rights in the purchase option. Nor did the trial court err in concluding that the tenant's failure to timely close on the purchase was excused because the delay was caused by Landlord's breach of his promise to convey marketable title. The trial court properly concluded that the landlord's promise to provide the property "as is, where is" did not excuse the landlord's failure to convey marketable property. Finally, the trial judge did not abuse his discretion in declining to award ancillary damages.

Jamil M. Azat v. Giuseppe Farruggio, No. 1308, September Term, 2004, decided June 7, 2005. Opinion by Davis, J.

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CRIMINAL LAW - THEFT - SUFFICIENCY OF EVIDENCE - ARTICLE 27, §342 (NOW CRIMINAL LAW ART., §7-104).

Facts: Following the terrorist attacks of September 11, 2001, Martin Todd Cain, owner of Cain Concrete Imprints ("CCI") in Salisbury, purportedly sought to assist with the relief efforts in New York City. Cain contacted a television station on September 11, 2001, informing the station of his desire to procure aid for New York City by collecting donations through CCI. The address and telephone number for CCI were provided to viewers. On September 12, 2001, viewers were told to send donations to Hebron Savings

Bank. Several witnesses testified at trial that they saw the story about Cain on television, and mailed donations to CCI to assist with the relief effort.

Melody Carter, Vice-President of Hebron Savings Bank, testified that on September 12, 2001, Cain opened the "Red, White & Blue Strikes Back" account (the "Account"). According to the Bank's records, a total of $3,272.87 was deposited to the Account. Carter also testified that three disbursements were made from the Account, totaling $1,098.80. At the time of the trial, there was $2,175.07 left in the Account.

Buffy Bittingham, a former CCI employee, recalled that checks for the relief effort were received at CCI's business office, as well as a $300 cash donation. In addition, some entities donated items, rather than money. Bittingham did not know what happened to the cash. When asked whether she recognized the endorsement signatures on the various checks sent by donors, Bittingham stated that the signatures "look like ... Marty Cain's."

Bittingham explained that CCI's business account was kept at Peninsula Bank, and Cain was the only person authorized to sign checks on that account. She averred that she had no control over the business account, nor did she handle deposits for that account.

Trooper Tracy Ilczuk of the Maryland State Police testified that the records for CCI's business account at Peninsula Bank were subpoenaed. The records reflected that the checks from several donors had been deposited to CCI's business account, totaling $770. Moreover, no checks drawn on the Peninsula Bank account were made payable to the Account, nor were there any transfers from Cain's personal accounts or business accounts to the Account.

Cain strenuously denied stealing any money that was donated to the 9/11 relief effort. Cain also denied that he was the person who deposited checks totaling $770 into CCI's account at Peninsula Bank. Further, Cain denied that he had any control over the Account, and testified that he relied on his staff to "handle my finances...." When asked to identify the endorsements on the back of the donation checks deposited to CCI's account, Cain acknowledged that they looked like his signature. Regarding CCI's purchase of 50 or 60 hard hats and lumber with Account funds, Cain conceded that he never took the items to New York City and that they were stored in trailers on the CCI site.

A jury sitting in the Circuit Court for Wicomico County convicted Cain of theft over $500, for which he was subsequently sentenced to eight years' imprisonment.

Held: Judgment affirmed. Cain failed to preserve his argument that the evidence was insufficient to sustain his conviction for felony theft. Even if preserved, the claim lacked merit. Although CCI's employees had access to the checks and cash donated to the Account, the evidence, viewed in the light most favorable to the State, demonstrated that, upon receipt, all checks and cash were turned over to Cain. Further, the State's evidence demonstrated that Cain handled all deposits for both the Account and his business account, and Cain requested the disbursements from the Account.

Further, Cain's signature was on the business account at Peninsula Bank, and its records showed that the donors' checks were deposited into Cain's business account. Moreover, it was Cain, not his employees, who stood to gain from the deposits to CCI's account. The jury was free to discredit Cain's testimony that his employees handled all the financial details for his company.

In the Court's view, Cain's reliance on *Wilson v. State*, 319 Md. 530 (1990), for the proposition that his mere access to the donated checks and cash was insufficient to sustain his conviction, was misplaced. Cain had more that mere access to the checks and cash; checks were deposited in his business account, and his employees had no financial incentive to deposit the donations into CCI's account.

