Amicus Curiarum

VOLUME 41
ISSUE 4 APRIL 2024

A Publication of the Office of the State Reporter

Table of Contents

THE SUPREME COURT

THE APPELLATE COURT

Return to ToC

SUPREME COURT OF MARYLAND

In the Matter of Antavis Chavis, Misc. No. 65, September Term 2022, filed December 21, 2023. Opinion by Watts, J.

Fader, C.J., Booth and Gould, JJ., dissent.

https://www.courts.state.md.us/data/opinions/coa/2023/65a22.pdf

AMERICANS WITH DISABILITIES ACT – UNIFORM BAR EXAMINATION – TEST ACCOMMODATION REQUEST

Facts:

During his last semester of law school, Antavis Chavis submitted to the State Board of Law Examiners ("SBLE") a test accommodation request form in which he asked for 50% additional time to take the Uniform Bar Examination ("the UBE"). Mr. Chavis made the test accommodation request under the Americans with Disabilities Act of 1990 ("the ADA"), 42 U.S.C. §§ 12101 to 12213, and, in doing so, disclosed that he has attention deficit hyperactivity disorder ("ADHD"). Together with his test accommodation request, Mr. Chavis provided documentation that both of the law schools that he attended had provided him with 50% additional time to take exams. Mr. Chavis also provided an "ADHD Verification Form" which had been produced by the law school from which he graduated and completed by Jeffrey Thiebaud, M.D.

In the ADHD Verification Form, Dr. Thiebaud found that Mr. Chavis met the "full [] criteria" set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition ("DSM-IV") for "ADHD[,] inattentive type[.]" In response to a question asking: "What evidence has been reviewed to indicate that ADHD symptoms cause the applicant difficulty taking tests?", Dr. Thiebaud wrote: "Personal experience and neuropsychiatric testing[.]" Dr. Thiebaud indicated that Mr. Chavis's self-reported symptoms of ADHD included "poor attention and focus[,]" taking "longer to complete tasks[,]" and often not completing "tasks due to distraction[,]" and that he was first diagnosed with ADHD at age 8. Dr. Thiebaud stated that Mr. Chavis's symptoms of ADHD were not limited to academic environments, and that he had difficulty completing tasks, and often left them undone, at work and at home. Dr. Thiebaud also noted that Mr. Chavis had taken Adderall, which is a prescription medication used to treat ADHD. Dr. Thiebaud recommended that Mr. Chavis be provided additional time to take law school exams.

SBLE referred Mr. Chavis's test accommodation request to Lawrence Lewandowski, Ph.D., a licensed psychologist who issued a report in which he opined that Mr. Chavis did "not qualify for test accommodations." Without providing a citation, Dr. Lewandowski stated that, for an applicant to qualify for a test accommodation, the circumstances must satisfy two criteria: (1) the applicant has "an evidence-based diagnosis of a mental or physical disorder from a qualified professional"; and (2) "the disorder substantially limits them in a major life activity as compared to most people." As to the first criterion, Dr. Lewandowski determined that, based on the documentation that Mr. Chavis provided, he could not confirm whether Mr. Chavis has been diagnosed with ADHD. Dr. Lewandowski also reasoned that the documentation did not address the second criterion and did not demonstrate impairment of a function required by the UBE.

Based on Dr. Lewandowski's opinions, SBLE denied Mr. Chavis's test accommodation request. Mr. Chavis noted an appeal to the Accommodations Review Committee ("the ARC"), which conducted a hearing at which Mr. Chavis and Dr. Lewandowski testified. Afterward, the ARC issued a report in which it recommended upholding SBLE's denial of Mr. Chavis's test accommodation request. Relying on the first criterion that Dr. Lewandowski identified—*i.e.*, that the applicant must "have an evidence-based diagnosis of a mental or physical disorder from a qualified professional"—the ARC determined that "there was no showing by [Mr. Chavis] of any diagnostic or any data-based evidence related to [his] assertion of ADHD." Addressing the second criterion that Dr. Lewandowski identified—*i.e.*, that "the disorder substantially limits [the applicant] in a major life activity as compared to most people"—the ARC indicated that "no objective evidence or testimony was presented by [Mr. Chavis] related to a showing of substantial limitation in any major life activity, nor how there were limitations regarding functions required on the" UBE.

