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# COURT OF APPEALS

ARBITRATION - AGREEMENTS TO ARBITRATE - REQUISITES AND VALIDITY - OTHER MATTERS - ARBITRATION CLAUSE THAT WAS CONSPICUOUSLY DISTINCT FROM OTHER CLAUSES IN DISCLOSURE AGREEMENT IN SECONDARY MORTGAGE LOAN CONTRACT WAS VALID AND ENFORCEABLE AND NEITHER PROCEDURALLY NOR SUBSTANTIVELY UNCONSCIONABLE.

Facts: In February 1998, David and Tamera Walther obtained a secondary mortgage loan from an entity known as Empire Funding Corporation ("Empire"). The mortgage loan principal was \$33,000.00 and it was secured by a lien on the Walthers' residence. As part of the mortgage loan transaction, the Walthers signed a "Direct Loan Note & Truth in Lending Disclosure" (the "Disclosure Agreement"), which contained, *inter alia*, an agreement to arbitrate. The arbitration agreement provided that "any claim, dispute or controversy arising from or relating to this agreement or the relationships which result from this agreement, including the validity of this arbitration clause or the entire agreement, shall be resolved by binding arbitration . . . ." The arbitration clause further stated that certain remedies would be reserved for the parties, including the right to foreclose and exercise self-help remedies. The arbitration clause also stated that no dispute subject to arbitration could be brought as a class-action proceeding and that the parties waived their right to jury trial by consenting to the arbitration agreement. The Walthers signed the Disclosure Agreement and, at some time after the loan documents were signed, Empire assigned the note to its current holder, Sovereign Bank.

On December 23, 2002, the Walthers filed a "Class Action Complaint and Demand for Jury Trial" in the Circuit Court for Baltimore County, alleging that Empire had violated the Maryland Secondary Mortgage Loan Law, Md. Code (1975, 2000 Repl. Vol.), §§ 12-401 et seq. of the Commercial Law Article, by charging the Walthers \$2,847.00 in illegal fees. The Walthers sought class-action status from the Circuit Court, believing there to be "hundreds of members" that had similarly been aggrieved by "predatory lending practices" relating to secondary mortgage loans sold or assigned to Sovereign Bank. On March 10, 2003, Sovereign Bank responded to the Walthers' complaint by filing in the Circuit Court a "Petition to Compel Arbitration and Motion to Dismiss or to Stay Proceedings." In its petition and supporting memorandum, Sovereign Bank stressed the fact that the Disclosure Agreement contained the aforementioned arbitration clause, which it argued made the Walthers' claims subject to mandatory arbitration. Sovereign Bank also pointed out in its memorandum that the

Walthers, by signing the Disclosure Agreement, explicitly had waived both their right to a class-action adjudication and their right to a jury trial. In response to Sovereign Bank's petition and memorandum, David Walther stated that he "had no opportunity to review the" Disclosure Agreement "beyond a cursory perusal" before signing it, but that, had he realized that the arbitration clause affected his right to a jury trial or availability of class-action proceedings, he would not have signed the Disclosure Agreement.

On April 2, 2003, the Circuit Court entered an order granting Sovereign Bank's petition to enforce arbitration. The Walthers thereafter appealed the decision to the Court of Special Appeals. On May 26, 2004, the intermediate appellate court, in an unreported decision, stated that the major issue to be decided was whether the arbitration clause contained in the Disclosure Agreement was unconscionable. The Court of Special Appeals found that the arbitration clause was not unconscionable but valid and enforceable. The Walthers thereafter petitioned the Court of Appeals for Writ of Certiorari. On August 25, 2004, the Court granted the petition.

Held: Affirmed. The Court of Appeals held that the arbitration agreement entered into by the Walthers and Sovereign Bank (via Empire) was a valid and enforceable agreement and was neither procedurally nor substantively unconscionable so as to make the agreement unenforceable. Because the arbitration clause was conspicuously distinct from other provisions in the Disclosure Agreement (it was the only clause that was underlined) and the clause immediately preceded the Walthers' signatures, the Court stated that the Walthers' claim that they should not be held to their agreement because they did not read it before signing was unavailing. Moreover, the Court stated that the numerous substantive reasons that the Walthers' argued should make the arbitration agreement be regarded as unfairly one-sided and unconscionable (e.g., no class actions, no jury trial) did not have such effect and that the Circuit Court was correct to order the Walthers to arbitrate their dispute with Sovereign Bank.

The Court also held that Sovereign Bank's filing of a "Petition to Compel Arbitration and Motion to Dismiss or to Stay Proceedings" did not constitute a waiver of the arbitration agreement contained in the Disclosure Agreement. Sovereign Bank timely filed its petition as a response to the Walthers' complaint and the Circuit Court's subsequent order resulted in no final adjudication of arbitrable issue. Thus, Sovereign Bank preserved its selection of arbitration as the forum for determination of "any claim, dispute or controversy arising from or relating to" the Disclosure Agreement.

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ATTORNEYS - MISCONDUCT; INTENTIONAL MISAPPROPRIATION OF FUNDS; FAILURE TO PROMPTLY DELIVER CLIENT FUNDS; FAILURE TO PROVIDE COMPETENT LEGAL REPRESENTATION; FAILURE TO RESPOND TO BAR COUNSEL

Facts: The disciplinary action against James arose out of two separate complaints by clients. As to the first complaint, James failed to maintain his client's settlement funds in trust when he wrote several checks that caused the account to be overdrawn and had used his trust account for personal and business expenses. As to the second complaint, James failed to deposit his client's retainer and investigative money into his trust account and also failed to adequately research and advise his client that the client did not have a viable cause of action. James also repeatedly failed to respond to lawful demands by Bar Counsel for information concerning the complaints.

Held: Disbarred. As to the clients' complaints, James violated MRPC 1.1 by failing to provide legal knowledge, skill, thoroughness and preparation in researching his client's cause of action and to properly maintain his client's settlement monies in his escrow account. James violated MRPC 1.3 and 1.4 requiring diligent representation and communication with clients when he pursued a cause of action with no legal basis, did not inform his client about the status of the case, and failed to respond to his client's attempts to contact him. He also commingled funds in violation of Maryland Rule 16-607 when he began using his escrow account for business and personal expenses, and Maryland Code, Section 10-306 of the Business Occupations and Professions Article (1989, 2000 Repl. Vol.) when he wrote checks for his own benefit that were drawn from funds held in trust. Such a misuse of James's escrow account also constituted a willful violation of Sections 10-304 and 10-306 of the Business Occupations and Professions Article. This same behavior as well as James's failure to deposit client

retainer and investigative fees violated MRPC 1.15(d) and 8.4(d) as funds to delivered in whole or in part to a client or third person, and Maryland Rules 16-604 and 16-609, and Section 10-304 of the Business Occupations and Professions Article for failing to expeditiously deposit trust money into his attorney trust account. In addition, James violated MRPC Rule 8.4(c) for dishonestly taking trust monies and Rule 8.4(d) for engaging in conduct prejudicial to the administration of justice. By willfully and repeatedly failing to respond to communications from Bar Counsel, James also violated MRPC 8.1.

As the Court explained, disbarment ordinarily follows any unmitigated misappropriation of funds. The Court also emphasized that, when an attorney uses client funds for personal purposes and fails to place client funds in escrow, such conduct is an intentional misappropriation of funds that reflects adversely on his honesty and fitness to practice law. Because no compelling extenuating circumstances existed for an exception to be made in his case, the Court imposed the sanction of disbarment.

Attorney Grievance Commission v. Charles M. James, Misc. Docket, AG No. 1, Sept. Term 2004, filed March 16, 2005. Opinion by Battaglia, J.

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ATTORNEYS - MISCONDUCT - EVIDENCE - PEER REVIEW PROCESS - MD. RULE 16-723 CONFIDENTIALITY - ADMISSIBILITY FOR IMPEACHMENT PURPOSES AT EVIDENTIARY HEARING OF STATEMENTS MADE AT A PEER REVIEW PROCEEDING

ATTORNEY GRIEVANCE - HEARING JUDGE'S FINDINGS AND CONCLUSIONS - EXCEPTIONS - NEWLY DISCOVERED EVIDENCE

Facts: Charges were filed by the Attorney Grievance Commission against Norman Joseph Lee III, Esquire, arising from a complaint made by Mary Ellen Smith ("Mary Smith") relating to the retention in 2001 of Lee to pursue the release of her husband, John Henry Smith ("John Smith"), from a Maryland prison. Mr. Smith was serving two concurrent life sentences at Western Correctional

Institute in Cumberland, Maryland ("WCI") for two first degree murder convictions in 1974. Over the course of several years prior to his wife's retention of Lee, Mr. Smith filed several petitions for post-conviction relief relating to the murder convictions, all of which were denied.

On 21 April 2001, Mary Smith met with Lester V. Jones, a paralegal, at Lee's office in Harford County to discuss her husband's case, bringing with her a box of documents and transcripts related to her husband's original trial and subsequent post-conviction proceedings. There was conflicting testimony in the instant disciplinary proceeding as to the scope of the documents and transcripts contained in the box.

During the period from April 2001 to the termination of his representation of Smith in early 2003, Lee sent several letters to John and Mary Smith describing his efforts to draft various pleadings and papers and indicating that this work product would be forwarded to the Smiths for their review. Bar Counsel, however, presented testimony at the evidentiary hearing indicating that, although Mary Smith acknowledged receiving a few of the letters sent by Lee's office, John Smith assertedly did not receive any correspondence from Lee's office. Bar Counsel also presented testimony indicating that neither John nor Mary Smith received any work product related to any petition for post-conviction relief or other court paper allegedly prepared by Lee or Jones.