The Court found no merit in Cain's contention that he could not be convicted of theft from the Account because that is akin to stealing from himself. Distinguishing Cain's conviction from the facts in *Cicoria v. State*, 332 Md. 21, 31-32 (1993), which concluded that an authorized campaign political committee was "a 'person' for purposes of the ownership provision of the theft statute," the Court concluded that for purposes of the theft statute, Cain was not the "owner" of the Account.

Martin Todd Cain v. State of Maryland, No. 1943, September Term, 2003, filed June 1, 2005. Opinion by Hollander, J.

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PHYSICIAN ASSISTANTS - MORAL TURPITUDE - LICENSE REVOCATION - TITLES 14 AND 15 OF THE HEALTH OCCUPATIONS ARTICLE - COMAR 10.32.02.03 - SANCTIONS - CASE RESOLUTION CONFERENCE - MARYLAND STATE BOARD OF PHYSICIANS.

Facts: In June 1999, the United States Attorney for the District of Maryland filed an Information against Carl F. Oltman, Sr., pursuant to a plea agreement between Oltman and the United States. The Information alleged that, "by fraud, deceit, misrepresentation, and subterfuge," Oltman "knowingly and intentionally" "forged and altered prescriptions and written orders for prescriptions for Methylphenidate; and concealed facts in order to obtain prescriptions for Methylphenidate," in violation of Md. Ann. Code. (1996 Repl. Vol.), Art. 27, §300, and the Assimilated Crimes Statute, 18 U.S.C. §13 (2000).

The federal prosecutor drafted a letter dated April 26, 1999, which Oltman and his lawyer signed on May 28, 1999, detailing the underlying facts. The letter provided that "Methylphenidate [is] a prescription drug and a controlled substance under 21 C.F.R. §§ 1300.01 and 1308.12." In addition, the letter explained that Oltman's son, Carl Oltman, Jr., "uses Methylphenidate and became ineligible to receive medical benefits in May 1996, as he turned 21." According to the letter, Oltman, a civilian physician assistant serving at the Naval Academy in Annapolis and at the National Naval Medical Center in Bethesda, generated prescriptions for Methylphenidate (a generic equivalent of Ritalin) using the Navy's health care system, beginning on July 18, 1996, and ending September 27, 1998. Moreover, Oltman deceived physicians in requesting prescriptions, beginning July 22, 1997, and ending October 17, 1998.

On July 15, 1999, Oltman tendered a guilty plea in federal court to the charge of violating Title 18, §13 of the U.S. Code and Article 27, §300 of the Maryland Annotated Code. On September 8, 1999, he was sentenced to two years of probation, a $1,000 fine, and $1,208.43 in restitution. As a result of the conviction, the Navy terminated his employment on January 11, 2000. The Navy subsequently notified the Board of Physicians (the "Board") of its action.

On August 20, 2001, the Department of Health and Mental Hygiene (the "State"), filed with the Board a "Petition to Revoke the Respondent's Physician Assistant Certificate." In particular, the State relied on Maryland Code (2000 Repl. Vol.), §§ 15-314(3) and 14-404(b) of the Health Occupations Article ("H.O."). The State sought a mandatory revocation of Oltman's physician assistant certificate because of his "plea of guilty to obtaining Controlled

Dangerous substances by fraud, deceit, misrepresentation and subterfuge," claiming it "constitutes a crime involving moral turpitude."

In response to preliminary motions filed by Oltman and the State, an Administrative Law Judge ("ALJ"), issued an "Order on Motions" on April 17, 2002. The ALJ considered whether Oltman, "a physician assistant, is subject to the mandatory license revocation law applicable to physicians" under H.O. §14-404(b). Concluding that a plain reading of Title 15 "incorporates the acts listed in §14-404, but not the procedures," the ALJ determined that Oltman was not "subject to the mandatory license revocation provisions of §14-404(b)(2)." Accordingly, the ALJ remanded the matter to the Board for further proceedings, including a Case Resolution Conference ("CRC").