Mr. Chavis filed exceptions to the ARC's recommendation. The Supreme Court of Maryland issued an order directing Mr. Chavis to show cause at a hearing why the exceptions should not be denied. At the hearing, the Supreme Court heard arguments from Mr. Chavis's counsel and SBLE's counsel.

Held:

The Supreme Court of Maryland sustained Mr. Chavis's exceptions to the ARC's recommendation, reversed SBLE's denial of Mr. Chavis's test accommodation request, and remanded to SBLE with instruction to grant Mr. Chavis's request.

The Supreme Court held that held that Mr. Chavis met the burden to prove both that he has a "disability" under the ADA and that the test accommodation that he requested—*i.e.*, 50% additional time to take the UBE—was reasonable. The Supreme Court adopted a two-step test for determining whether a bar examination test accommodation request should be granted. The first step is to determine whether the applicant meets the definition of the word "disability" under the ADA—*i.e.*, whether the applicant has "a physical or mental impairment that substantially limits one or more major life activities of such individual[.]" 42 U.S.C. § 12102(1)(A). The

second step is to determine whether the test accommodation requested by the applicant would be "reasonable, consistent with the nature and purpose of the examination and necessitated by the applicant's disability[,]" as required under Board Rule 3(a).

The Supreme Court observed that, under ADA and related federal regulations, the definition of "disability" should be broadly construed, and evidence of past test accommodations must be given considerable weight. The Supreme Court determined that the requirement under Board Rule 3(a) that a request be consistent with the nature and purpose of the UBE and necessitated by the applicant's disability does not impose an additional burden of proof exceeding the reasonableness requirement of the ADA, but rather is part of the reasonableness analysis.

The Supreme Court concluded that, in light of the ADHD Verification Form completed by Dr. Thiebaud, who found that Mr. Chavis met the criteria in the DSM-IV for "ADHD[,] inattentive type" and recommended that Mr. Chavis be provided additional time and other test accommodations as to law school exams, Mr. Chavis met the burden to prove that he had a disability under ADA and that the requested test accommodation was reasonable, necessary, and consistent with the nature and purpose of the UBE. The Supreme Court determined that the ARC, SBLE, and Dr. Lewandowski were mistaken in reasoning that the ADHD Verification Form did not establish that Mr. Chavis has an impairment that substantially limits major life activities. According to the Supreme Court, this reasoning was at odds with a straightforward application of the plain language and legislative history of the ADA to the circumstances of the case. The Supreme Court explained that such an application demonstrates that Mr. Chavis's diagnosis of ADHD under the DSM-IV cleared the low bar for establishing a disability under the ADA. The Supreme Court also concluded that the documentation that Mr. Chavis provided was more than sufficient to demonstrate that granting him 50% additional time to take the UBE would be reasonable and necessitated by his disability, and in no way inconsistent with the nature and purpose of the bar examination.

Return to ToC

In the Matter of the Petition of the Maryland Office of People's Counsel, No. 11, September Term 2023, filed February 23, 2024. Opinion by Booth, J.

https://www.mdcourts.gov/data/opinions/coa/2024/11a23.pdf

PUBLIC UTILITIES – ADMINISTRATIVE LAW – AGENCY DEFERENCE

Facts:

In 2017, AltaGas Limited ("AltaGas") and Washington Gas and Light Company ("Washington Gas") filed an application seeking authorization from the Maryland Public Service Commission ("Commission") for AltaGas to acquire Washington Gas. After an administrative proceeding ("merger administrative proceeding"), the Commission approved the merger and entered a merger order with a list of conditions that the companies would be required to satisfy as part of their merged operations. One condition in the Commission's merger order required that Washington Gas customer rates reflect "merger-related savings" of "not less than $800,000 per year over the five years" following the merger's closing.