Lee testified that, pursuant to conversations with John and Mary Smith, he sent a letter in April 2002 to the Maryland Parole Commission requesting a parole hearing for John Smith. A parole hearing was scheduled for a date in June 2002. Although Lee testified that this letter was copied to both John and Mary Smith, they testified that they did not receive this correspondence. On 30 May 2002, however, John Smith, without the knowledge of Lee, informed the Parole Commission that he withdrew the request for a hearing. Mary and John Smith testified that they never requested that Lee schedule a parole hearing. Furthermore, John Smith testified that, in the course of over 188 collect phone calls to Lee's office, he had not once spoken with Lee, instead speaking solely with Lee's paralegal, Jones, a disbarred former Maryland lawyer, to whom Lee had delegated most of his post-conviction caseload. In December 2002, pursuant to Lee's request, Jones wrote a memorandum summarizing the status of the Smith matter in which he urged Lee to call Mary Smith to discuss the progress of the case with her. Mary Smith testified that she did not have any communication with Lee until she called Lee in late December 2002 to request a meeting to review the status of her husband's case. With Jones present, Lee met with Mary Smith on or about 9 January 2003. Mary Smith inquired as to the progress of Lee's research.

Lee told Mary Smith that, in order to give her a complete answer to her inquiries, he would need a month to review the transcripts and other documents that she had delivered to his office in April 2001. Mary Smith agreed to Lee's request.

Approximately six weeks later, after being unable to communicate effectively with Lee, Mary Smith emailed Lee seeking a return of the \$3500 retainer and her papers. On 4 March 2003, Lee responded via email, stating that he was in the process of reviewing the transcripts, but that, if Mary Smith desired, he would cease work, return the transcripts, and refund any unearned portion of the retainer. Lee testified, however, that Mary Smith was unwilling to accept anything less than a refund of the full retainer. Lee also testified that, despite Mary Smith's representations to the contrary, the transcripts were available for her to pick up at her convenience. Mary Smith filed the present complaint, dated 21 April 2003, with the Attorney Grievance Commission ("Commission").

In her complaint, she accused Lee of being "totally unfamiliar" with her husband's matter and failing to act diligently on her requests even though, for almost two years, according to her claims, Lee had all the written materials that he needed to pursue effectively the matter. Mary Smith also accused Lee of failing to communicate effectively with her and her husband, instead either ignoring their requests for information or stringing them along by making unsubstantiated promises regarding the progress being made on John Smith's case.

In his written response, dated 20 June 2003, to the Commission regarding the complaint, Lee characterized Mary Smith's assertions as springing more from a fee dispute than his failures of diligence or communication. On 17 September 2003, Bar Counsel filed a Statement of Charges against Lee, advancing various violations of the Maryland Rules of Professional Conduct ("MRPC"). Pursuant to the Maryland Rules governing the attorney discipline process, a Peer Review Panel proceeding was held in late 2003 during which, among other things adduced, both Lee and Mary Smith gave in-person statements. When the Peer Review process failed to resolve the matter, the Commission, on 21 January 2004, directed Bar Counsel to file a Petition for Disciplinary Action against Lee.

The Petition for Disciplinary Action alleged violations of MRPC 1.3 (diligence), MRPC 1.4 (communication), MRPC 1.5(a) (fees), MRPC 1.16(d) (declining or terminating representation), MRPC 8.1(a) (bar admission and disciplinary matters), and MRPC 8.4(b), (c), (d) (misconduct). In his answer to the petition, Lee denied any misconduct.



After a two day evidentiary hearing, Judge Vicki Ballou-Watts of the Circuit Court for Baltimore County concluded, by clear and convincing evidence, that Lee violated MRPC 1.3, 1.4(a), 8.1(a), and 8.4(c). Lee violated MRPC 1.3, she found, by failing to review personally Smith's case materials for nearly two years; failing to forward to his clients the results of any research or draft documents, as promised in various correspondence; failing to manage properly his workload; and, failing to meet with or speak to John and Mary Smith for nearly a two year period. The hearing judge concluded that Lee violated MRPC 1.4(a) by failing to respond to the Smiths' requests for information, both written and made by telephone; failing to forward the results of any research or draft documents, as promised in various correspondence; and, failing to respond to Mary Smith's repeated requests for the return of transcripts and papers for a period of three weeks. The judge also concluded that Lee "violated [MRPC] 8.1(a) and 8.4(c) when he misrepresented to the Attorney Grievance Commission that the cause for delay in pursuing the legal matter for which he was retained was due to the unavailability of transcripts." The hearing judge, however, found no clear and convincing evidence to support a conclusion that Lee violated MRPC 1.5(a) and 1.16(d). Rather, she was persuaded by a client ledger introduced by Lee at the hearing that there was not sufficient evidence from which to find that no appreciable work had been performed. She stated that, although it was possible that Mary Smith may have been entitled to a refund of a portion of her retainer, there was insufficient evidence to determine accurately what portion of the fee was unearned.

Lee filed several exceptions to the hearing judge's written Findings of Fact and Conclusions of Law, disputing several, if not most, of the factual findings. Lee also filed a Motion for Reconsideration Based on Fraud, Deceit and Misrepresentation, supported by alleged new evidence that was not introduced or considered at the evidentiary hearing, which he alleged demonstrated that Bar Counsel deliberately had presented false information. Lee also argued that the hearing judge improperly precluded him from impeaching Bar Counsel's witness, Mary Smith, by preventing him from introducing evidence of statements reportedly made by her at the Peer Review Panel meeting that supposedly were inconsistent with some of her testimony at the evidentiary hearing. Although Bar Counsel requested that Lee's exceptions be overruled, no exceptions were taken by Bar Counsel to the hearing judge's findings of fact or conclusions of law. Bar Counsel sought an indefinite suspension as the appropriate sanction for Lee's violations.

Held: Remanded for further proceedings. The Court concluded that Lee may not introduce statements made by Mary Smith at the Peer Review Panel proceeding for the purpose of impeaching her

testimony at the evidentiary hearing. Under Md. Rule 16-723(a), all statements made at a Peer Review Panel proceeding, no matter the declarant, remain confidential and privileged and thus unavailable for use to impeach the declarant as a witness at a subsequent evidentiary hearing in that disciplinary process.

The Peer Review process embodied in the current Maryland attorney grievance rules was fashioned in 2001 as a substitute for the former Inquiry Panel and Review Board procedures. During public hearings in 1999 and 2000, many members of the legal and judicial communities voiced their concerns that the effectiveness of the attorney grievance process was impeded by the duplicative and redundant nature of a process that included two administrative tiers of relatively formal fact finding. In response to these concerns, the Court of Appeals, among other things, determined to eliminate the Inquiry Panel and Review Board and, in their place, create the Peer Review Panel process.

Under the current process, if, after receipt of a complaint, Bar Counsel elects to file a Statement of Charges against an attorney, the Chair of the Peer Review Committee then schedules a Peer Review Panel proceeding and selects a panel. Md. Rule 16-742(a). The Peer Review process, governed primarily by Rules 16-713, 16-723, 16-742, and 16-743, provides an informal and nonadversarial forum in which a panel composed of fellow attorneys and at least one lay person determines, based on statements or papers from the complainant(s), the respondent attorney, and any other persons the panel chooses to hear from, whether the matter may be resolved informally or whether dismissal or further, formal disciplinary action should be recommended against the respondent attorney. The purpose of the Peer Review proceedings, however, is not principally to make recommendations as to the appropriateness of formal charges. The Committee Note to Md. Rule 16-743(a) provides a relatively complete description of the purpose of the Peer Review process:

If a Peer Review Panel concludes that the complaint has a substantial basis indicating the need for some remedy, some behavioral or operational changes on the part of the lawyer, or some discipline short of suspension or disbarment, part of the peer review process can be an attempt through both evaluative and facilitative dialogue, (A) to effectuate directly or suggest a mechanism for effecting an amicable resolution of the existing dispute between the lawyer and the complainant, and (B) to encourage the lawyer to recognize any

deficiencies on his or her part that led to the problem and take appropriate remedial steps to address those deficiencies. The goal, in this setting, is not to punish or stigmatize the lawyer or to create a fear that any admission of deficiency will result in substantial harm, but rather to create an ambience for a constructive solution. The objective views of two fellow lawyers and a lay person, expressed in the form of advice and opinion rather than in the form of adjudication, may assist the lawyer (and the complainant) to retreat from confrontational positions and look at the problem more realistically.

If, however, after considering the statements, the Panel determines that the Statement of Charges "has a substantial basis and that there is reason to believe that the [respondent] attorney has committed professional misconduct or is incapacitated, the Panel may . . . make an appropriate recommendation to the Commission," including recommending that a Petition for Disciplinary Action be filed. Md. Rule 16-743.

One of the issues discussed in-depth during the Court's rule-making process was the level of confidentiality that should cloak statements made during the Peer Review process. A delegated two member working subcommittee of the Court drafted, among other things, language addressing the confidentiality of the Peer Review proceedings, which then was submitted to the Court's Standing Committee on Rules of Practice and Procedure ("Rules Committee") for its review. That proposed language provided:

(a) Confidentiality of peer review meetings. All persons present at a peer review meeting shall maintain the confidentiality of all speech, writing, and conduct made as part of the meeting and may not disclose or be compelled to disclose the speech, writing, or conduct in any judicial, administrative, or other proceeding. Speech, writing, or conduct that is confidential under this Rule is privileged and not subject to discovery, but information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use at the peer review meeting.