On September 13, 2002, the Board issued a "Reversal of Dismissal and Interim Order of Remand," in which it treated the ALJ's "remand" as an "order of dismissal, dismissing the case for lack of a prior Case Resolution Conference." The Board was of the view that Oltman could be charged with a violation of any of the grounds listed in H.O. §14-404, but that the procedures set forth in that provision did not apply. Rather, the Board determined that the procedures of the Physician Assistants Act, found in Title 15 of the Health Occupations Article, applied to Oltman. In particular, the Board determined that H.O. §15-315 entitled Oltman to a hearing in accordance with the provisions of the State Government Article. Further, the Board concluded that Oltman was not subject to the mandatory revocation provisions of H.O. §14-404(b)(2). However, it ruled that the "statutory requirement" for a CRC applies to physicians, not physician assistants.

Accordingly, the case was remanded for a contested case hearing, which took place in November 2002. Thereafter, the ALJ submitted a "Proposed Decision" on January 31, 2003, concluding that Oltman committed a crime of moral turpitude, in violation of H.O. §§ 14-404 and 15-314(3). The ALJ stated: "Deceitfully obtaining prescription drugs over such a long period of time shows a serious lack of integrity for which revocation is an appropriate sanction." The ALJ concluded that the Board "properly revoked" Oltman's Physician Assistant Certificate because of his conviction.

Oltman filed exceptions to the ALJ's findings. Following a hearing on April 23, 2003, the Board issued a "Final Decision and Order" on August 11, 2003. It concluded that, pursuant to H.O. §15-314, "given the nature and long-term pattern of Mr. Oltman's willful and fraudulent criminal acts, revocation of his physician assistant certificate is warranted."

Oltman then sought judicial review in the Circuit Court for Anne Arundel County. In a "Memorandum Opinion" filed on February 23, 2004, the court affirmed. It stated that Oltman's crime "was one of moral turpitude regardless of the context" because his "actions clearly constitute actions of moral turpitude within the broader administrative context of the term." Moreover, the court was satisfied that the ALJ and the Board gave fair consideration to the appropriate sanction and the Board acted within its statutory discretion to revoke Oltman's certificate. Further, the court determined that, because Oltman was not being prosecuted under H.O. §14-404(a), "the holding of a Case Resolution Conference would not be appropriate."

Held: Judgment affirmed. The Court agreed with the Board that, in the context of a licensing board's review of the conduct of its licensee, the concept of moral turpitude is rather broad. The Court noted, however, that even if Oltman's conduct were not subject to review by a licensing board, it would nonetheless conclude that he committed a crime of moral turpitude. Citing *Attorney Grievance Comm'n of Md. v. Klauber*, 289 Md. 446, *cert. denied*, 451 U.S. 1018 (1981), and *Attorney Grievance Comm'n v. Walman*, 280 Md. 453 (1977), the Court stated that merely because Oltman pleaded guilty to a misdemeanor, rather than a felony, does not mean that the offense was not one of moral turpitude. The statutory text of the crime makes clear that fraud is an essential element of the offense, and thus appellant's crime was one of moral turpitude.

The Court agreed with appellant that while the Legislature mandates revocation for certain health care licensees who commit crimes of moral turpitude, automatic revocation is not required for physician assistants who commit crimes of moral turpitude. However, the Court was satisfied that the Board exercised the discretion conferred upon it when it determined that Oltman's "willful and fraudulent criminal acts" warranted the revocation of his physician assistant certificate. Citing the Court of Appeal's recent decision in *Maryland Aviation Administration v. Noland*, ___ Md. ___, No. 15, September Term, 2003, slip op. at 26-27 (filed May 10, 2005), the Court concluded that it was not the province of the Court to second-guess that decision.

Finally, the Court agreed that Oltman was not entitled to a CRC. It reasoned that there is no statutory or regulatory provision requiring the Board to grant a CRC in a case arising under H.O. §15-314(3). COMAR 10.32.02.03 provides for a CRC with respect to proceedings under H.O. §14-404(a). Because Oltman was charged under H.O. §15-314(3), he was subject to the procedural mechanisms of H.O. Title 15. In addition, the Court must give

weight to an administrative agency's interpretation of the statute which the agency administers.

