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COURT OF APPEALS

Attorney Grievance Commission of Maryland v. Darryl Russel Armstrong, Misc. Docket AG No. 35, September Term 2019, filed December 21, 2020. Opinion by Watts, J.

<https://www.mdcourts.gov/data/opinions/coa/2020/35a19ag.pdf>

ATTORNEY DISCIPLINE – SANCTIONS – DISBARMENT

Facts:

On behalf of the Attorney Grievance Commission, Petitioner, Bar Counsel filed in the Court of Appeals a “Petition for Disciplinary or Remedial Action” against Darryl Russel Armstrong, Respondent, charging him with violating Maryland Attorneys’ Rules of Professional Conduct (“MARPC”) 1.1 (Competence), 1.2(a) (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), 1.5(a) (Unreasonable Fees), 1.5(c) (Contingent Fees), 1.15(a), (c), and (d) (Safekeeping Property), 1.16(d) (Terminating Representation), 3.4(c) and (d) (Fairness to Opposing Party and Attorney), 4.1(a)(1) (False Statement to Third Person), 8.1(b) (Failing to Respond to Lawful Demand for Information), 8.4(b) (Criminal Act), 8.4(c) (Dishonesty, Fraud, Deceit, or Misrepresentation), 8.4(d) (Conduct that is Prejudicial to the Administration of Justice), and 8.4(a) (Violating the MARPC), and Md. Code Ann., Bus. Occ. & Prof. (1989, 2010 Repl. Vol., 2017 Supp.) (“BOP”) § 10-306 (Trust Money Restrictions).

The Court appointed a hearing judge, who made findings of fact and conclusions of law, concluding that Armstrong had violated MARPC 1.1, 1.2(a), 1.3, 1.4(a) and (b), 1.5(a), 1.5(c), 1.15(a), (c), and (d), 1.16(d), 3.4(d), 4.1(a), 8.1(b), 8.4(b), 8.4(c), 8.4(d), and 8.4(a), and BOP § 10-306 in connection with his representation of eight clients—Blessing Ngong, Louise R. Whiting, Cheryl L. Merriman, Nancy Schaffer, Carmen Gunici, Deqwan Cheatham, Alvin Knox, and Dequantae McRae—in various civil and criminal matters and an immigration matter, and in connection with his representation of several other clients who were injured in motor vehicle accidents and sought medical treatment at a physical therapy facility, CJB Therapy Centers (“CJB”).

Bar Counsel filed a Request to Waive Oral Argument. The Court issued a Show Cause Order, directing Armstrong to show cause why oral argument should be heard. Armstrong did not file a

response to the Show Cause Order, or anything else, in the Court. On October 30, 2020, the Court issued an order granting the Request to Waive Oral Argument. On November 20, 2020, in a *per curiam* order, the Court disbarred Armstrong. See *Attorney Grievance Comm'n v. Darryl Russel Armstrong*, 471 Md. 311, 241 A.3d 885, Misc. Docket AG No. 35, Sept. Term, 2019, 2020 WL 6815871, at *1 (Md. Nov. 20, 2020).

Held:

The Court of Appeals upheld the hearing judge's conclusions of law and explained why disbarment was the appropriate sanction for Armstrong's misconduct.

The Court concluded that, among other things, Armstrong violated MARPC 1.1 and 1.3 by, in the Ngong matter, failing to take necessary, fundamental steps in the case, failing to respond to discovery requests, failing to file a response to motions to compel and for sanctions, failing to appear at a pre-trial conference, and failing to communicate with Ngong concerning the status of her case. Armstrong violated MARPC 1.1 with respect to CJB by failing to remit funds from clients' settlements to pay outstanding medical bills due to CJB and by failing to withhold portions of clients' settlements to pay medical providers, including CJB. Armstrong violated MARPC 1.1 and 1.3 in the Merriman and Whiting matters by mishandling client funds and failing to pay settlement proceeds to either medical providers or his client. Armstrong violated MARPC 1.1 and 1.3 in the Schaffer matter by failing to cooperate or pursue Schaffer's complaint before the Maryland Commission on Civil Rights ("MCCR"), failing to advise Schaffer of the MCCR's adverse decision or the timeframe within which to apply for reconsideration, failing to file a lawsuit on Schaffer's behalf, and failing to meaningfully communicate with Schaffer about her case.

Armstrong violated MARPC 1.1 and 1.3 in the Gunicci matter by failing to advise Gunicci of the Immigration Court's instructions or of the deadline for filing an asylum application and by failing to respond to her repeated attempts to contact him for a status update. Armstrong violated MARPC 1.1 and 1.3 in the Cheatham matter by failing to appear at multiple proceedings, showing up unprepared at a status conference, and failing to communicate in any way with Cheatham. Armstrong violated MARPC 1.1 and 1.3 in the Knox matter by abandoning the representation after being paid and failing to communicate with Knox. Armstrong violated MARPC 1.1 and 1.3 in the McRae matter by failing to appear at multiple proceedings, including the arraignment, failing to communicate with McRae or his mother, and failing to forward the client file to McRae's new counsel. Armstrong violated MARPC 1.1 by failing to deposit and maintain client and third-party funds in an attorney trust account.

Armstrong violated MARPC 1.2(a) by routinely failing to consult with his clients or to provide status updates to his clients and those he represented who had sought medical treatment at CJB. Armstrong violated MARPC 1.4(a) and (b) by repeatedly failing to adequately communicate with, or promptly respond to reasonable requests for information from, his clients, by failing to keep his clients reasonably informed about the status of their matters, and by failing to provide

his clients with updates on developments in their cases, thereby preventing the clients from making informed decisions about the representation. Armstrong violated MARPC 1.5(a) by charging Ngong, Cheatham, Knox, and McRae fees and then providing essentially little or no legal services. Armstrong violated MARPC 1.5(c) by entering into a contingency fee agreement with Merriman but failing to memorialize the agreement in a writing signed by Merriman. Armstrong violated MARPC 1.5(c) with respect to CJB by failing to provide a settlement disbursement sheet in one matter and providing inaccurate settlement disbursement sheets in other matters.