At its 8 September 2000 meeting, the Rules Committee debated

two competing policies regarding the level of confidentiality that should apply to Peer Review proceedings. Some members expressed concern that, under the proposed language, a respondent attorney might be encouraged to make false statements at the Peer Review Panel proceeding because Bar Counsel would be unable to utilize those statements for impeachment purposes at a later evidentiary hearing held in the matter. Other members, however, believed that complete confidentiality was essential to the overall purpose of the Peer Review process. It was surmised that a respondent attorney should be encouraged to speak openly, without fear of direct exposure to potential disciplinary or other adverse consequences. The Rules Committees voted to recommend to the Court that the language of the Court's subcommittee in this regard be approved. On 8 November 2000, the Court's subcommittee reiterated that the language in Rule 16-723(a) reflected a "pure policy issue" that was designed to encourage candor and openness in the Peer Review process by providing complete confidentiality to any statement made during the Peer Review process. The language in proposed Md. Rule 16-723(a) was approved by the full Court on 30 November 2000, and the new rules, including those governing the Peer Review process, became effective on 1 July 2001.

With this complete confidentiality policy decision in place, the Court concluded in the instant case that Rule 16-723 prohibited Lee from using statements allegedly made by Mary Smith during Peer Review to impeach her testimony at the evidentiary hearing. Although the rule-making history indicates that most concerns over the level of confidentiality were based on Bar Counsel's supposed ability to use a respondent attorney's statements at a later evidentiary hearing, the Court found that the Peer Review process only would be effective if *all* statements made at a Peer Review Panel meeting were insulated from subsequent disclosure in the remaining stages of the attorney grievance process. Although noting a common sense appeal in allowing a respondent attorney to expose the inconsistent statements of a complainant or other witness, the Court was persuaded that the attorney grievance rules provided a respondent attorney with a potent alternative to the confidentiality bar. Once a Petition for Disciplinary or Remedial Action is filed, a respondent attorney is afforded all the discovery tools that are available to litigants in a civil trial, including depositions. Md. Rule 16-756. Using these, a respondent attorney could ascertain a potential witness's position or testimony, under oath, before the evidentiary hearing, thus "freezing" the deponent's account and enabling the attorney to prepare his or her case.

In his motion for reconsideration, Lee also alleges that the fairness of his evidentiary hearing was prejudiced because the Assistant Bar Counsel introduced, and the hearing judge relied

upon, evidence and proffers that were patently and demonstrably false. For example, at the evidentiary hearing, John Smith testified that he did not receive his copy of Lee's letter to the Maryland Parole Commission requesting a parole hearing. Although John Smith did not testify expressly whether he received any other correspondence from Lee's office, the Assistant Bar Counsel made representations during cross-examination of Lee that he had been informed personally by an officer at WCI that the official "legal log book" at WCI indicated that John Smith did not receive any correspondence from Lee's office.

Lee maintained that, subsequent to the evidentiary hearing, he discovered, through his investigatory efforts, that the mail records from WCI demonstrate that John Smith did receive several pieces of correspondence from Lee's office. The Court found that these records, included with Lee's motion, if admitted in evidence, could draw into question John Smith's credibility specifically and generally by indicating that, within days of each date indicated on all of the pieces of correspondence that Lee testified were sent to John Smith, John Smith signed for legal mail in the "legal log book" maintained by WCI.

When new evidence that reflects materially on the relative veracity of material witnesses is brought to the Court's attention subsequent to the evidentiary hearing, the Court reserves the right to remand the case so that the hearing judge may consider properly whether to admit that evidence and, if so, what effect it may have on the credibility assessments previously made and conclusions drawn. In this case, the Court found that this new evidence was material because each of the hearing judge's conclusions of a violation of the MRPC represented, to one degree or another, a rejection of Lee's testimony in favor of the testimony of either John or Mary Smith. Although the proffered potential evidence of John Smith's receipt of certain correspondence may not have been relevant directly to all of the violations, the Court found that, if this evidence were admitted and credited by the hearing judge, it could bolster the credibility of Lee's previously rendered testimony.

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Attorney Grievance Commission v. Lee, AG No. 8, September Term, 2004, filed 12 May 2005. Opinion by Harrell, J.

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ATTORNEYS - MISCONDUCT - MARYLAND RULES OF PROFESSIONAL CONDUCT

Facts: Charles J. Zuckerman was a member of the Maryland Bar since June 20, 1974. He had no history of any disciplinary sanction or involvement prior to the occurrence in the instant case. On May 7, 2002, Zuckerman hired Shannon Becker as a paralegal. She had previously been employed by Zuckerman for six months in 1999 answering phones and performing clerical duties. When Ms. Becker was rehired, her duties included the handling of accident settlements. Within one or two days of her hiring, Zuckerman gave her the authority to write checks on his trust account.

Ms. Becker devised a scheme to steal money from Zuckerman's trust account. She filled out check stubs made payable to appropriate payees for what appeared to be proper amounts, but the corresponding checks were made out for considerably larger amounts made payable to Ms. Becker's friends, who would cash the checks and return the proceeds to her. Due to Zuckerman's failure to check his trust account statement personally, which would have revealed Ms. Becker's actions, Ms. Becker was able to continue to steal from the trust account until mid-July of 2004, when Zuckerman received an anonymous telephone call informing him that Ms. Becker was stealing from him. Zuckerman then examined the June bank statement and detected her theft. He informed the police and cooperated fully with the police and prosecuting authorities.

An examination of Zuckerman's trust account statements, deposit slips, and deposited items revealed that one hundred seventy-one of his clients had negative balances between 1998 and 2004. It also showed that Zuckerman advanced a total of \$311,898.11 to his personal injury clients with checks drawn on his trust account before the funds belonging to those clients were deposited in his trust account. He also overcharged a client in connection with representation that resulted in depleting the funds of other clients in the trust account. Zuckerman also failed to pay medical providers promptly after settlements because he wanted to resolve PIP issues prior to disbursing funds; however, at the time Ms. Becker was hired, money payable to PIP or to clients or both, had accumulated for three years. Additionally, Zuckerman habitually delayed deducting his fee from settlement checks received on behalf of clients and failed to deposit advance fee payments in his trust account.

Before this Court, Zuckerman excepted to various factual

findings and conclusions of law by the hearing judge. All of his exceptions were overruled.

Held: Zuckerman's exceptions to the factual findings were denied because there was clear and convincing evidence to support each of the allegations. Moreover, his exceptions to the conclusions of law were denied as well because they were based on his exceptions to the findings of fact, which the Court denied.

The sanction assessed was an indefinite suspension with the right to reapply after thirty days. Because Zuckerman routinely failed to pay settlement money to clients and medical providers and allowed money to accumulate for over three years without informing the clients, the Court found that Zuckerman violated Rule 1.1 requiring competent representation to a client. This also constituted a violation of Rule 1.3, due diligence, Rule 1.4, failure to keep clients reasonably informed, and Rule 1.15, requiring prompt notification and delivery of funds.

Zuckerman was also found to have violated Rule 1.15(a) and Maryland Rule 16-607 (b)(2) when he did not promptly remove his earned fees from the trust account, thereby commingling the clients' funds with his own. The Court also concluded that Zuckerman violated Section 10-304 and 10-306 of the Business Occupations and Professions Article when he deposited advance fees, which had not yet been earned, directly into his operating account rather than his trust account and when he disbursed funds to his client prior to depositing their settlement checks.

The Court determined that Zuckerman did not instruct his employees about the proper management of the trust account and inform himself of the status of his employees' efforts to monitor the funds in the account. Such a failure in oversight constituted a violation of Rule 5.3 (a) and (b), requiring Zuckerman to insure that his employees' conduct is compatible with his professional obligations.

Finally, the Court found that Zuckerman also violated Rule 8.4 (d) when he misused his trust account, commingled client funds in his operating account, and commingled client funds in the trust account, which were prejudicial to the administration of justice.

Because of mitigating factors, including Zuckerman's lack of a prior disciplinary record, his cooperation with Bar Counsel, lack of personal benefit, and the dearth of financial loss to the clients, in conjunction with various personal problems, the appropriate sanction was an indefinite suspension with the right to reapply after thirty days.

Attorney Grievance Commission v. Zuckerman, Misc. Docket, AG No. 21, Sept. Term 2004. Opinion filed on April 13, 2005 by Battaglia, J.

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CRIMINAL LAW - SECOND DEGREE ASSAULT - SCOPE OF DEFINITION OF "OFFENDER" UNDER MARYLAND'S REGISTRATION OF OFFENDERS STATUTE

Facts: On July 29, 2002, Richard Wilburn Cain was arrested and charged in the Circuit Court for Calvert County with one count of child abuse, two counts of third degree sexual offense, and one count of second degree assault. Cain pled guilty on March 11, 2003 to the second degree assault charge. The State sought, as a condition of probation, that Cain be required to register as an offender and to have no contact with the victim or the victim's family.

On June 24, 2003, the Circuit Court conducted a sentencing hearing during which Cain's attorney requested that Cain receive probation and not be required to register as a sexual offender. The court imposed a five-year sentence for second degree assault with all but one day suspended for time that Cain had previously served and imposed five years of supervised probation with various conditions, including that Cain submit to evaluation, attend and successfully complete mental health treatment, have no contact with the victim or her family, and that he serve a period of home confinement for six-months. The court also ordered Cain to register as an "offender" as a condition of his probation. The State then entered a *nolle prosequi* on the remaining counts of child abuse and third degree sex offense.

On December 22, 2003, Cain filed a Motion to Correct Illegal Sentence, contending that the second degree assault conviction did not fall within the definition of "offender" that required registration, and the court denied his motion. Cain noted an appeal to the Court of Special Appeals, and this Court issued, on its own initiative, a writ of certiorari prior to any proceedings in the intermediate appellate court.