Carl F. Oltman, Sr. v. Maryland State Board of Physicians, No. 97, September Term, 2004, filed June 2, 2005. Opinion by Hollander, J.

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TORTS - ASBESTOS LITIGATION - *OWENS-ILLINOIS, INC. V. GIANOTTI*, 148. M. APP. 457 (2002), *SUB. NOM., OWENS-ILLINOIS, INC. V. HARRY COOK SR., ET. AL.*, ___ MD. ____, NO. 10, SEPT. TERM, 2003 (FILED APRIL 26, 2005); *JOHN CRANE, INC. V. SCRIBNER*, 369 MD. 369 (2002); *ANCHOR PACKING V. GRIMSHAW*, 115 MD. APP. 134 (1997), *SUB. NOM. PORTER HAYDEN CO. V. BULLINGER*, 350 MD. 452 (1998); PURSUANT TO THE DECISION OF THE COURT OF APPEALS IN *OWENS-ILLINOIS, INC. V. HARRY COOK SR., ET. AL.*, THE LOWER COURT PROPERLY DETERMINED THAT, WHERE A LOSS OF CONSORTIUM IS NOT A SEPARATE ACTION FOR INJURY TO THE MARRIAGE ENTITY AND THE PERSONAL INJURY CAUSE OF ACTION, FROM WHICH IT DERIVES, IS NOT ITSELF SUBJECT TO THE CAP STATUTE (MD. CODE ANNO., CTS. & JUD. PROC. ART., § 11-108), NEITHER CAN A CAP BE IMPOSED ON NON-ECONOMIC DAMAGES IN A LOSS OF CONSORTIUM CLAIM.

Facts: Former shipyard worker developed and died of mesothelioma. Before his death, in the Circuit Court for Baltimore City, he and his wife sued Owens-Illinois for his personal injuries and their loss of consortium. After a plaintiff's verdict, Owens-Illinois sought JNOV and remittitur. JNOV was denied, but remittitur was granted in part.

Held: Affirmed. JNOV was properly denied because witness's testimony that he saw decedent covered in defendant's asbestos dust "quite often" was admissible and satisfied the bystander exposure standard of proof imposed by *Eagle-Picher Indus. v. Balbos*, 326 Md. 179 (1992). Remittitur was properly denied as to loss of consortium claim because the statutory cap on noneconomic damages did not apply to the claim, as it arose before the cap's effective date. Remittitur was not improperly granted for loss of consortium damages on the basis of the gross disparity between the personal

injury damages awarded and the loss of consortium damages awarded. Finally, statutory cap applied against wrongful death claim because decedent died after cap's effective date.

Owens-Illinois, Inc. v. Barbara Hunter, Personal Representative of the Estate of Harry Hunter, et al., No. 2215, September Term, 2003, decided June 1, 2005. Opinion by Davis, J.

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WITNESSES - EXPERT WITNESSES - MURDER - MENS REA - PREMEDITATION - IMPULSE DISORDER - PSYCHOLOGICAL PROFILE - C.J. § 9-109 - PATIENT - PSYCIATRIST/PSYCHOLOGIST PATIENT PRIVILEGE

Facts: Donna Martin, the ex-wife of Michael Bryant, appellant, was fatally stabbed at her townhouse in Gaithersburg on July 20,2002. Martin and appellant had two children together, who were three and four years of age at the time of appellant's trial in May 2003. The jury convicted appellant of first degree premeditated murder of Martin, felony murder, and first degree burglary, for which appellant was sentenced to life without parole.

At trial, the State presented evidence that appellant had threatened the victim a year before she was killed. Specifically, at a court proceeding held on April 9, 2001, the victim was speaking to a judge in the presence of appellant. A tape of comments made by appellant was admitted into evidence at his murder trial, and showed that he made threatening comments to the victim at the proceeding on April 9, 2001. Moreover, Cynthia Sargeant, a registered nurse, came into contact with appellant on April 9, 2001, during an intake medical screening at the Montgomery County Detention Center. She testified that appellant "indicated he had a definite plan to kill" the victim; that "he enjoyed seeing her blood;" that "he was obsessed with killing her;" that "she messed with him;" and that the "[t]hought of killing her won't go away."