Armstrong violated MARPC 1.15(a) by failing to maintain client funds in an attorney trust account. Armstrong violated MARPC 1.15(c) by depositing trust funds into an account other than an attorney trust account without his clients' informed consent to do so. Armstrong also violated MARPC 1.15(d) by failing to promptly deliver—or, indeed, to deliver at all—settlement proceeds to clients and medical providers and to pay clients' debts from those proceeds. Armstrong violated MARPC 1.16(d) in the Ngong and Knox matters by essentially abandoning the representation, effectively terminating his representation without reasonable notice. Armstrong violated MARPC 1.16(d) by failing to return unearned fees to Cheatham, Knox, and McRae, and by failing to provide copies of Schaffer's and McRae's files. Armstrong also violated MARPC 1.16(d) in the Whiting and Merriman matters and with respect to CJB by failing to take steps reasonably necessary to protect his clients' interest, including remitting settlement proceeds to the clients that they were owed and paying medical providers.

Armstrong violated MARPC 3.4(d) in the Ngong matter by failing to make any effort whatsoever to comply with discovery requests propounded by the opposing parties, to respond to the motion to compel, to comply with the circuit court's order compelling discovery, or to respond to the motion for sanctions. Armstrong violated MARPC 8.1(b) by repeatedly failing to provide responses to the nine complaints against him and by providing a response to Ngong's complaint that was almost two months later than the date that he had stated he would respond by. Indeed, other than the untimely response to Ngong's complaint, Armstrong failed to respond to the complaints filed against him. Armstrong violated MARPC 8.4(d) by engaging in misconduct that would negatively impact the perception of the legal profession of a reasonable member of the public.

Significantly, Armstrong violated MARPC 4.1(a)(1) in the Schaffer matter by making a false statement of material fact to a third party when he misrepresented the value of Schaffer's case and the timeline for settlement of the case in the Attorney Questionnaire section of Schaffer's loan application with Global Financial. Armstrong violated MARPC 8.4(b) and 8.4(c) in the Whiting and Merriman matters and with respect to CJB by knowingly and intentionally misappropriating settlement proceeds owed to his clients or medical providers, such as CJB, for his own use and benefit. Armstrong violated MARPC 8.4(c) in multiple other instances. Armstrong intentionally concealed from Ngong that the circuit court had dismissed her case with prejudice due to his failure to respond to discovery requests and to appear at a pre-trial conference. Armstrong later misrepresented to Ngong that he would file a new lawsuit on her behalf against different defendants, but he never did so. Armstrong intentionally misrepresented to CJB that he had inadvertently paid a different medical provider, instead of CJB, for treatment

rendered to two clients. To support that misrepresentation, Armstrong fraudulently altered two cancelled checks. Armstrong purposefully lied to Schaffer that he had filed a personal injury action on her behalf, although he had not done so. And, Armstrong compounded that lie by intentionally misleading Schaffer into believing that he had filed the lawsuit. Additionally, Armstrong violated BOP § 10-306 by intentionally misappropriating funds from settlement proceeds that were owed to CJB.

The Court concluded that Armstrong's misconduct harmed his clients who, among other things, were deprived of their funds and files, were charged unreasonable fees, and were lied to by Armstrong. For example, Armstrong's failure to respond to discovery and appear at a pre-trial conference resulted in the circuit court dismissing Ngong's case with prejudice, thereby depriving Ngong of the ability to prosecute her case against two defendants. Armstrong's mishandling and misappropriation of settlement proceeds resulted in CJB not being paid funds that it was due. Armstrong's failure to cooperate with the MCCR investigation in the Schaffer matter resulted in an adverse decision being issued, and Armstrong's failure to advise Schaffer of the adverse decision and the timeframe for requesting reconsideration caused Schaffer to lose the opportunity to request reconsideration. Moreover, Armstrong's false statement of material fact on Schaffer's loan application resulted in Schaffer obtaining and becoming liable for a \$5,000 loan. Armstrong's failure to provide competent representation to Gunici and to adequately communicate with her resulted in Gunici missing the deadline to file an asylum application and in the Immigration Court ordering Gunici removed. Subsequent counsel's efforts to reopen the proceedings and to file an asylum application on Gunici's behalf were unavailing.

The Court determined the same eight aggravating factors as the hearing judge. First, Armstrong had a dishonest or selfish motive, as Armstrong misappropriated client and third-party funds for his own use and benefit, he made knowing and intentional misrepresentations to CJB as to his failure to pay his clients' outstanding medical bills to conceal his misappropriation, and he made knowing and intentional misrepresentations to Schaffer regarding her case status. Armstrong certainly engaged in a pattern of misconduct in eight client matters and in representing others who had been treated by CJB. Indeed, Armstrong repeatedly accepted funds, abandoned the representation of his clients, failed to communicate with his clients, and misappropriated funds belonging to his clients and third parties. Next, Armstrong committed multiple violations of the MARPC.

Armstrong engaged in bad faith obstruction of the attorney discipline proceeding by intentionally failing to comply with Bar Counsel's numerous requests for information. Also, Armstrong has refused to acknowledge the wrongful nature of his misconduct. According to the hearing judge, at the hearing, Armstrong failed to acknowledge the sheer scope of his misconduct or to accept any responsibility for his misconduct. Instead, apparently Armstrong continued to make excuses and even blamed his administrative assistant for sending payment to the wrong physical therapy center. Additionally, one of Armstrong's victims, Gunici, was a person seeking asylum, and thus was vulnerable. Further, Armstrong displayed an indifference to making restitution or rectifying the consequences of his misconduct, as he failed to refund unearned fees in the Knox, Cheatham, or McRae matters, he failed to honor his settlement agreement with Ngong, and he failed to return other client and third-party funds that he misappropriated. Finally, Armstrong engaged in

illegal conduct; specifically, Armstrong intentionally misappropriated client and third-party funds for his own personal use and benefit.

Like the hearing judge, the Court determined two mitigating factors: the absence of prior attorney discipline and inexperience in the practice of law, as Armstrong became a member of the Bar of Maryland in 2014.