In 2020, Washington Gas filed an application with the Commission seeking to increase its base rates ("rate administrative proceeding"). The Office of People's Counsel ("OPC") objected to the rate increase. The Commission delegated the matter to a public utility law judge ("PULJ").

One of the contested issues in the rate administrative proceeding concerned the manner in which "merger-related savings" were to be computed under the Commission's merger order in subsequent applications for rate increases. OPC asserted that under the conditions in the merger order, Washington Gas was required to compute "merger related savings" by subtracting $800,000 from its actual pre-merger costs. Under Washington Gas's interpretation, "merger-related savings" could be demonstrated by establishing that Washington Gas's post-merger costs were $800,000 less than they would have been but for the merger.

After considering voluminous testimony and exhibits from numerous witnesses, the PULJ issued a proposed order approving the rate increase, but at a rate lower than Washington Gas requested.

OPC appealed the PULJ's decision to the Commission on several grounds, one of which involved the interpretation of the conditions in the Commission's merger order. The Commission affirmed the PULJ's decision. As relevant here, the Commission interpreted the conditions in its merger order to permit Washington Gas to demonstrate "merger-related savings" by establishing that its post-merger costs were $800,000 per year less than they would have been but for the merger and rejected OPC's interpretation. The Commission approved the rate increase as recommended by the PULJ. OPC filed a petition for rehearing which the Commission denied.

OPC filed a petition for judicial review in the Circuit Court for Baltimore City, and the circuit court affirmed the Commission's decision. Thereafter, OPC appealed to the Appellate Court of Maryland, which affirmed the circuit court's judgment. The Supreme Court of Maryland granted OPC's petition for writ of *certiorari*, to consider the following questions:

> 1. When undertaking judicial review of a Commission's decision approving a public service company's application for a rate increase, does a reviewing court apply an arbitrary or capricious standard of review to the Commission's interpretation of its own prior order approving the acquisition of the public service company?
>
> 2. In connection with its approval of a public service company's application for a rate increase, was the Commission's interpretation of its own prior order arbitrary or capricious?

Held: Affirmed.

The Supreme Court answered "yes" to the first question and "no" to the second question. The Court held that the "arbitrary or capricious" standard of review applies when a reviewing court is asked to consider an administrative agency's interpretation of its own prior decision or order that it entered in connection with an administrative proceeding in which it was required to apply its technical expertise and discretion. The Court explained that the General Assembly has enacted a highly deferential standard of review of Commission decisions. Md. Code Ann. Public Utilities Article ("PU") § 3-203. Namely, Commission decisions are "prima facie correct" and shall be affirmed unless "clearly shown[,]" among other things, to be affected by an "error of law." PU § 3-203(5). The Court explained that under general principles of administrative law, the Court has previously identified four different kinds of errors of law: (1) whether the agency's decision was constitutional; (2) whether the agency had jurisdiction to consider the matter; (3) whether the agency correctly interpreted and applied applicable case law; and (4) whether the agency correctly interpreted an applicable statute or regulation. While errors of law falling into the first three categories are reviewed *de novo*, the Court occasionally applies agency deference when reviewing errors of law related to the fourth category.

With respect to an agency's interpretation of a statute that it administers, the Court applies a "sliding-scale approach" in which the weight that we may give to an agency's interpretation depends on a number of factors. The Court gives more weight when the interpretation resulted from a process of reasoned elaboration by the agency, when the agency has applied that interpretation consistently over time, or when the interpretation is the product of contested adversarial proceedings or formal rule making. When the "error of law" involves an administrative agency's interpretation of its own rule or regulation, the Court has explained that even more deference is in order. Because an agency is best able to discern its intent in promulgating a regulation, the agency's expertise is more pertinent to the interpretation of an agency's rule than to the interpretation of its governing statute.