Prior to trial, appellant filed a motion *in limine* to exclude

the statements he made to Sargeant on April 9, 2001. He contended, *inter alia*, that the statements were privileged under Md. Code (2002), § 9-109 of the Courts and Judicial Proceedings Article ("C.J."), because they were made to a professional for the purpose of diagnosing or treating the mental or emotional disorder of a patient. He also claimed that the statements were irrelevant as they were made more than a year prior to Ms. Martin's death.

At a motions hearing, Sargeant testified that she was a registered nurse "specializing in psychiatric nursing," but that she had "no advanced practice degree in psychiatric nursing." She explained that the purpose of the medical intake screening "is for medical screening and obtaining medical information." According to Sargenat, she "was not doing medical care and treatment." Moreover, she stated that, although she sometimes worked with the detention center psychiatrist, she only transcribed orders for medications and did not aid in any therapy with the patients.

In a written Opinion and Order, issued two days after the motion hearing, the trial court denied appellant's motion *in limine*. It determined that appellant was "not a 'patient' as defined under Section 9-109(a)(3)" because the "intake screener at MCDC cannot be construed as a '*person participating directly or vitally with [a psychiatrist or psychologist] in rendering ... services in consultation with or under direct supervision of a psychiatrist or psychologist' as defined in Section 9-109(a)(3).*" (Emphasis and alteration in original).

At trial, the State showed that, prior to her death, the victim sought to conceal her whereabouts from appellant. Several witnesses from her neighborhood testified that, on the day of the murder, they saw a man, not specifically identified as appellant, pacing near the victim's home. Other witnesses testified that, at about 5:00 p.m. on July 20, 2002, they saw a woman arrive at the townhouse with a baby in her arms and a little boy walking next to her. Upon reaching the door, witnesses saw the arm of an African-American male grab the woman by the hair and drag the woman, who was still holding the baby, into the house, leaving the boy outside. One witness stated that he also "vaguely" saw a knife.

Upon arriving at the scene a few minutes later, the police entered the townhouse through the back door and discovered the victim on the floor in a pool of blood. They also discovered an infant crying and "covered with blood." There were two telephones on the ground floor of the victim's home. The cord to one telephone had been cut and the cord to the second phone was missing. Two knifes were recovered from the home, as well as a metal sharpening stick, which matched a set of knives found in the

house. Bloody shoe prints were also discovered in the home. From a path through woods near the victim's townhouse, the police recovered a pair of tan pants with blood on them, as well as two latex gloves and a bandana hanging on a tree branch.

Appellant was arrested on the morning of July 24, 2002, from an apartment in Gaithersburg. He was found sitting in a bedroom closet behind a closed door. A wristwatch that appeared to have dried blood on it was recovered from appellant's wrist.

The owner of the apartment from which appellant was arrested estimated that appellant had been living there one week prior to his arrest. The owner further recalled that, the night before appellant was arrested, he noticed that, in the bathroom appellant used, "there were cleaning supplies and scouring powder all over the floor, and like 409 on the top of the toilet, and nobody had cleaned the bathroom; it was just all over the bathroom." The police seized, *inter alia*, appellant's shoes and a shirt.

The police compared the shoe impressions recovered from the Martin residence with appellant's shoes. Two of the impressions were positively identified as having been made by appellant's right shoe and one impression was positively identified as having been made by appellant's left shoe. As to two other impressions, it was "highly unlikely" that any shoe other than appellant's could have made the impressions. Two other impressions "could have been made" by appellant's shoe.

An expert in forensic biology stated that the victim could not be excluded as the source of blood found on appellant's right shoe, the two knives that were recovered, appellant's shirt, and the pants found in the woods. In addition, appellant could not be excluded as the source of the blood found on the broken rear window and the latch of the victim's townhouse.

In his defense, appellant attempted to offer the testimony of two experts, who would testify that he suffered from an impulse control disorder. The State filed a motion *in limine* to exclude the testimony, arguing it was not relevant to any issue before the court. It contended: "Without an acknowledgment by the defendant that he was in fact responsible for Ms. Martin's killing, allowing a psychiatric portrait of the defendant to explain his mental state at the time of the crime would be meaningless, irrelevant, and confuse the jury." At a motion hearing held in May 2003, the court reserved ruling.