The Court concluded that the appropriate sanction for Armstrong's misconduct was disbarment. Armstrong engaged in copious instances of misconduct while representing eight clients, as well as numerous individuals who sought medical treatment at CJB. Armstrong violated MARPC 8.4(b) and 8.4(c) by, among other things, misappropriating funds, altering checks, and making misrepresentations to clients and third parties. Armstrong's only mitigating factors—inexperience in the practice of law and the absence of prior attorney discipline—came nowhere near constituting compelling extenuating circumstances justifying a lesser sanction than disbarment. Additionally, there were numerous aggravating factors, including illegal conduct, a dishonest or selfish motive, a pattern of misconduct, and a refusal to acknowledge the wrongful nature of the conduct. Given the numerous instances and wide range of misconduct throughout the representation of eight clients, as well as during the representation of various other clients with respect to CJB, and the injury to multiple clients, disbarment was necessary to protect the public and, indeed, the only appropriate sanction.

Attorney Grievance Commission of Maryland v. Mary Theresa Keating, Misc. Docket AG No. 46, September Term 2019, filed December 23, 2020. Opinion by Hotten, J.

Watts, J., concurs.

<https://mdcourts.gov/data/opinions/coa/2020/46a19ag.pdf>

ATTORNEY DISCIPLINE – SANCTIONS – INDEFINITE SUSPENSION

Facts:

The Attorney Grievance Commission of Maryland, acting through Bar Counsel (“Petitioner”), filed a Petition for Disciplinary and Remedial Action (“the Petition”) with the Court of Appeals, alleging that Mary Theresa Keating (“Respondent”) violated Maryland Attorney’s Rules of Professional Conduct (“MARPC”) Rules 19-301.8 (Conflict of Interest), 19-301.15 (Safekeeping Property), 19-303.3 (Candor Toward the Tribunal), 19-308.4 (Misconduct), and 19-408 (Commingling of Funds). These allegations stemmed from Respondent’s handling of the estate of her former client, Keith Nelson Wilson (“Mr. Wilson”). Respondent submitted a falsely attested will to the Register of Wills. Respondent self-reported her conduct to Petitioner, who recommended that Respondent be disbarred from the practice of law.

As reflected in the findings of fact rendered by the hearing judge in March 2020, the hearing judge concluded that Respondent violated MARPC Rules 19-301.8 (Conflict of Interest), 19-303.3 (Candor Toward the Tribunal), and 19-308.4 (Misconduct). The hearing judge concluded that Respondent violated Rule 19-301.8 (Conflict of Interest) because Respondent prepared a will for Mr. Wilson that gave herself the substantial gift of Mr. Wilson’s life insurance proceeds. Even though the hearing judge acknowledged that, as a matter of law, the life insurance proceeds did not pass through the will, the hearing judge still concluded that Respondent should not have drafted testamentary language in her client’s will that gave herself a substantial gift.

The hearing judge did not conclude that Respondent violated MARPC Rule 19-301.15 (Safekeeping Property) because as beneficiary of Mr. Wilson’s life insurance proceeds, Respondent was at liberty to commingle her own funds in a client trust account. The hearing judge also found that Respondent placed her funds in a client trust account to earmark them specifically for estate and administration expenses. While Respondent drafted testamentary language that allocated some of her insurance proceeds towards specific bequests in the will, Respondent’s ownership of the life insurance proceeds meant, as a matter of law, that Respondent had no legal obligation to satisfy these bequests with her life insurance proceeds.

The hearing judge concluded that Respondent violated MARPC Rule 19-303.3 (Candor Toward the Tribunal) by falsely stating that Mr. Wilson’s will was signed by two or more witnesses in the presence of the testator pursuant Md. Code Ann., Estates and Trusts (“Est. & Trusts”) § 4-

102 and submitting the falsely witnessed will under penalty of perjury, pursuant Est. & Trusts § 5-206. On March 20, 2018, Respondent submitted Mr. Wilson's will for probate to the Register of Wills, even though Respondent forged one of the required witness signatures approximately one month after Mr. Wilson's death. The hearing judge found that Respondent accrued no personal benefit in submitting the falsely attested will, rather Respondent intended to carry out Mr. Wilson's final wishes.

The hearing judge determined that Respondent's other MARPC violations resulted in a violation of Rule 19-308.4 (Misconduct). The hearing judge concluded that Respondent did not violate Rule 19-408 (Commingling of Funds) because Respondent placed her insurance proceeds into an attorney trust account to further her client's wishes and not for personal use. The hearing judge only found illegal conduct as an aggravating factor based on Respondent's submission of a falsely attested will for probate. The hearing judge identified no prior disciplinary history, no personal enrichment, and no selfish or dishonest motive as mitigating factors.

Held: Indefinitely suspended with a right to reapply in six months.

This Court found that Respondent violated MARPC Rules 19-303.3 (Candor Toward the Tribunal) and 19-308.4 (Misconduct) through the submission of a knowingly falsely attested will to the Register of Wills. Respondent fraudulently submitted the will to further her client's final testamentary wishes, not for personal enrichment.

Respondent did not violate Rule 19-301.8 (Conflict of Interest). Mr. Wilson named Respondent as his life insurance beneficiary without her knowledge, so Respondent could not have solicited the life insurance proceeds. More importantly, the life insurance proceeds constituted non-probate assets and passed outside of probate. The testamentary language drafted by Respondent did not give the life insurance proceeds to Respondent because the proceeds passed independently via contract. Respondent drafted testamentary language that allocated the life insurance proceeds to Mr. Wilson's estate because Respondent felt a moral obligation to her client. Respondent safeguarded these assets in a trust account and spent the balance in furtherance of her client's final testamentary wishes. Respondent had no legal obligation to allocate these funds towards her client's estate. These good faith efforts, combined with a distinguished thirty-five-year career, an absence of prior discipline, and a showing of high moral character, reduced the severity of discipline from disbarment to indefinite suspension with a right to reapply in six months.

Lawrence Ervin Montague v. State of Maryland, No. 75, September Term 2019, filed December 23, 2020. Opinion by Getty, J.