Held: Second degree assault to which Cain pled guilty and was convicted is not one of the enumerated crimes in the statute requiring registration, such as rape, kidnaping, false imprisonment, or violations of the child pornography statute. It is the elements of the crime that determine whether registration is appropriate, not the underlying conduct in the case. This interpretation is supported by the statute's legislative history and the interpretation of the federal Wetterling Act and Megan's Law. Moreover, the elements of second degree assault for which Cain was convicted do not contain reference to a sexual offense against a minor. Therefore, the Circuit Court erred in denying Cain's Motion to Correct Illegal Sentence and the condition of probation requiring Cain to register as an offender was vacated.

Richard Wilburn Cain v. State of Maryland, No. 97, Sept. Term 2004. Opinion decided April 12, 2005 by Battaglia, J.

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FAMILY LAW - TERMINATION OF PARENTAL RIGHTS - BEST INTEREST OF CHILD STANDARD - CHILD WITH SEVERE DISABILITIES.

Facts: Victor A. was born on March 26, 2000 to Ms. A. and Mr. A. He tested positive for cocaine and amphetamines at birth and was diagnosed with severe mental and physical disabilities, including cerebral palsy, mental retardation, dysphagia, myopia, reflux, global development impairment microcephaly, encephalopathy, and failure to thrive. He is severely spastic and cannot control any of his extremities, cannot speak or walk, and must be fed with a gastronomy tube. He is confined to a wheelchair and uses braces to keep his legs straight and other supports for his body; he takes several medications to alleviate his discomfort and assist with his breathing. Victor A. requires 16 hours of in-home nursing services a day and is in the care of numerous doctors. He also receives speech therapy, physical therapy, and occupational therapy to prevent further deterioration of his abilities.

At the time of Victor A.'s birth, Ms. A. was an active drug

user. Neither Ms. A. nor Mr. A. could care for Victor A., who remained in the hospital three months immediately following his birth. On July 3, 2000, the Prince George's County Department of Social Services (PGDSS) filed an emergency shelter care petition in the Circuit Court for Prince George's County, Division of Juvenile Causes. A hearing was held and temporary custody of Victor A. was awarded to PGDSS with instructions to place him with a relative. The court allowed Ms. A. supervised visitation with Victor A. if she participated in a drug treatment program and remained drug free for three months; Mr. A. was permitted liberal unsupervised visitation unless he was found to have a substance abuse problem, which he did not. Victor A. was declared a child in need of assistance (CINA) and was released from the hospital. He resided with a maternal aunt until 2000, when Ms. A. alleged that Victor A. was sexually abused by his cousin. While investigating the charges, PGDSS placed Victor A. in foster care, where Mr. A. visited him several times a week. When the allegations were not corroborated, the maternal aunt declined to resume caring for Victor A.

On January 25, 2001, the court conducted a review hearing, during which the judge established a permanency plan of reunification and awarded full custody to Mr. A. Three months later, PGDSS filed a petition alleging that Victor A.'s medical needs were not being met. The court rescinded Mr. A.'s custody, declared Victor A. to be a CINA again, and placed him in foster care, but allowed Mr. and Ms. A. to have daily unsupervised visitation. Mr. A. signed service agreements to complete parenting skills classes, to participate in a support group for parents of special needs children, and to obtain adequate housing in an effort to regain custody. Ms. A. agreed to undergo psychological testing, to participate in parenting skills classes, and continue her drug treatment under a service agreement.

On May 28, 2002, the court changed the permanency plan from reunification with Mr. A. to adoption, after PGDSS reported that both parents had failed to satisfy some of the terms of their service agreements. PGDSS then petitioned the court for a termination of parental rights of Mr. and Ms. A, and on December 24, 2002, the court granted PGDSS limited guardianship and reduced each parent's visits to once per month.

On July 18, 2003, the court conducted a two-day termination of parental rights hearing, during which PGDSS sought guardianship of Victor A. to place him for adoption. The judge determined that neither Ms. A. or Mr. A. could adequately care for Victor A. and was convinced that PGDSS was better suited to provide care for Victor A; although the judge also expressed reservations as to whether it was in Victor A.'s best interest to terminate his

parents' rights. On September 23, 2003, the court issued an order terminating Mr. and Ms. A.'s parental rights, awarding guardianship to PGDSS, and continuing Mr. and Ms. A.'s visitation until Victor A. was adopted. Mr. and Ms. A. appealed to the Court of Special Appeals.

The intermediate appellate court agreed with Victor A.'s parents that PGDSS had failed to establish by clear and convincing evidence that termination of their parental rights was in Victor A.'s best interests. It held that the trial court did not make adequate factual findings to support a termination of their parental rights, vacated the judgment terminating Mr. A. and Ms. A.'s parental rights, and remanded the case to the trial court to assess all the available permanent placement options for Victor A. in deciding whether termination of parental rights would be appropriate. PGDSS filed a petition for certiorari to this Court, which was granted.

Held: Because the trial court determined that Victor A. was a CINA, it was not required to make any additional findings under Section 5-313 (a)(3) of the Family Law Article, including whether Victor A.'s prospects for a permanent placement would be diminished by a continuation of Mr. and Ms. A.'s parental rights. It was, however, required to address the considerations of Sections 5-313 (c) and (d) of the Family Law Article and make specific findings as to each of the factors identified therein.

A child's prospects for adoption must be considered independently of the decision to terminate the parents' rights. The statute does not provide for a different standard to apply to the placement of children with special needs or in the decision concerning whether the rights of their parents should be terminated. Although the trial judge may consider long-term placement options for children with special needs, the existence of special needs does not independently enter into the court's decision whether to terminate parental rights. The Court of Special Appeals's judgment was modified to provide that the case was remanded to the Circuit Court for further proceedings consistent with the opinion, and, as modified, the judgment was affirmed.

In re Victor A., No. 72, Sept. Term 2004. Opinion filed on April 12, 2005 by Battaglia, J.

REAL PROPERTY - MORTGAGES - FORECLOSURE BY ACTION - SALE - POSSESSION BY PURCHASER - REMEDIES FOR RECOVERY - WRIT OF POSSESSION - JUDICIAL METHOD BY WHICH FORECLOSURE SALE PURCHASER SOUGHT ACTUAL POSSESSION OF PROPERTY FROM HOLDOVER MORTGAGORS WAS INCORRECT, AS THE SOLE JUDICIAL METHOD AVAILABLE TO THE FORECLOSURE PURCHASER WAS UNDER MARYLAND RULE 14-102 (A) AND IS A JUDICIAL ACTION WITHIN THE EXCLUSIVE PROVINCE OF THE CIRCUIT COURTS OF MARYLAND.

Facts: On April 11, 2003, Empire Properties LLC ("Empire") purchased at a foreclosure sale property located at 4504 Powder Mill Road in Beltsville, Maryland. The sale was ratified by the Circuit Court for Prince George's County on June 13, 2003. At the time of the foreclosure sale, Donald and Joan Hardy were the owners and mortgagors of the property at issue. They remained in actual possession of the premises subsequent to ratification of the foreclosure sale.

On June 23, 2003, ten days after ratification of the foreclosure sale by the Circuit Court, Empire filed a forcible entry and detainer action under then Md. Code (1974, 2003 Repl. Vol), § 8-402.3 of the Real Property Article in the District Court of Maryland sitting in Prince George's County, seeking possession of the property. The case was heard before the District Court on July 29, 2003. At that time, Empire had not yet paid the balance of the purchase price and had not received a deed to the property. On or about August 1, 2003, the District Court issued a written opinion denying Empire its request for possession, stating that the District Court did not have jurisdiction to grant Empire possession under § 8-402.3 unless Empire had a deed, or legal title, to the property in question.

Empire thereafter appealed the decision of the District Court to the Circuit Court for Prince George's County. By Opinion and Order dated June 3, 2004 and entered on August 19, 2004, the Circuit Court affirmed the judgment of the District Court. Empire then filed a Petition for Writ of Certiorari to the Court of Appeals. On December 8, 2004, the Court granted the petition.

Held: Affirmed. The Court of Appeals held that the judicial method by which Empire sought to be awarded actual possession of

the property from the holdover mortgagors was incorrect. Whereas Empire pursued a forcible entry and detainer action under what now exists as § 8-402.4 of the Real Property Article in the District Court, the sole judicial method available allowing Empire to be awarded actual possession following a foreclosure sale is found in Maryland Rule 14-102 (a) and is a judicial action within the exclusive province of the circuit courts of Maryland.

The Court also held that, generally, a purchaser of property at a foreclosure sale may be entitled to seek possession of that property when the sale is ratified by the Circuit Court. Subsequent to ratification, the purchaser generally has complete equitable title in the property purchased at the foreclosure sale. At this point, when complete equitable title vests in the purchaser, he or she may, under proper circumstances, be entitled to possession.

Empire Properties LLC v. Donald G. Hardy, et al. No. 98, September Term 2004, filed April 5, 2005. Opinion by Cathell, J.