At the close of the State's case, the court revisited the issue of the admissibility of the defense's expert witnesses.

After hearing one of the defense expert's testimony outside the presence of the jury and argument from both sides, the court declined to admit the expert's testimony. It concluded that the testimony was irrelevant and would confuse the jury.

In appellant's defense, his counsel read the following statement to the jury: "On February 14th of 2002, the defendant made the following statement to a physician, quote: 'I don't have the urge to kill any more like before.'" Appellant did not testify; nor did he present any further evidence on his behalf.

Held: Judgment affirmed. The Court looked to Md. Rule 5-702, pertaining to the admissibility of defense expert testimony, and noted that expert testimony "is admissible only if it is relevant in a particular case." The Court was satisfied that "there was no factual predicate for the expert testimony." In its view, there was "no nexus" between the expert's proffered testimony and the particular facts of the case, because "appellant never acknowledged that he murdered Ms. Martin." Thus, the Court concluded: "[I]t is not clear how testimony about an alleged impulse disorder would have been relevant to explain conduct that appellant denied."

The Court also found it pertinent that the "objective evidence clearly showed that the murderer acted with premeditation," and it was satisfied that such conduct "is the antithesis of an impulsive act." Consequently, the Court was persuaded that the expert's testimony "would not have made it more likely that the murderer acted without premeditation." Furthermore, the Court was satisfied that, by excluding the expert's testimony, the trial court did not violate appellant's due process right to call witnesses on his behalf.

The Court also rejected appellant's claim that the circuit court erred in ruling that Nurse Sargeant's testimony was not privileged under C.J. § 9-109. The Court looked to the definitions of "patient" and "mental health care provider," as defined in C.J. §§ 9-101(a)(3) and 5-609, respectively. It held that "appellant's statements to Sargeant were not privileged," because appellant was not a patient at the relevant time. Rather, he was an inmate undergoing routine screening at the Detention Center. The Court noted that Sargeant testified "that she was not involved in inmate therapy and did not work with any psychiatrist or psychologist in connection with such therapy."

As to appellant's relevancy argument, the Court concluded: "His statements on that date, to the effect that he intended to kill Ms. Martin and enjoyed seeing her blood, were probative of

whether Bryant was, indeed, the one who killed Martin." Moreover, the Court was satisfied that his statements "were also probative of the element of premeditation." Further, the Court recognized that the admissibility of evidence "is generally vested in the sound discretion of the trial court" and that the trial courts "'retain wide latitude in determining what evidence is material and relevant[.]'" (Citation omitted). In this case, the Court could not say that the trial court's ruling constituted an abuse of discretion.

Michael Jerome Bryant v. State of Maryland, No. 1154, September Term, 2003, filed June 1, 2005. Opinion by Hollander, J.

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ATTORNEY DISCIPLINE

The following attorney has been replaced upon the register of attorneys in the State of Maryland as of June 2, 2005:

CHARLES J. ZUCKERMAN
*

By an Opinion and an Order of the Court of Appeals of Maryland dated June 21, 2005, the following attorney has been indefinitely suspended from the further practice of law in this State:

BARBARA OSBORN KREAMER
*

By an Opinion and an Order of the Court of Appeals of Maryland dated June 22, 2005, the following attorney has been disbarred from the further practice of law in this State:

JILL JOHNSON PENNINGTON
*

By an Opinion and an Order of the Court of Appeals of Maryland dated June 23, 2005, the following attorney has been disbarred from the further practice of law in this State:

ROBERT JOEL ZAKROFF
*

JUDICIAL APPOINTMENTS

On April 15, 2005, the Governor announced the appointment of the Hon. Patrick L. Woodward to the Court of Special Appeals. JUDGE WOODWARD was sworn in on May 26, 2005 and fills the vacancy created by the retirement of the Hon. Andrew L. Sonner.

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On May 6, 2005, the Governor announced the appointment of the Hon. Leonard Bruce Wade to the Wicomico County District Court. JUDGE WADE was sworn in on June 2, 2005 and fills the vacancy created by the retirement of the Hon. Lloyd O. Whitehead.

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