Watts, J., dissents.

<https://mdcourts.gov/data/opinions/coa/2020/75a19.pdf>

EVIDENCE – FACTORS AFFECTING ADMISSIBILITY – RELEVANCE OF RAP LYRIC EVIDENCE

EVIDENCE – FACTORS AFFECTING ADMISSIBILITY – PREJUDICIAL EFFECT AND PROBATIVE VALUE OF RAP LYRIC EVIDENCE

Facts:

In the early morning hours of January 16, 2017, George Forrester was shot and killed while attempting to purchase cocaine at the Woodside Gardens apartment complex in Annapolis. Mr. Forrester drove to the apartment complex with his cousin, Tracy Tasker, and parked his sport utility vehicle (“SUV”) facing 708 Newtowne Drive (“708 Newtowne”). After unsuccessfully attempting to purchase drugs from someone in the back of the parking lot, Mr. Forrester walked towards 708 Newtowne and found a drug dealer who was willing to sell him cocaine. At trial,

Ms. Tasker testified that the \$100 bill used by Mr. Forrester to pay for the drugs was counterfeit.

The drug dealer immediately realized that the \$100 bill was counterfeit and followed Mr. Forrester back to his SUV before raising a firearm and shooting him in the back. When the drug dealer realized that Ms. Tasker witnessed the shooting from the passenger seat of the SUV, he fled in the direction behind 708 Newtowne. Ms. Tasker exited the vehicle, and attempted to render aid to Mr. Forrester, but fled in Mr. Forrester’s SUV shortly thereafter because she had open warrants for her arrest. Annapolis Police Officer Brittany Artigues testified that, after arriving at the crime scene, she rendered first aid to Mr. Forrester and witnessed him leave the scene in an ambulance before marking two .40-caliber shell casings and one spent bullet. Shortly after arriving at the hospital, Mr. Forrester was pronounced deceased from the injuries caused by the gunshot.

Ms. Tasker was later arrested for her open warrants and, in an interview with Detective Charles Bealefeld, identified Lawrence Montague as the drug dealer who shot Mr. Forrester. About two weeks after the interview, Mr. Montague was arrested at a motel near Annapolis and he was indicted for Mr. Forrester’s murder. Before trial, Mr. Montague and Ms. Tasker had an encounter in the medical unit of the Jennifer Road Detention Center where Mr. Montague called Ms. Tasker a “f---in’ rat.” Mr. Montague was subsequently transferred to the Anne Arundel County Detention Center where, three weeks before trial, he made a telephone call to an unidentified male using another inmate’s personal identification number passcode. Mr.

Montague requested that the unidentified male record rap lyrics that he had composed while incarcerated and upload them to Instagram:

Listen, I said YSK / I ain't never scared / I always let it spray /
And, if a n---a ever play / Treat his head like a target /
You know he's dead today / I'm on his ass like a Navy Seal /
Man, my n----s we ain't never squeal /
I'll pop your top like an orange peel / You know I'm from the streets /
F.T.G. / You know the gutter in me / And I be always reppin' my YSK shit / Because
I'm a king / I be playin' the block bitch / And if you ever play with me / I'll give you a
dream, a couple shots snitch /
It's like hockey pucks the way I dish out this /
It's a .40 when that bitch goin' hit up shit / 4 or 5, rip up your body quick /
Like a pickup truck / But you ain't getting picked up /
You getting picked up by the ambulance /
You going to be dead on the spot /
I'll be on your ass.

When the unidentified male warned Mr. Montague about uploading the lyrics to Instagram, Mr. Montague countered: "I'm gucci. It's a rap. F--k they can do for—about a rap?"

Among other evidence, the State sought to admit the recorded telephone call containing Mr. Montague's rap lyrics. The Circuit Court for Anne Arundel County admitted the lyrics into evidence over Mr. Montague's objection and he was subsequently convicted of crimes relating to Mr. Forrester's murder. Mr. Montague appealed. In a unanimous reported opinion, the Court of Special Appeals affirmed and found that Mr. Montague's rap lyrics are admissible under Maryland Rules 5-402 and 5-403 because the lyrics are "a relevant statement of a party opponent, whose probative value was not substantially outweighed by any unfair prejudice caused by its admission." *Montague v. State*, 244 Md. App. 24, 35 (2019).

Held: Affirmed

The Court of Appeals held that a defendant's rap lyrics—or other artistic expressions—have heightened probative value, and are admissible as substantive evidence, when the lyrics bear a close nexus to the details of an alleged crime. When a defendant's lyrics bear a close nexus to the details of an alleged crime, those lyrics exceed the low relevance threshold of Maryland Rule

5-401, which only requires that evidence have "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Generally, all relevant evidence is admissible under Maryland Rule 5-402. The Court found that Mr. Montague's rap lyrics are relevant under Rule 5-401, and therefore admissible under Rule 5-402, because the lyrics have a close nexus to the details of Mr.

Forrester's murder. Mr. Montague's rap lyrics include verses that match details of the murder, have a close temporal nexus to the murder, and recite "stop snitching" references that were published on social media to potentially intimidate witnesses to the murder. As a result of this close nexus, Mr. Montague's rap lyrics tend to prove his involvement in the murder and serve as substantive evidence of his guilt.

The Court of Appeals also held that the circuit court did not abuse its discretion in admitting Mr. Montague's rap lyrics under Maryland Rule 5-403. For the circuit court's admission of Mr. Montague's rap lyrics under Rule 5-403 to be an abuse of discretion, that decision must be "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Faulkner v. State*, 468 Md. 418, 460 (2020) (quoting *King v. State*, 407 Md. 682, 697 (2009)). Relevant evidence is excluded under Rule 5-403 when its probative value is substantially outweighed by the danger of unfair prejudice. Even when relevant, rap lyric evidence carries inherent prejudicial effect as propensity evidence of the defendant's bad character. However, when a close nexus exists between a defendant's rap lyrics and the details of an alleged crime, the heightened probative value of the lyrics is not substantially outweighed by the reduced danger of admitting the lyrics as unfairly prejudicial propensity evidence. The Court found that Mr. Montague's rap lyrics are admissible under Rule 5-403 because they have a close nexus to the details of Mr. Forrester's murder, such that their probative value is not substantially outweighed by the danger of unfair prejudice. Accordingly, the circuit court's decision to admit Mr. Montague's rap lyrics under Rule 5-403 was not an abuse of discretion.