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TORTS - GOVERNMENTAL IMMUNITY - LOCAL GOVERNMENT TORT CLAIMS ACT - PUBLIC OFFICIALS - QUALIFIED IMMUNITY

Facts: On 16 January 1999, Amelia Willoughby was sledding with her father at Pinecliff Park in Frederick, Maryland, on a toboggan slope owned by Frederick County. Amelia's toboggan veered off the slope and collided with a tree, resulting in significant physical injuries to her. Amelia's parents, on her behalf, ("Appellants") filed a complaint in the Circuit Court for Frederick County alleging, as to the accident, simple negligence on the parts of individuals employed in various capacities by the Frederick County Department of Parks and Recreation, including the Director of Parks, Capital Improvement Administrator, Recreation Superintendent, Park Superintendent, and Safety Inspector ("Appellees"). The complaint alleged, in separate counts as to each Appellee, respectively, that he or she was negligent in maintaining an inherently dangerous facility, failing to prevent use of the slope, failing to warn the public that the slope was inherently dangerous due to icy conditions, failing to hire competent people to maintain the slope, and failing to assure that the slope was safe for public use, all of which were alleged to be the proximate cause of Amelia's injuries. Appellees moved to dismiss the complaint, or for summary judgment, arguing, in

addition to other grounds, that Appellees were entitled to public official immunity. At the conclusion of a hearing, the Circuit Court effectively granted summary judgment in favor of Appellees, solely on the ground that they were public officials because they exercised "some portion of the sovereign power of the State . . . and were performing discretionary as opposed to ministerial acts." Appellants noted a timely appeal to the Court of Special Appeals. Before the intermediate court could consider the appeal, however, this Court, on its initiative, issued a writ of certiorari to consider whether Appellees are "public officials" entitled to assert the defense of qualified public official immunity.

Held: Reversed and remanded. The Circuit Court erred in determining that Appellees were public officials entitled to the benefit of public official immunity for merely negligent performance (or non-performance) of their duties. At common law, a government actor may enjoy qualified immunity from liability for his or her non-malicious acts where: (1) he is a public official, rather than a mere government employee or agent; and (2) his or her tortious conduct occurred while he or she was performing discretionary, as opposed to ministerial, acts in furtherance of official duties. See *Muthukumarana v. Montgomery County*, 370 Md. 447, 479, 805 A.2d 372, 391 (2002). In *James v. Prince Georges County*, 288 Md. 315, 324, 418 A.2d 1173, 1178 (1980), the Court identified four non-exclusive guidelines to aid in the analysis of whether a particular individual is a public official for purposes of common law immunity:

- (i) whether the position was created by law and involves continuing and not occasional duties;
- (ii) whether the holder performs an important public duty;
- (iii) whether the position calls for the exercise of some portion of the sovereign power of the State; and
- (iv) whether the position has a definite term for which a commission is issued and a bond or oath are required.

Even if an individual does not satisfy these guidelines, he or she may be able to assert public official immunity if he or she exercises "a large portion of the sovereign power of government" or "can be called on to exercise police powers as a conservator of the peace." *Duncan v. Koustenis* 260 Md. 98, 106, 271 A.2d 547, 551 (1970) (citations omitted).

The Court held that, applying these standards in the present case, Appellees are not public officials. There was nothing in the record to indicate that the titled positions of the Appellees were

"created by law," "have a definite term for which a commission is issued," or "require a bond or an oath." *James*, 288 Md. at 324, 418 A.2d at 1178. Although the parties conceded that Appellees perform important public duties, there was some dispute as to whether Appellees "exercise some portion of the sovereign power of the State." *Duncan*, 260 Md. at 105, 271 A.2d at 550.

The exercise of sovereign power includes "the power to make and enforce laws," and generally contemplates someone serving "in a legislative or policymaking capacity." *Black's Law Dictionary* 1430 (8<sup>th</sup> ed. 2004); *Duncan*, 260 Md. at 106, 271 A.2d at 551. Appellees do not exercise sovereign power because, by the nature of their duties, they do not make park rules, regulations, or policy. Rather, they exercise the policies determined and adopted by the Frederick County Parks and Recreation Commission, the body to which these powers are delegated by law.

Appellees also do not satisfy the additional scenarios outlined in *Duncan* in which an individual may be "nevertheless considered to be a public official." 260 Md. at 106, 271 A.2d at 551. If Appellees do not exercise "some portion of the sovereign power of the State," as determined previously, they certainly do not exercise "a large portion of the sovereign power of the government." Appellees do not qualify as public officials under the second scenario because nothing in the record demonstrated that Appellees exercise any authority that could be characterized fairly in the nature of "police power or conservator of the peace." *Id.*

De la Puente v. Frederick County Dept. of Parks and Recreation, No. 50, September Term, 2004, filed 5 May 2005. Opinion by Harrell, J.

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TORTS - GOVERNMENTAL IMMUNITY - CONDITION PRECEDENT - GOOD CAUSE

Facts: In 1991, Nelly Rios Saravia, a recent emigre from Bolivia with her husband, became pregnant and received pre-natal health care from a clinic in Rockville operated by the Montgomery County Health Department. She signed several documents that were

translated into Spanish and contained the County's name or that of the County Health Department. During the same time period, Dr. Richard Footer was employed part-time by Montgomery County through a program called "Project Delivery," which subsidized delivery costs for lower income county residents.

On December 31, 1991, Dr. Footer delivered Ms. Rios's son, Luis. Ms. Rios paid the hospital directly for the costs associated with Luis's birth.

During the labor, Luis's shoulder became lodged, and Dr. Footer used forceps to deliver him, which resulted in paralysis of Luis's arm. Although Luis's injury was apparent at birth, Ms. Rios did not notify the County of the malpractice claim until 2001. Ms. Rios filed a claim with the Maryland Health Claims Arbitration Office, and, after arbitration was waived, filed a negligence suit against the County and Dr. Footer as Luis's next friend.

At her deposition, Ms. Rios claimed ignorance as to the County's involvement in her care, and at trial sought to have the notice requirement under the Local Government Tort Claims Act (LGTCA) waived. The trial court denied her motion and noted that Ms. Rios had a duty to inquire as to the circumstances surrounding her son's injury but failed to do so. The court also found that she did not establish good cause for waiving the requirement. After the trial court dismissed the claims against Dr. Footer and the County, Ms. Rios appealed to the Court of Special Appeals.

The Court of Special Appeals affirmed the decision of the trial court because Ms. Rios was on notice and had an obligation to investigate. The court also determined that the notice requirement of the LGTCA was not unconstitutional as applied to minors because it is a reasonable restriction on access to the courts.

Held: Affirmed. The notice requirement of the LGTCA is a condition precedent and is generally treated as a limitation of liability rather than the remedy alone. The provision of subsidized health care to lower income residents by the County is a governmental activity and as such the County is entitled to absolute immunity for its actions. Because the activity is governmental rather than proprietary, and therefore the County is entitled to claim absolute immunity, the notice provision is constitutional as applied to minors under both the Federal and State constitutions. Thus, the claim is barred for failure to comply with the notice requirement.

The Court also held that being a minor does not *per se* constitute good cause. The trial court did not abuse its discretion in determining that Ms. Rios's limited English



proficiency or immigrant status did not constitute good cause under the circumstances of this case.

Nelly Rios, as Parent and Next Friend of Her Son, Luis Fernando Rios v. Montgomery County, No. 71, Sept. Term 2004. Opinion by Battaglia, J.

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## COURT OF SPECIAL APPEALS

ARBITRATION - CONSIDERATION- SUPPORTING AGREEMENT TO ARBITRATE - ILLUSORY CONTRACTS - CHEEK V. UNITED HEALTHCARE OF THE MID-ATLANTIC, INC., 378 MD.139 (2003) - DISTINCTION BETWEEN THE RIGHT TO UNILATERALLY MODIFY AGREEMENT "AT THE SOLE AND ABSOLUTE DISCRETION OF EMPLOYER AT ANY TIME WITH OR WITHOUT NOTICE," HELD TO BE UNENFORCEABLE IN CHEEK, AND THE RIGHT TO UNILATERALLY MODIFY AGREEMENT PURSUANT TO 30 CALENDAR DAYS WRITTEN NOTICE ISSUED ON A SET DATE, AT WHICH TIME, ALL CLAIMS ARISING PRIOR THERETO, SHALL BE SUBJECT TO THE RULES AND REGULATIONS IN EFFECT AT THAT TIME; THE TERMS OF THE AGREEMENT, IN THE LATTER CASE, ARE MUTUALLY OBLIGATORY AND THEREFORE BINDING UNTIL MODIFIED BY THE EMPLOYER, THUS RENDERING THE AGREEMENT NON ILLUSORY PRIOR TO THE NOTIFICATION THAT TERMS OF THE AGREEMENT WILL BE MODIFIED.

Facts: At the inception of Holloman's employment with Circuit City, she signed an agreement to arbitrate all disputes arising out of the employment relationship. The employment agreement provided that Circuit City could alter the arbitration rules, but only after giving Holloman thirty days' notice of such changes. Holloman left her employment with Circuit City and, alleging sexual harassment and other theories, sued the company in the Circuit Court for Prince George's County. Circuit City filed a motion to compel

arbitration, and Holloman argued that the arbitration agreement was unenforceable because Circuit City's reservation of a right to alter the rules rendered its promise illusory. The circuit court granted Circuit City's motion, and Holloman appealed.

Held: Affirmed. The arbitration agreement was supported by consideration; Circuit City's promise to arbitrate was not rendered illusory, because Circuit City could not alter the rules without giving notice to Holloman, after which she could either accept the rules or decline to continue the employment relationship.

La'Tia Holloman v. Circuit City Stores, Inc., et al., No. 1145, September Term, 2004, decided May 5, 2005. Opinion by Davis, J.