The Court recognized a fifth category of "errors of law" in the administrative law context—judicial review of an agency's interpretation of its own decision or order that it enters in connection with an administrative proceeding in which it is required to apply its technical expertise and discretion. The Court held that where the allegation of an "error of law" involves the interpretation of the Commission's own merger order under the circumstances presented here, it falls on the outermost deference spectrum, thereby commanding a more deferential review under the "arbitrary or capricious" standard. The Court explained that the Commission is best able to discern its intent behind the conditions that it imposed in the exercise of its discretionary authority to impose merger conditions, as well as when applying those conditions in a subsequent rate case involving the same public service company. The Court noted that such a standard is consistent with the highly deferential standard required by PU § 2-203 and with the Court's case law applying agency deference principles involving an agency's interpretation of its own regulations.

Turning to the parties' competing interpretation of the language in the Commission's merger order, the Court held that the Commission's interpretation of its own prior order was not arbitrary or capricious. The Court explained that the Commission correctly observed that there was no language in the conditions to suggest that the Commission intended that Washington Gas be required to compute "merger-related savings" by subtracting $800,000 from its pre-merger costs. Moreover, the Court observed that the Commission's explanation of its interpretation of the conditions that it articulated in the rate administrative proceeding was consistent with its analysis and consideration of those conditions in the merger administrative proceeding. Under the circumstances, the Commission's interpretation of its own prior order was reasonable and was not arbitrary or capricious.

Return to ToC

In the Matter of SmartEnergy Holdings, LLC D/B/A SmartEnergy, No. 1, September Term 2023, filed February 22, 2024. Opinion by Booth, J.

Gould, J. concurs and dissents.

Motion for reconsideration, filed March 25,2024, is pending before the Court.

https://www.mdcourts.gov/data/opinions/coa/2024/1a23.pdf

PUBLIC UTILITIES – ADMINISTRATIVE LAW – THE ELECTRIC CUSTOMER CHOICE ACT OF 1999 – THE MARYLAND TELEPHONE SOLICITATIONS ACT

Facts:

The Maryland Electric Customer Choice and Competition Act of 1999, Md. Code Ann., Public Utilities Article ("PU") § 7-501 (the "Choice Act") confers significant regulatory oversight to the Public Service Commission ("Commission") to ensure that electricity suppliers who sell electricity in Maryland comply with applicable laws designed to protect consumers, including the State's consumer protection laws. The Maryland Telephone Solicitations Act ("MTSA"), codified at Title 14, Subtitle 22 of the Commercial Law Article ("CL") is a consumer protection statute that applies to contracts arising from a "telephone solicitation." The MTSA defines "telephone solicitation" as "the attempt by a merchant to sell or lease consumer goods, services, or realty to a consumer located in this State that is: (1) Made entirely by telephone; and (2) Initiated by the merchant." If a contract for the sale of consumer goods, consumer services, or consumer realty is made pursuant to a "telephone solicitation," it "is not valid and enforceable against a consumer" unless it complies with the provisions of the MTSA, which include that a written contract be provided to the consumer.

SmartEnergy Holdings, LLC ("SmartEnergy") is a retail electricity supplier that obtained a license from the Commission to sell electricity in Maryland in 2017. From February 2017 through May 2019, SmartEnergy mailed six million postcards to Marylanders advertising its services. The postcards, which informed consumers that they were "eligible" for a "free month of electricity" and a six-month guaranteed rate protection plan, provided a toll-free number inviting prospective customers to call to learn more about the offer. Among other things, the postcards made multiple references to the consumer's existing utility company. During this time period, SmartEnergy received approximately 104,000 calls from prospective customers who received the postcards, of which approximately 32,000 callers enrolled as customers with SmartEnergy. When SmartEnergy received a call from a prospective customer, its agents were required to follow a script. SmartEnergy did not provide written contracts or contract summaries to those customers who enrolled.

After numerous consumer complaints, Commission Staff filed a complaint against SmartEnergy, alleging violations of various provisions of Maryland law governing retail electricity suppliers.