COURT OF SPECIAL APPEALS

DeAngelo Montier Stanley v. State of Maryland, No. 521, September Term 2019, filed December 16, 2020. Opinion by Arthur, J.

<https://www.courts.state.md.us/data/opinions/cosa/2020/0521s19.pdf>

CRIMINAL LAW – CROSS-EXAMINATION

Facts:

In the early morning hours of August 5, 2018, a man was walking near the intersection of Church Street and Davis Street in Salisbury. Two assailants began striking him the head. Officers and paramedics found the victim behind a shed near the intersection. The victim was unconscious and bleeding, with head wounds including a skull fracture. He was in a coma for three days and became disabled as a result of traumatic brain injuries.

Weeks after the assault, police received an anonymous call from a woman who claimed to have information about the assault. Police traced the call to Cotrenna Drayton, but she denied making the call.

Drayton was later arrested on unrelated charges. She eventually made a recorded statement in which she said that she witnessed the assault from the intersection of Barclay Street and Church Street. In her statement, Drayton identified DeAngelo Stanley as one of the perpetrators. At Stanley's eventual trial, Drayton recanted the identification and claimed that she could not have witnessed the assault from Barclay Street.

A second informant, Glay Kimble, also implicated Stanley. Kimble told investigators that, while he was incarcerated with Stanley, Stanley admitted to his involvement in an assault on Church Street.

During other interviews earlier that same month, Kimble also implicated others in unrelated crimes. Kimble received a benefit (admission into a drug-treatment program) for testifying in the other cases, but he did not receive any benefit from testifying against Stanley. During cross-examination of Kimble, the court sustained objections to questions about the names of the other persons whom Kimble accused or the substance of those allegations.

At the end of the State's case and at the close of all evidence, defense counsel moved for a judgment of acquittal, asserting that Drayton did not (or could not) see the assault. The court denied both motions.

The jury found Stanley not guilty of attempted first-degree murder and of attempted second-degree murder. The jury found Stanley guilty of first-degree assault, second-degree assault, and reckless endangerment. The court sentenced Stanley to a prison term of 18 years. Stanley appealed.

Held: Affirmed.

In the first issue on appeal, Stanley contended that the trial court erred in restricting his cross-examination of the jailhouse informant, Kimble. The Court of Special Appeals held that the circuit court did not err or abuse its discretion in restricting the scope of the cross-examination.

The Court concluded that Stanley was able to expose facts from which the jurors could appropriately draw inferences relating to the reliability of the witness. Specifically, the defense was able to elicit that Kimble's accusation against Stanley was one of "many" accusations that Kimble made against others under an expectation of leniency. The defense also elicited that Kimble obtained a benefit (referral for drug rehabilitation) even though he may have been facing up to 13 years for violating his probation, in exchange for providing information and testifying against others. The trial court restricted the defense only in its ability to explore the details of the allegations that Kimble had made against others, such as their names and the crimes that they allegedly committed. The jury did not need those potentially confusing, collateral details to understand the point that Kimble may have had a motivation to lie about Stanley.

As a second issue on appeal, Stanley contended that the evidence was insufficient to support his convictions. Stanley argued that the jury could not reasonably rely on Drayton's identification of him as one of the assailants. The Court of Special Appeals rejected that argument.

According to Stanley, it was impossible for Drayton to have seen the assault, because the testimony established that a person could not see the location where the victim was found from the intersection where Drayton claimed to have seen the assault. Nevertheless, the jury could reasonably conclude that Drayton witnessed an earlier part of the assault, before the victim was dragged behind a shed and left for dead out of view.

Maryland Department of Health v. Christine Myers, No. 3168, September Term 2018, filed December 17, 2020. Opinion by Gould, J.

<https://www.mdcourts.gov/data/opinions/cosa/2020/3168s18.pdf>

ESTATES AND TRUSTS – CLAIMS AGAINST ESTATE – RECOUPMENT OF MEDICAID BENEFITS PAID – LIMITATIONS OF ACTIONS

Facts:

Carol Diana Miller died on June 6, 2017. Ms. Miller had received Medicaid benefits in the amount of \$449,053.71, and, therefore, the Maryland Department of Health (the “Department”) had a reimbursement claim against her estate for that amount pursuant to section 15-121(a) of the Health-General (“HG”) Article of the Annotated Code of Maryland (1976, 2019 Repl. Vol.).

On July 17, 2017, the Frederick County Register of Wills (the “Register”) appointed Appellee Christine Myers as the personal representative (the “PR”) of Ms. Miller’s estate. The Register published notice of this appointment in the *Frederick News-Post* on July 26, 2017, August 2, 2017, and August 9, 2017. The Department filed its reimbursement claim on January 25, 2018, and it was marked as received by the Register on January 30, 2018.

The PR filed a Notice of Disallowance of the Department’s claim pursuant to Section 8-107(a)(1) of the Estates & Trusts Article (“ET”) of the Annotated Code of Maryland (1974, 2017 Rep. Vol.), prompting the Department to file a Petition for Allowance of Claim Against Decedent’s Estate in the orphans’ court under ET § 8-107(b). The orphans’ court denied the Department’s petition as untimely under ET § 8-103(f).

The Department appealed to the Circuit Court for Frederick County, which affirmed the orphans’ court’s decision. The Department filed a timely notice of appeal.

Held: Reversed and remanded.

Notice pursuant to ET § 8-103(f) was not complete until publication of all three required notices, and the 90-day period for the Department to file a claim did not start to run until notice was complete.