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CIVIL PROCEDURE - LONG ARM STATUTE - INTERNATIONAL SHOE COMPANY V. WASHINGTON, 326 U.S. 310 (1945); IN PERSONAM JURISDICTION-MINIMUM CONTACTS; TRIAL COURT DID NOT ERR IN CONCLUDING THAT MARYLAND LACKED BOTH GENERAL AND SPECIFIC PERSONAL JURISDICTION OVER OHIO ATTORNEY IN SUIT BY FORMER SHEPPARD PRATT HOSPITAL RESIDENT FOR LEGAL MALPRACTICE AND NEGLIGENT MISREPRESENTATION STEMMING FROM ATTORNEY'S TELEPHONIC ADVISEMENT THAT APPELLANT'S JUVENILE RECORD FOR PATRICIDE HAD BEEN EXPUNGED AND THAT APPELLANT "WOULD NEVER HAVE TO ADMIT TO THE EXISTENCE OF THE JUVENILE CASE," WHICH RESULTED IN APPELLANT CERTIFYING THAT HE HAD NEVER SPENT MORE THAN THIRTY CONSECUTIVE DAYS IN A MEDICAL INSTITUTION FOR TREATMENT OF A MENTAL DISORDER AND A SUBSEQUENT PROSECUTION FOR SUBMITTING THAT FALSE STATEMENT.

Facts: Appellant, William Bond, murdered his father in Ohio, and Gerald Messerman, an Ohio attorney, represented Bond in the juvenile court proceedings, which resulted in Bond being hospitalized at Sheppard Pratt in Maryland. Bond and Messerman communicated by letter and telephone, but Messerman has never been to Maryland. In their correspondence, Messerman allegedly misadvised Bond regarding whether Bond's Ohio record was expunged, and Bond sought to sue Messerman in the Circuit Court for Baltimore City for legal malpractice. Bond also sued Sheppard Pratt for allegedly wrongfully disclosing confidential medical records in response to a subpoena. The circuit court dismissed Bond's suit against Messerman, concluding that Maryland could not assert personal jurisdiction over him, and the court granted summary

judgment for Sheppard Pratt, concluding that Bond's complaint failed to state a claim.

Held: Affirmed. The fact that Messerman never purposefully availed himself of the privilege of conducting any activity in Maryland precluded Maryland's courts from asserting personal jurisdiction over him. Any contacts between Messerman and Maryland resulted from Bond's unilateral actions reaching out of this State. Summary judgment for Sheppard Pratt was appropriate because, even if releasing Bond's records was inappropriate, as a matter of law Sheppard Pratt's disclosure was not made in bad faith.

William C. Bond v. Gerald A. Messerman et al., No. 1067, September Term, 2004, decided April 28, 2005. Opinion by Davis, J.

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CONTRACTS - STATUTE OF FRAUDS - MD. CODE, COURTS AND JUDICIAL PROCEEDINGS ARTICLE, § 5-901(3) - CONTRACTS NOT TO BE PERFORMED WITHIN ONE YEAR - SUFFICIENCY OF WRITTEN MEMORANDUM - A written memorandum containing all material terms of the agreement may satisfy the statute of frauds even if the memorandum was signed by the party to be charged before the formation of the alleged contract.

Facts: The case came to the Court of Special Appeals from the Circuit Court for Baltimore County. Krause Marine sued Salisbury Building Supply, alleging breach of a contract to provide towing services for a five year term. The defendant pointed out that the plaintiff corporation had not been incorporated on the date of the document that was alleged to contain the terms of the agreement. The trial judge submitted the case to the jury with instructions that the jury could nevertheless find the defendant liable for breach of contract if the jury concluded that, subsequent to the plaintiff's incorporation, the parties had orally agreed to adopt the terms of the prior written document. After the jury returned a verdict that found the parties had contracted by adopting the terms of the prior written document, the defendant asserted that such an oral contract would not be enforceable under the statute of frauds, Courts & Judicial Proceedings Article § 5-901(3). The trial judge disagreed, and entered judgment for the plaintiff.

Held: Judgment affirmed. Judge Meredith wrote for the Court:

[T]he jury specifically found that Towing Corp. and Supply Co. entered into a contract "by adopting the terms of the May, 1989 written agreement." That factual finding was amply supported by the uncontradicted testimony of Mr. Krause. For two years, the parties conducted business in accordance with the terms of the May 12, 1989, memorandum of agreement, with no apparent disputes or misunderstandings. Under such circumstances, the trial court was well justified in concluding that the document signed by Supply Co.'s president on May 12, 1989, is a sufficient memorandum of the parties' agreement to enforce the alleged oral contract.

Salisbury Building Supply Company Inc. v. Krause Marine Towing Corporation, No. 0021 September Term, 2004, filed May 2, 2005. Opinion by Meredith, J.

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CRIMINAL LAW - INEFFECTIVE ASSISTANCE OF COUNSEL

Facts: Appellant, LeBon Walker, was indicted for nine counts of theft over three hundred dollars, and one count of conspiracy to commit theft. Walker absconded from the country while released on bond. At trial, the circuit court granted the State's motion to try Walker in absentia. Walker's attorney objected to the trial in absentia, and declined to actively participate in the trial in any way. After the State adduced testimony from forty-two (42) witnesses and introduced three hundred twenty-four (324) exhibits into evidence, Walker was convicted on all counts.

Walker was apprehended in Zambia nine months after the trial, and was returned to the United States. Walker was then sentenced to a total of twenty-four (24) years in prison, with credit for time served. Walker noted a timely appeal. The Court of Appeals granted certiorari in the case, on its own motion, on the issue of whether a trial court may conduct a criminal trial in the absence of the defendant if the defendant is informed of when the trial will begin and then fails to appear. The Court of Appeals affirmed Walker's convictions.

Walker then sought post-conviction relief on the ground of ineffective assistance of counsel. The circuit court denied the request for relief. Walker filed a petition to appeal the denial of post-conviction relief, which was denied. Walker then filed a

motion for reconsideration of his appeal, which was granted by The Court of Special Appeals.

Held: Affirmed. There is no presumption of ineffectiveness as a result of counsel's decision not to actively participate in Walker's trial. Walker was provided with competent counsel and given over six months to prepare for trial. Prior to the beginning of trial Walker's attorney argued strenuously against conducting the trial in absentia. Additionally, attorney's for Walker's co-defendants were present and active throughout the trial to question witnesses and raise objections. Walker's attorney knowingly adopted a strategy of silence, hoping to argue jury nullification, or facilitate a reversal on direct appeal. Counsel's decision not to participate in trial of defendant was a sound trial strategy, and thus not ineffective assistance of counsel. Even if counsel's decision not to participate in trial constituted deficient performance, defendant was not prejudiced. Counsel's decision not to participate in the trial also did not constitute structural error.

Walker v. State, No. 1811, September Term 2003, filed February 24, 2005. Opinion by Eyler, James R., J.

CRIMINAL LAW - SEARCH AND SEIZURE - CONSTITUTIONALLY PERMISSIBLE LENGTH OF DETENTION DURING TRAFFIC STOP - REQUIREMENT THAT DETAINING OFFICER EXERCISE DILIGENCE IN ACCOMPLISHING THE PURPOSE FOR TRAFFIC STOP - REQUIREMENT THAT THERE BE REASONABLE ARTICULABLE SUSPICION TO SUPPORT CONTINUED DETENTION BEYOND THAT REQUIRED BY *WHREN [V. UNITED STATES, 517 U. S. 806 (1996)] - UNITED STATES V. SHARPE, 470 U. S. 675 (1985) - WILKES V. STATE, 364 MD. 554 (2001) - PRYOR V. STATE, 122 MD. APP. 671 (1998); MARYLAND STATE TROOPER, WHO STOPPED THE VEHICLE IN WHICH APPELLANT WAS A PASSENGER FOR OBSCURING THE VEHICLE TAGS, DID NOT INFRINGE UPON APPELLANT'S FOURTH AMENDMENT RIGHTS BY DETAINING PASSENGER AND MOTORIST FOR THIRTY MINUTES, DURING WHICH THE OFFICER WAS ATTEMPTING TO ASCERTAIN THAT THE DRIVERS' LICENSES AND VEHICLE REGISTRATION WERE IN ORDER AND TO CHECK FOR OUTSTANDING WARRANTS, BUT WAS UNABLE TO OBTAIN THE INFORMATION SOUGHT BECAUSE OF PROBLEMS WITH COMPUTERS AND PHONE SYSTEMS WHICH WERE NOT IN OPERATION AT TWO BARRACKS; WRITING OF WARNING FOR VIOLATION OF TRANSPORTATION ARTICLE, §§ 13-411.1 (a) AND 13-411 (c) WITHOUT DELIVERING CITATION TO MOTORIST DID NOT CONSTITUTE SECOND DETENTION AS PROSCRIBED BY *FERRIS V. STATE, 355 MD. 356 (1999); FACTUAL FINDING OF LOWER COURT THAT OFFICER EXERCISED DILIGENCE, REASONABLE UNDER THE CIRCUMSTANCES, IN OBTAINING INFORMATION REGARDING DRIVERS' LICENSES AND VEHICLE REGISTRATION, WAS NOT CLEARLY ERRONEOUS.**

Facts: Appellant, Orlando Byndloss, was charged in the Prince George's County Circuit Court with various drug offenses. He filed a motion to suppress the seized drugs, which was denied. It was elicited during the suppression hearing that Sergeant Clifford Hughes observed the vehicle in which appellant was a passenger

traveling on Interstate 95 with a concealed vehicle registration tag. After pulling the vehicle over, he immediately notified his barrack of the stop and was informed that the computer system that checks for criminal backgrounds was not operational. Sergeant Hughes asked for the drivers' licenses of appellant and the operator of the vehicle and returned to his vehicle, where he was informed a few minutes later that the computer system was still down. Sergeant Hughes then called for a K-9 unit and inquired of the driver where the occupants were traveling. He then advised the occupants that they were free to leave as soon as the information concerning any outstanding warrants or other infractions was relayed to him. Approximately ten minutes after the stop began, Sergeant Hughes called another barrack to see if its computer system was working; it was not. The officer again attempted to obtain the computer information after ordering the driver out of the vehicle to discuss her travels, but was informed again that the system was down. Almost thirty minutes after the stop began, Sergeant Hughes complained again to the dispatcher that the check was taking too long, and at that point, the K-9 unit arrived. The K-9 scanned the vehicle and identified drugs in the vehicle. At that same moment, the warrant check information was received by Sergeant Hughes, where it provided that appellant had an extensive criminal history and the driver's history was still unavailable. After being alerted to the presence of drugs, the officers recovered two kilos of cocaine in the vehicle and effected the arrest. After the motion to suppress was denied, appellant was found guilty of importation of cocaine, possession of 448 grams of cocaine with intent to distribute, possession of cocaine with intent to distribute, and possession of cocaine.