The timeliness of the Department’s claim hinges on the application of ET § 8-103(f). 8-103(f) of the Estates and Trusts Article establishes the Department’s filing deadline:

A claim filed by the Maryland Department of Health against the estate of a deceased Maryland Medical Assistance Program recipient, as authorized under § 15-121(a) of the Health-General Article, is forever barred against the estate, the personal representative,

and the heirs and legatees, unless the claim is presented within the earlier of the following dates:

- (1) 6 months after publication of notice of the first appointment of a personal representative; or
- (2) 2 months after the personal representative mails or otherwise delivers to the Department's Division of Medical Assistance Recoveries a copy of a notice in the form required under § 7-103 of this article or other written notice, notifying the Department that the claim shall be barred unless the Department presents its claim within 2 months from the receipt of the notice.

The "publication of notice," in turn, is governed by ET § 7-103(a) which provides:

- (1) After the appointment of a personal representative, the register shall have a notice of the appointment published in a newspaper of general circulation in the county of appointment once a week in 3 successive weeks, announcing the appointment and address of the personal representative, and notifying creditors of the estate to present their claims.
- (2) The personal representative shall file or have filed with the register a certification that a notice has been published.

If "publication of notice" under ET § 8-103(f) refers to the first of the three required publications under ET § 7-103(a), the Department's claim was untimely; if it refers to the third publication, the claim was timely. Thus, the simple facts of this case tee up a question of statutory construction.

Our reading of the plain language of ET § 8-103 is straightforward. In enacting ET § 7-103(a), the General Assembly made a policy determination that, to adequately provide notice to creditors and other interested parties of the decedent's death and appointment of a personal representative, three successive weekly publications of the notice were required; anything less would be incomplete and partial. It logically follows that the phrase "publication of notice" in ET § 8-103(f) similarly means the notice that meets the publication requirements established under ET § 7-103. If the General Assembly intended that partial compliance with the publication requirement under ET § 7-103(a) would suffice as "publication of notice" under ET § 8-103(f), the General Assembly could have qualified "publication of notice" with, for example, the word "first."

Section 8-103 was amended in 1971, 1989, 1992, 1997, and 2005. Prior to the 1971 amendment, the six-month limitations period for all creditor claims commenced on the "first publication" of the notice. The General Assembly therefore knew where "first" should be placed in a sentence when it wanted it to modify "publication."

The legislative history shows that the word “first” in “first appointment of a personal representative” has historically been synonymous with “initial.” In addition to its historical meaning, this clause has been used elsewhere in the Estates and Trusts Article to the same effect and meaning, as have cases that have construed this clause in other contexts. Thus, when the General Assembly left the entire clause intact when it amended ET § 8-103(f), we must presume it did so intentionally, which means that “first” sits where it belongs. And, when the General Assembly chose to amend subsection (f) by adding the four-word phrase “publication of notice of” instead of the five-word phrase “*first* publication of notice of,” we likewise presume that the General Assembly did so intentionally.

Richard A. Kaplan v. Chelsea M. Kaplan, No. 3387, September Term 2018, filed November 18, 2020. Opinion by Leahy, J.

<https://mdcourts.gov/data/opinions/cosa/2020/3387s18.pdf>

FAMILY LAW – DIVORCE – INDEFINITE ALIMONY

FAMILY LAW – DIVORCE – CHILD SUPPORT – GUIDELINES FOR CALCULATION OF SUPPORT – ABOVE-GUIDELINES

Facts:

Appellant Richard A. Kaplan (“Husband”) and appellee Chelsea M. Kaplan (“Wife”) were married in 2001 and had three children. The parties separated in 2017. Wife filed a complaint for limited divorce or, in the alternative, absolute divorce, and Husband filed an answer and counterclaim for limited divorce, or, in the alternative, absolute divorce, custody, and other related relief. On January 31, 2018, following a contested custody trial, the circuit court entered a custody, access, and child support order, granting, inter alia, sole legal custody and primary physical custody of the children to Husband and ordering weekly access for Wife with the children.

The court then set a three-day merits trial, beginning November 27, 2018, as to the parties’ complaints for divorce and related issues, including alimony and child support. At the time of the trial, Husband was employed as the executive vice-president of legal and regulatory affairs and general counsel at a trade association and lobby group and earned a base salary of \$1.1 million with opportunities for bonuses. Wife was employed as a long-term substitute teacher, earning an annual salary of \$50,000. According to the testimony of Husband and Wife, they experienced problems throughout their marriage. At various points in the marriage, there was suspected and actual marital infidelity by both parties. Husband testified that Wife’s excessive spending was a source of conflict during the marriage, as was her use of marital funds to start a business, which ultimately failed.

After the trial, the judge delivered a lengthy oral opinion on November 30, 2018 and subsequently issued a judgment of absolute divorce that was filed on December 17, 2018. The court awarded Wife indefinite alimony in the amount of \$8,500 per month and child support in the amount of \$6,500 per month and entered a monetary award in favor of Wife in the amount of \$30,000. Husband noted a timely appeal challenging, among other things, the court’s award of indefinite alimony and its award of child support to a non-custodial parent.

Held: Affirmed.

The Court of Special Appeals reached three holdings. First, the Court held that the circuit court did not abuse its discretion in awarding indefinite alimony to Wife and determined that the court did not err in its consideration of the factors set forth in Maryland Code (2012 Repl. Vol., 2019 Supp.), Family Law Article (“FL”), § 11-106(b) or its conclusion, under § 11-106(c), that an unconscionable disparity would exist in the parties’ relative standards of living when Wife could be expected to reach her maximum earning potential. Based on the lengthy duration of the parties’ marriage, this Court perceived no error in the circuit court’s focus on the parties’ standard of living during the marriage, rather than the parties’ respective pre-marital standards of living. The evidence concerning the parties’ pre-marital standards of living bore less relevance compared to the parties’ contributions, monetary and non-monetary, to their comfortable lifestyle over the course of their seventeen-year marriage.

Second, discerning no error in the court’s findings as to Wife’s reasonable expenses for her and the children, the Court held that the trial court did not abuse its discretion by obligating Father to pay monthly child support in the amount of \$6,500. In reaching this holding, this Court concluded that, in an above-Guidelines case, the trial court, in exercising its significant discretion, may employ any rational method in balancing “the best interests and needs of the child with the parents’ financial ability to meet those needs.” *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018) (quoting *Unkle v. Unkle*, 305 Md. 587, 597 (1986)). Although Wife was not the custodial parent, she had the children for a significant amount of time. The circuit court considered the financial circumstances of the parties and the reasonable expenses for the children in determining an amount of child support that would enable the children to maintain the lifestyle and advantages to which they are accustomed.

Third, this Court held that the circuit court properly considered Wife’s spending habits as one of many equitable factors in its determinations of alimony and child support.

Wanda Daughtry, et al. v. Jeffrey Nadel, et al., No. 1814, September Term 2019, filed December 16, 2020. Opinion by Fader, C.J.

<https://www.courts.state.md.us/data/opinions/cosa/2020/1814s19.pdf>

MORTGAGES AND DEEDS OF TRUST – FORECLOSURES – TIME FOR PROCEEDINGS – LIMITATIONS AND LACHES

JUDGMENT – MERGER AND BAR OF CAUSES OF ACTION AND DEFENSES – IDENTITY OF CAUSE OF ACTION IN GENERAL

Facts:

In 2007, Wanda and Nathaniel Daughtry borrowed money from Liberty Mortgage Corporation to refinance residential property located in Prince George’s County. The loan was evidenced by a promissory note and secured by a deed of trust. In 2012, the Daughtrys defaulted on the loan. In March 2019, more than six years after the initial default, substitute trustees initiated a foreclosure action against the Daughtrys in the Circuit Court for Prince George’s County.

The Daughtrys filed a motion to dismiss or stay the foreclosure action. Their primary contention was that the foreclosure sale was barred by the three-year statute of limitations in § 5-101 of the Courts and Judicial Proceedings Article. The Daughtrys argued that Chapter 592 of the 2014 Laws of Maryland exempted mortgage foreclosures from the 12 year statute of limitations contained in § 5-102 of the Courts and Judicial Proceedings Article and, in doing so, subjected such actions to the blanket three-year statute of limitations in § 5-101. Because the substitute trustees brought the foreclosure action more than three years after they defaulted on their loan, the Daughtrys argued, it was barred by the statute of limitations.

The Daughtrys also argued that the foreclosure action was barred by res judicata based on an action filed in 2015 by the then-trustee on behalf of the then-noteholder against another holder of a lien on the property and the Daughtrys. In that action, the trustee sought reformation of a subordination agreement that misidentified the position of the lienholders and a declaration that the deed of trust created an enforceable lien against the property. The circuit court reformed the subordination agreement and declared that the deed of trust created an enforceable lien. The Daughtrys argued that because the foreclosure action could have been brought as part of that 2015 action, it was barred by res judicata.

The circuit court denied the motion to stay or dismiss the foreclosure action without a hearing. The Daughtrys appealed.

Held: Affirmed.

First, the Court held that no statute of limitations applies to mortgage foreclosure actions. The Court discussed *Cunningham v. Davidoff*, 188 Md. 437, 442 (1947), in which the Court of Appeals held that no statute of limitations applies to mortgage foreclosure actions. The Court then reviewed subsequent developments that the Daughtrys claimed superseded *Cunningham*, including the adoption of §§ 5-101 and 5-102 of the Courts and Judicial Proceedings Article, the merger of law and equity, and Chapter 592 of the 2014 Laws of Maryland. The Court concluded that none of those developments imposed a statute of limitations on foreclosure actions. The Court also held that the statute of limitations in § 5-101 did not apply by analogy to mortgage foreclosure actions. Accordingly, the Court held that *Cunningham* remains good law and the circuit court did not err in denying the Daughtrys' motion to stay or dismiss the foreclosure action based on statute of limitations.

Second, the Court held that the foreclosure action was not barred by res judicata. The Court observed that to be barred by res judicata, the claim in the current action must be the same claim brought in the prior litigation. The Court concluded that the foreclosure action did not involve the same claim as the earlier reformation action. The Court therefore affirmed the judgment of the circuit court.

Maryland State Highway Administration v. Brawner Builders, Inc., No. 1643, September Term 2019, filed December 18, 2020. Opinion by Wilner, J.

<https://mdcourts.gov/data/opinions/cosa/2020/1643s19.pdf>

STATE FINANCE & PROCUREMENT – EXISTENCE OF CONTRACT – TIMELINESS OF CLAIM

Facts:

SHA had contract with Brawner to erect noise barrier wall along I-95. Brawner subcontracted with Faddis to supply the contract panels. SHA had pre-approved Faddis's panels but had no direct contract with Faddis. During the construction, SHA determined that the panels supplied by Faddis were faulty and suspended work. Faddis requested Brawner to make a claim on its behalf with SHA, which Brawner declined to do. Faddis sued Brawner in Federal court for refusing to file the claim. When that case was settled, Brawner filed a claim for Faddis, which SHA denied as being untimely. Brawner and Faddis appealed to State Board of Contract Appeals, which affirmed SHA by a summary decision. The Circuit Court for Baltimore City, on judicial review, reversed the Board, holding that pre-approval of Faddis's panels constituted a direct contract with Faddis and there was a genuine dispute as to whether Brawner's claim on behalf of Faddis was timely.

Held: Reversed

Only a person with a direct contract with a procurement agency may file a procurement claim against with agency, and mere pre-approval of Faddis's initial panels did not constitute a procurement contract to purchase those panels. Brawner could have filed a claim on Faddis's behalf but, as a matter of law, did not do so timely.

Six Flags America, L.P. v. Stephanie Gonzalez-Perdomo, Case No. 1620, September Term 2019, filed December 16, 2020. Opinion by Berger, J.

<https://mdcourts.gov/data/opinions/cosa/2020/1620s19.pdf>

NEGLIGENCE – DUTY OF POSSESSOR OF LAND – INVITEE – DUTY TO WARN OF OPEN AND OBVIOUS CONDITION – JURY INSTRUCTION – VERDICT SHEET

Facts:

The negligence claim giving rise to this case was filed by Stephanie Gomez Perdomo (the “appellee”) on behalf of her minor son, Daniel Gomez Gonzalez, after Daniel suffered a slip and fall injury on a pedestrian bridge at an amusement park operated by Six Flags America LP (“Six Flags”). The pedestrian bridge was in a location where it was frequently splashed with water from a nearby water ride.