Held: The circuit court did not err in denying appellant's motion to suppress the cocaine, where it found that a finding of reasonable articulable suspicion was unnecessary to support the extended detention so long as the purpose for the initial stop had not been accomplished and the investigation was ongoing. The initial stop of the vehicle was proper, as the license plate numbers were concealed.

In this case, the detention lasted thirty minutes. Whether the length of a traffic stop exceeds constitutional dimensions is measured by whether the traffic stop was longer than necessary to effectuate the purpose of the stop. Once a police officer pulls a vehicle over, conducts a license, registration, and warrant check, then issues the citation, the stop is completed and, unless reasonable suspicion exists to detain the vehicle any longer, the officer must release the vehicle and its passengers. Once the purpose of the traffic stop has been fulfilled, the continued detention of the vehicle and its occupants amounts to a second detention. Here, the officer diligently pursued the warrant and

background check of the occupants and, until that aspect of the stop was completed, the first stop was not finished and the length of the detention was reasonable. There was only one stop in this case, as the initial stop was still ongoing while the officer tried to obtain the information from the computer system when the K-9 arrived and alerted the officers to the presence of the cocaine. The traffic stop was not extended beyond the period necessary to complete the initial reason for the stop.

Orlando Byndloss v. State of Maryland, No. 711, September Term, 2004, decided May 5, 2005. Opinion by Davis, J.

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CRIMINAL LAW - SEARCH AND SEIZURE - PROBABLE CAUSE - REASONABLE ARTICULABLE SUSPICION - 4TH AMENDMENT - SEARCH AND SEIZURE - REAR SEAT PASSENGER - POLICE OFFICER AS EXPERT WITNESS - MD. RULE 5-701; MD. RULE 5-702

Facts: Appellant, Kobie Matoumba appeals his conviction in the Circuit Court for Baltimore City for possession of a handgun by a person previously convicted of a crime of violence. Matoumba's conviction stemmed from a July 18, 2002, traffic stop by officers in an unmarked police cruiser on crime suppression detail. The officer driving observed a vehicle traveling at a "greater than reasonable" speed. As a result of their observations, they stopped the vehicle for the traffic violation.

As the officers approached the vehicle, one officer on each side of the car, the officer on the passenger side observed Matoumba seated in the right rear passenger seat and testified about appellant's conduct during the time of the traffic stop, revealing that appellant (1) repeatedly looked back at the police cruiser while the officers were affecting the stop; (2) appeared to dip his right shoulder down toward the floor as Moynihan approached; (3) placed his right hand behind his back as Moynihan actually reached the rear passenger side; (4) maintained constant eye contact with Moynihan; and (5) demonstrated visibly shaking hands when commanded to show them.

Eventually, all of the occupants were ordered out of the vehicle and, while conducting a frisk of Matoumba, the officer discovered a loaded .25 caliber Browning handgun in appellant's

back pants pocket. Matoumba challenged the frisk as an unreasonable search in violation of the 4th Amendment of the United States Constitution, and also challenged the testimony of the officers regarding the presence of reasonable articulable suspicion.

Held: Affirmed. The court gives due weight to Matoumba's nervous conduct and obvious attempt to conceal some item behind his back, the dangerous nature of the area where the traffic stop occurred, and the initial reasonableness of the stop. Given these particular facts, the officer operated on more than a "hunch" of danger. The facts of this case warranted a prophylactic frisk to assure public and police officer safety, and the court's conclusion is consistent with the safety objective of *Terry v. Ohio*, 392 U.S. 1 (1968).

No aspect of Rule 5-702, Maryland case law, or *Terry* contains anything that could be construed to mandate that a police officer be qualified as an expert in order to render an opinion on his or her basis for reasonable articulable suspicion to conduct a pat-down. Md. Rule 5-701 controls the testimony of a police officer as to his or her reasonable articulable suspicion.

Matoumba v. State, No. 562, September Term 2003, filed April 28, 2005, Opinion by Sharer, J.

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CRIMINAL LAW - VOLUNTARINESS OF CONFESSION - IMPROPER PROMISE  
INDUCING CONFESSION - MENTAL STATE OF SUSPECT GIVING CONFESSION

Facts: On May 24, 2003, a witness identified the appellant, Anthony Leon Harper, a/k/a Francis McClain, as the perpetrator of a May 13, 2003 robbery of a teacher outside an elementary school in Upper Marlboro. The appellant was arrested and brought to the police station at about 5:00 p.m. that day.

At 6:45 p.m., Detective Kelly Rogers advised the appellant of his *Miranda* rights. The appellant identified himself as Francis



McClain, and signed that name on an "Advice of Rights and Waiver Form." He placed checks and the initials "F. Mc." next to questions on the form, indicating that he understood his rights and wanted to make a statement, and that he had not been promised anything, offered any reward or benefit, or threatened in any way. In response to the question, "Are you under the influence of drugs or alcohol at this time," he checked "yes." Detective Rogers handwrote on the form that the appellant said he "had a beer 3 hrs. ago & smoked 2 blunts" (marijuana cigarettes).

In response to questions by Detective Rogers, the appellant denied any involvement in the robbery. Detective Rogers transcribed the appellant's oral responses into a written statement; the appellant did not sign the statement, however. Detective Rogers then left the appellant alone in the interview room.

At 8:45 p.m., Detective Charles Brew interviewed the appellant. The appellant kept falling asleep during the interview, and Detective Brew asked him if he needed medical attention. The appellant answered that he would be all right. The appellant then said that he was hungry and thirsty, and the detective gave him coffee and a candy bar.

According to Detective Brew, the appellant appeared to be "intoxicated" or "under the influence." Detective Brew could smell marijuana on him, but did not detect a strong odor of alcohol. Detective Brew testified that the appellant appeared to understand everything that was said to him.

Detective Brew discussed the appellant's drug problem with him. He testified that he told the appellant that there were drug treatment programs available but denied telling the appellant that he could get him into such a program.

Detective Brew requested the appellant to write an apology to the victim, which the appellant dictated, admitting that he kicked the victim but that he was under the influence at the time and needed money for his "habit."

The appellant testified that he did not remember much of what occurred at the police station because he was under the influence of marijuana, alcohol, and cocaine, and was "going in and out" of sleep. However, he recalled telling both detectives that his name was Francis McClain to avoid being arrested for violating his probation, signing the "Advice of Rights and Waiver Form," making the exculpatory statement to Detective Rogers, being given coffee and a candy bar, and talking about his drug problem and drug treatment programs.

The appellant also testified that Detective Brew told him he would talk to the State's Attorney about helping him get into a drug treatment program, and that the appellant would not have to do "as much time" if he was in the program.

The appellant moved to suppress the inculpatory apology statement, arguing that Detective Brew made an improper promise to the appellant, rendering the statement involuntary. The hearing court denied the motion on the ground that the appellant clearly understood what was going on, and, while testifying, was able to recite almost word for word what Detective Brew said went on during the proceeding. The court then held that, even if it credited the appellant's testimony about what Detective Brew said about drug treatment, the testimony would not support a finding that an improper promise was made.

The case proceeded to a jury trial. The appellant was found guilty of robbery, theft of property valued at less than \$500, second-degree assault, and making a false statement to a police officer. The court merged the theft and assault convictions into the robbery conviction, and sentenced the appellant to 15 years in prison, with all but 12 years suspended. It imposed a six-month prison sentence, to be served consecutively to the robbery sentence, for making a false statement.

Held: Reversed and remanded to the circuit court for further proceedings. The Court held that the hearing court erred in ruling that the appellant's suppression hearing testimony, if credited, would not establish an improper promise of a special benefit.

The Court observed that an offer to advocate for drug treatment in connection with leniency in prosecution or sentencing is an improper promise. Thus, if the hearing court fully credited the appellant's testimony that the detective offered to advocate for the appellant to receive drug treatment that might result in the appellant serving less prison time, it would constitute an improper promise of a special benefit.

However, the Court also recognized that an offer to recommend drug treatment that is available routinely to members of prison population, unconnected to any promise of leniency in prosecution or sentencing, is not an improper promise because it does not hold out the prospect of a special advantage. Thus, if fully credited, the detective's testimony would establish only an offer to recommend the appellant for drug treatment generally available to those incarcerated by the criminal justice system, not a special benefit, and hence would not show an improper promise.

The Court held that the hearing court failed to resolve critical first-level factual conflicts between the detective's and the appellant's testimony necessary to determine whether an improper promise was made. The Court vacated the judgments and remanded the case for a new suppression hearing at which the court should resolve the first-level factual conflicts and determine whether an improper promise was made, and, if so, whether the appellant's apology statement was induced by the improper promise, under the two-prong test of *Hillard v. State*, 286 Md. 145 (1979); and otherwise address whether the confession was voluntarily made. The Court ordered a new trial, regardless of the outcome of the new suppression hearing.

The Court also held the appellant's mental state at the time of the interrogation did not, in and of itself, render his statement involuntary. Although the appellant claimed at the hearing to have been under the influence of marijuana, alcohol, and cocaine when he was interviewed, and that he was sleep deprived, he was able to recount in great detail what transpired at the police station and had the presence of mind to use the name "Francis McClain" instead of his real name, so as to avoid being arrested for violating his probation.

The Court further held that the appellant had waived his argument on appeal that his statement was involuntary because he lacked the mental capacity to waive his *Miranda* rights, when he did not raise it below. Had the argument been properly preserved, the Court held that the evidence was sufficient to support the hearing court's determination that the appellant was aware of what was transpiring at the police station. The Court also held that the totality of the circumstances did not require that the appellant be re-advised of his *Miranda* rights when only two hours passed between the advisement of rights and Detective Brew's interrogation and the appellant clearly understood what was going on.

Anthony Leon Harper v. State of Maryland, No. 2700, September Term, 2003, filed April 28, 2005. Opinion by Eyler, Deborah S., J.

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LABOR AND EMPLOYMENT - WRONGFUL DISCHARGE - COMPELLING PUBLIC POLICY REQUIREMENT

Facts: Karen Bauries King, appellant, a terminated female employee, brought a state court action against her former employer and her immediate supervisor for wrongful discharge under Maryland state law. King asserted that she was discharged for refusing to violate the Employee Retirement Income Security Act (ERISA), and for complaining about violations of ERISA to co-workers and supervisors. The employer, Marriott removed the case to federal court, alleging that ERISA completely preempted the state cause of action. The United States District Court for the District of Maryland denied King's motion for remand, and granted summary judgment for Marriott. King appealed. The Fourth Circuit Court of Appeals, 337 F.3d 421, vacated the District Court order and remanded the case to the Maryland Circuit Court.

On remand, King filed an amended complaint in which she only alleged a state law wrongful discharge claim. The circuit court granted Marriott's motion for summary judgment. King appealed.

Held: Affirmed. Appellant failed to identify a sufficiently compelling public policy violated by the actions of appellee. In light of this conclusion, there is no State law claim to be preempted, and thus, no need to determine whether the doctrine of preemption applies.

King v. Marriott International, Inc., No. 175, September Term 2004, filed January 27, 2005. Opinion by Eyler, James R., J.

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STATE EMPLOYEES - GRIEVANCE PROCESS - RECLASSIFICATION ERROR - REMEDIES AVAILABLE - In a reclassification grievance being heard by the Office of Administrative Hearings pursuant to Md. Code, State Personnel and Pensions Article, § 12-205, the administrative law judge has the authority, pursuant to § 12-402, to order that the grievant's position be reclassified to the correct classification.

Facts: The case arose after the Department of Budget and Management created a new series of employee position classifications to cover certain personnel who specialize in procurement via competitive bidding or negotiation. After the new procurement classifications were adopted, a number of State employees who had previously been classified in the Agency Buyer series were reclassified to the Agency Procurement Specialist series. The appellants felt aggrieved by the manner in which their positions had been reclassified, and initiated grievance proceedings. The administrative law judge assigned to hear the matter agreed that two of the employees should have been classified differently, and ordered that the classifications for their positions be changed accordingly. When the Department of Public Safety and Correctional Services sought judicial review, the Circuit Court for Baltimore County agreed that the two employees were entitled to have their positions reclassified, but agreed with the State's contention that the administrative law judge lacked authority to order such reclassification.

Held: Judgment affirmed in part and vacated in part; case remanded to the Circuit Court for Baltimore County.

On appeal to the Court of Special Appeals, the Court concluded that the administrative law judge had properly ordered the reclassification. Judge Meredith wrote for the Court:

The [Department of Public Safety and Correctional Services "DPSCS"] asserts that reclassification of an employee's position is not among the potential remedies expressly enumerated in § 12-402(a) or (b). Because the statute states that "the remedies available to a grievant ... are limited to..." those spelled out in § 12-402(a) and (b), the DPSCS contends that reclassification was not an option for the ALJ.

The fatal flaw in the DSPSC's logic is that § 12-402(b)(2) expressly contemplates an award of up to one year of back pay "[i]n a reclassification grievance." If the DSPSC were correct that an ALJ has no authority to order reclassification of a grievant's position, there would be little occasion for an award of back pay in a reclassification grievance.

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Upon reviewing S.P.P. § 12-402 in context as part of the statutory scheme governing employee grievances relative to reclassifications, we do not agree with the DPSCS's contention that the phrase "restoration of the

rights, pay, status, or benefits that the grievant otherwise would have had" is limited to situations in which the grievant is put back into a position previously held (as opposed to having the grievant's position upgraded to a new level, which was the relief sought by appellants Smith and Myers). Rather, the statutory scheme provides for remedies of a restitutionary nature that put the employee in the same position the employee would have enjoyed if the "contested policy, procedure, or regulation had been applied appropriately as determined by the final decision maker." In a reclassification grievance, the remedy is limited to back pay (which can be extended back no more than one year prior to the date the grievance was filed), plus being placed in the same position with respect to the "rights, ... status, [and] benefits" the employee would have had if the position had been properly classified in the first instance. The goal is to restore to the employee the status and benefits the employee would have had if no error had been made.

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Consequently, we conclude that the ALJ did not exceed his authority as the final decision maker in these grievances by ordering that the positions of appellants Smith and Myers be reclassified, and that they be granted back pay accounting from one year prior to the date their grievances were filed. We conclude that such an order provided a remedy that restored to grievants Smith and Myers "the rights, pay, status, [and] benefits that the grievant[s] otherwise would have had if the contested [reclassification] had been applied appropriately as determined by the final decision maker." Such an order is within the scope of remedies authorized by § 12-402. Because there was no error of law in the ALJ's order as to appellants Smith and Myers, the circuit court erred in modifying that portion of the ruling of the OAH.

Diane Myers, et al. v. Department of Public Safety and Correctional Services, No. 00426 September Term 2004, filed May 4, 2005. Opinion by Meredith, J.

TORT LAW - NEGLIGENCE - SLIP AND FALL.

Facts: On May 23, 1999, at approximately 1 p.m., appellant, Chandra Maans, and her fifteen-year-old niece, Amanda Randolph, were shopping at a busy Giant store. Maans and Randolph proceeded to one of the checkout lines to pay for the items they had selected. Randolph stayed in the checkout line, while Maans walked away from it in the hope of finding a shorter one. Maans then turned around and began walking back toward her niece. When she was about "one cart length" away from the line in which her niece stood, Maans slipped and fell.

Maans filed suit against Giant, claiming that it breached its duty of care to her as an invitee by "negligently allowing water to remain on the floor."

Maans and Randolph testified that neither saw anything on the floor either before or after Maans's fall. Nevertheless, Maans testified that she heard the assistant store manager tell a man nearby "to get up all the water off the floor," and she later told the paramedics "to be careful so they didn't slip and fall in the water." Maans did not know how the water got on the floor or how long it had been there prior to her fall.

At trial, several store employees testified that porters constantly patrolled the store looking for hazards or spills on the floor. Two witnesses testified in plaintiff's case that each Giant employee was responsible for maintaining the area of the store where he or she worked, and if hazards were spotted, to either clean up the hazard or call a porter to do so.

The Circuit Court for Harford County granted Giant's motion for judgment at the close of the plaintiff's case, finding that Maans did not present sufficient evidence to raise a question as to whether Giant had actual or constructive knowledge of the alleged water spill.

Held: Affirmed. The proprietor of a store owes a duty to an invitee to exercise ordinary care to keep the premises in a reasonably safe condition. In order to prove liability, evidence must show not only that the dangerous condition existed, but also

that the proprietor had actual or constructive knowledge of it, and that that knowledge was gained in sufficient time to give the owner the opportunity to remove it or to warn the invitee. Maans failed to produce any evidence that the water existed for some appreciable time before the injury. Nor did she prove that had Giant made a reasonable pre-accident inspection, the store's employees would have discovered the water in time to prevent the accident.

The Court rejected the plaintiff's contention that the so-called "mode-of-operation rule" should have been applied in considering Giant's motion. Under that rule, a plaintiff need not show that a store owner was on notice of a dangerous condition if the proprietor could reasonably anticipate that hazardous conditions would regularly arise in the ordinary course of business. The Court held that the rule was at odds with Maryland precedent.

Maans v. Giant of Maryland, L.L.C., No. 161, September Term, 2004, filed April 4, 2005. Opinion by Salmon, J.

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# ATTORNEY DISCIPLINE

By an Order of the Court of Appeals of Maryland dated April 29, 2005, the following attorney has been disbarred by consent from the further practice of law in this State:

IRA C. COOKE

\*

By an Order of the Court of Appeals of Maryland dated April 29, 2005, the following attorney has been disbarred by consent from the further practice of law in this State:

JOHN L. HELT

\*

By an Order of the Court of Appeals of Maryland dated April 29, 2005, the following attorney has been disbarred by consent from the further practice of law in this State:

NICHOLAS J. PISTOLAS

\*

By an Order of the Court of Appeals of Maryland dated April 29, 2005, the following attorney has been disbarred by consent from the further practice of law in this State:

HARRY M. WALSH, JR.

\*

The following attorney has been replaced upon the register of attorneys in this Court effective May 10, 2005:

JOHN WHEELER GLENN

\*

By an Opinion and Order of the Court of Appeals of Maryland dated May 10, 2005, the following attorney has been disbarred from the further practice of law in this State:

JERRY DENEISE JORDAN

\*

By an Order of the Court of Appeals of Maryland dated May 10, 2005, the following attorney has been disbarred by consent from the further practice of law in this State:

FREDRIC DAVID LEFFLER

\*

By an Order of the Court of Appeals of Maryland dated May 10, 2005, the following attorney has been placed on inactive status by consent from the further practice of law in this State:

DAVID A. WEISKOPF

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