Following discovery, Six Flags moved for summary judgment, asserting that the undisputed facts demonstrated that the wet and slippery condition of the bridge was “open and obvious,” and, therefore, Six Flags owed no duty to warn or cure the alleged dangerous condition. Six Flags’ motion for summary judgment was denied. At trial, several witnesses testified that the pedestrian bridge where Daniel fell was frequently splashed with water and was obviously wet. At the close of the plaintiff’s case, Six Flags moved for judgment, again arguing that there was no duty to warn of the open and obvious wet condition of the bridge. The motion was denied.

At the conclusion of the case, the trial court declined to propound four jury instructions requested by Six Flags concerning the open and obvious defense. The trial court’s instructions to the jury included the pattern jury instructions on negligence, proximate cause, invitee status, and premises liability. Six Flags also requested that the open and obvious defense issue be presented to the jury via a specific question on the verdict sheet. The trial court declined to use Six Flags’ proposed special verdict sheet. Instead, the verdict sheet asked the jury to determine: (1) whether Six Flags was negligent; (2) whether Daniel was contributorily negligent; (3) whether Daniel assumed the risk; and (4) what damages, if any, to award. The jury found that Six Flags was negligent and that Daniel was not contributorily negligent and had not assumed the risk. The jury awarded the appellee \$45,000.00 in non-economic damages. Six Flags noted a timely appeal.

Held: Vacated and remanded.

The Court of Special Appeals held that the trial court did not err by determining that Six Flags was not entitled to judgment as a matter of law. The Court explained that although witnesses for both parties testified that the wet condition of the bridge was visible, it did not necessarily follow

that the slippery condition of the bridge was obvious. The Court agreed with Six Flags that the evidence overwhelmingly established that the bridge was openly and obviously wet, but the Court disagreed with Six Flags that the dangerous condition caused by the wet surface was so clearly open and obvious as to permit no reasonable factfinder to conclude otherwise. The Court, therefore, held that the trial court did not err by denying Six Flags' motion for summary judgment and by denying Six Flags' motions for judgment at trial.

The Court agreed with Six Flags that the trial court's decision not to propound certain requested instructions regarding the open and obvious defense constituted reversible error. The Court explained that two of the requested instructions regarding the lack of a duty to warn of open and obvious dangers were verbatim or nearly verbatim quotations from *Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 393 (1997), and *Casper v. Charles F. Smith & Sons, Ind.*, 316 Md. 573, 582 (1989), and were accurate statements of law. The Court further reasoned that the instructions were applicable under the facts of the case and were not fairly covered in the instructions actually given. Finally, the Court concluded that Six Flags had demonstrated probable prejudice as a result of the trial court's decision not to propound these instructions.

The final issue the Court of Special Appeals considered was whether the trial court erred and/or abused its discretion by declining to include a question regarding the open and obvious nature of the dangerous condition on the verdict sheet. The Court concluded that the trial court's decision to decline to include a question regarding the open and obvious doctrine on the verdict sheet was not an abuse of discretion. The determination of whether the dangerous condition was open and obvious was relevant to the jury's determination of whether Six Flags breached a duty, and, therefore, was relevant to the jury's determination of whether Six Flags was negligent, but the trial court was not required as a matter of law to ask the jury to separately issue written findings as to a particular factual finding that would have influenced the jury's finding as to a particular element of negligence.

ATTORNEY DISCIPLINE

*

By an Order of the Court of Appeals dated September 21, 2020, the following attorney has been
disbarred by consent, effective December 1, 2020:

JASON W. SHOEMAKER

*

By an Order of the Court of Appeals dated December 10, 2020, the following attorney has been
indefinitely suspended:

NANCY THERESA LORD

*

By an Order of the Court of Appeals dated November 16, 2020, the following attorney has been
indefinitely suspended by consent, effective December 16, 2020:

GINIKANWA CHINAEMEREM OKEDI

*

By an Order of the Court of Appeals dated December 21, 2020, the following attorney has been
disbarred by consent:

TRISTAN DOYLE YOUNG

*

By an Opinion and Order of the Court of Appeals dated December 23, 2020, the following
attorney has been indefinitely suspended:

MARY THERESA KEATING

*

*

By an Opinion and Order of the Court of Appeals dated November 25, 2020, the following attorney has been indefinitely suspended, effective December 28, 2020:

JOHN T. RIELY

*

By a Order of the court of Appeals dated November 12, 2020, the following attorney has been indefinitely suspended by consent, effective December 31, 2020:

TIMOTHY GUY SMITH

*

JUDICIAL APPOINTMENTS

*

In the General Election held November 3, 2020, **QUINCY L. COLEMAN** defeated the Hon. John J. Kuchno in the Circuit Court for Howard County. Judge Coleman was sworn in on December 4, 2020.

*

On November 10, 2020, the Governor announced the appointment of **KEMP WALDEN HAMMOND** to the District Court – Anne Arundel County. Judge Hammond was sworn in on December 4, 2020 and fills a new judgeship created by the General Assembly.

*

In the General Election held November 3, 2020, **MAKEBA GIBBS** defeated the Hon. Patrick J. Devine in the Circuit Court for Charles County. Judge Gibbs was sworn in on December 18, 2020.

*

In the General Election held November 3, 2020, **APRIL T. ADEMILUYI** was elected to the Circuit Court for Prince George’s County. Judge Ademiluyi was sworn in on December 18, 2020 and fills a seat vacated by the resignation of the Hon. Bryon S. Bereano.

*

In the General Election held November 3, 2020, **GLADYS M. WEATHERSPOON** defeated the Hon. Jared M. McCarthy in the Circuit Court for Prince George’s County. Judge Weatherspoon was sworn in on December 18, 2020.

*

UNREPORTED OPINIONS

The full text of Court of Special Appeals unreported opinions can be found online:

<https://mdcourts.gov/appellate/unreportedopinions>

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