The Commission delegated the case to a public utility law judge ("PULJ"), who issued findings of fact and a proposed order. The PULJ found that SmartEnergy engaged in deceptive, misleading, and unfair trade practices, and a pattern or practice of systematic violations of the Choice Act and the Commission's regulations.

On appeal, the Commission affirmed the factual findings of the PULJ and determined that the MTSA applied to SmartEnergy's marketing and sales practices. The Commission found that SmartEnergy violated the MTSA. As a result of these violations, the Commission: (1) imposed a moratorium prohibiting SmartEnergy from enrolling or soliciting additional customers in Maryland and (2) directed SmartEnergy to take certain actions, including returning all of its Maryland customers to their utility's standard offer service, and refunding to its former and existing customers the price difference between SmartEnergy's electricity rate and the utility's standard offer service during the period of the customer's enrollment.

SmartEnergy filed a petition for judicial review in the Circuit Court for Montgomery County, and the circuit court affirmed the Commission's decision. Thereafter, SmartEnergy appealed to the Appellate Court of Maryland, which affirmed the circuit court's judgment. The Supreme Court of Maryland granted SmartEnergy's petition for writ of *certiorari* to answer the following questions:

> 1. Did the Appellate Court err in finding that the Commission has jurisdiction to interpret and enforce the MTSA?
>
> 2. Did the Commission err in determining that the MTSA applied to SmartEnergy's electricity marketing and sales practices?
>
> 3. Was the Commission's decision, affirming the PULJ's findings that SmartEnergy's business practices violated the Choice Act, the MCPA, and the Commission's additional findings that SmartEnergy's business practices violated the MTSA, supported by substantial evidence in the record as a whole?
>
> 4. Were the Commission's remedies imposed upon SmartEnergy resulting from the violation of Maryland's consumer protection laws arbitrary or capricious?

Held: Affirmed.

The Supreme Court of Maryland held that under the plain language of the Choice Act, the General Assembly granted the Commission the express authority to determine whether electricity suppliers under its jurisdiction have violated Maryland's consumer protection laws, including the MTSA, and to impose statutory remedies and civil penalties when it determines that the supplier has violated any applicable consumer protection laws of this State.

Return to ToC

The Supreme Court held that the Commission correctly concluded that the MTSA applied to SmartEnergy's marketing and sales practices that are the subject of this proceeding. After examining the statutory text, statutory scheme, the legislative purpose and legislative history, and the consequences of SmartEnergy's alternative interpretation, the Supreme Court held that the MTSA applies to sales made over the telephone where the consumer places the telephone call to the merchant in response to a merchant's marketing materials unless the transaction falls within one of the statutory exemptions outlined in CL § 14-2202.

The Supreme Court held that the Commission's affirmance of the PULJ's findings of fact that SmartEnergy's business practices violated the Choice Act and the Commission's regulations, and its additional findings of fact that SmartEnergy's business practices violated the MTSA were supported by substantial evidence in the record.

Finally, the Court held that the remedies imposed by the Commission in its final order arising from SmartEnergy's violation of Maryland laws were within its discretion and were not arbitrary or capricious.

Return to ToC

Westminster Management, LLC, et al. v. Tenae Smith, et al., No. 4, September Term 2023, filed March 25, 2024. Opinion by Fader, C.J.

Gould and Harrell, JJ., concur and dissent.

https://www.mdcourts.gov/data/opinions/coa/2024/4a23.pdf

LANDLORD-TENANT LAW – RESIDENTIAL LEASES – REAL PROPERTY § 8-401 – MEANING OF RENT

LANDLORD-TENANT LAW – RESIDENTIAL LEASES – REAL PROPERTY §§ 8-208(d)(2) AND 8-401 – PAYMENT ALLOCATION CLAUSES

LANDLORD-TENANT LAW – RESIDENTIAL LEASES – REAL PROPERTY § 8-208(d)(3)(i) – LATE FEES

CIVIL PROCEDURE – CLASS ACTIONS – MD. RULE 2-231 – SUBSEQUENT MOTIONS FOR CLASS CERTIFICATION

Facts:

The petitioners, Westminster Management, LLC, and its predecessor, JK2 Westminster, LLC, managed several multi-unit residential properties in Maryland. Westminster offered its tenants a form lease, on a take-it-or-leave-it basis, which included provisions (1) defining all charges owed by tenants to Westminster, including costs of collection, as "rent"; (2) charging tenants a 5% late fee upon nonpayment of rent in addition to costs of collection such as agent fees and court costs; and (3) allowing Westminster to allocate any and all tenant payments first to charges other than base monthly rent before applying the payment to base monthly rent.

When its tenants failed to timely pay rent, Westminster charged delinquent tenants the 5% late fee, filed a summary ejectment action against them, and charged tenants the fees Westminster paid to an agent to file such actions and court costs. When some tenants were late on their rent, Westminster sent notices threatening eviction if the tenants did not pay "rent" and included charges other than monthly rent in the amount due. If Westminster proceeded further toward eviction in the summary ejectment process, it charged tenants other related court costs and, in some cases, overcharged tenants for those costs and charged a fee for agent services it did not incur. Westminster refunded the excessive fees, without interest, to current tenants, but not to former tenants.

Five former tenants at four Westminster properties filed a putative class action in the Circuit Court for Baltimore City alleging, among other counts, that Westminster's practices violated both Real Property § 8-208(d)(3)(i), which prohibits provisions in residential leases imposing penalties for late payment of rent in excess of 5% of the rent due, and Real Property § 8-

208(d)(2), which prohibits provisions in residential leases that require tenants to waive rights provided by law. In addition to denying the tenants' two motions for class certification, the trial court granted summary judgment for Westminster. The tenants appealed. The Appellate Court of Maryland reversed, holding in relevant part that the tenants presented viable claims under the Real Property statutes. The Appellate Court also held that the tenants should be permitted to file a new motion for class certification on remand.

Held: Affirmed.

The Court first addressed the meaning of "rent" as used in the summary ejectment statute, Real Property §8-401, in the residential context. The Court reviewed prior caselaw interpreting that statute in the commercial context and determined the cases did not control the interpretation of "rent" in the residential context. Next, the Court applied principles of statutory interpretation, analyzing the plain meaning of "rent," and the context and apparent statutory purpose of the summary ejectment statute. The Court concluded that "rent," as used in the statute and applied to residential leases, means the fixed, periodic payments a tenant owes for use or occupancy of a rented premises regardless of how it is defined in a lease.

Next, the Court considered the lease provision allowing Westminster to allocate tenants' rent payments to charges other than rent. The Court observed that the clause allowed Westminster to apply "rent" payments to other charges and then claim that "rent" was unpaid and pursue summary ejectment, even though tenants have a right to face summary ejectment only if they fail to pay rent as the Court defined it. The Court concluded the allocation clause in Westminster's leases violated Real Property § 8-208(d)(2) by requiring tenants to waive that right.

The Court then addressed Westminster's lease provision requiring delinquent tenants to pay, in addition to a 5% late fee, summary ejectment court costs and agent fees. The Court analyzed the plain meaning of "penalty," used in Real Property § 8-208(d)(3)(i), as well as "fees," used in the summary ejectment statute to connote the same late charges. Finding ambiguity, the Court turned to legislative history and found evidence that the legislature intended the 5% penalty to be inclusive of any hard costs of rent collection. Thus, the Court held that charging tenants fees conditioned on late payment of rent above 5% of the rent due violated the law.

The Court also held that, after a prior ruling on a motion for class certification, courts should consider a subsequent class certification motion on the merits if there has been a material change in circumstances. The Court determined that the tenants' second motion for class certification represented such a change. The Court thus held that the circuit erred in refusing to consider the second certification motion on its merits and must do so on remand. Lastly, the Court held that, by not meaningfully arguing it to the Appellate Court, the tenants failed to preserve their contention that the circuit court erred by denying their motion for summary judgment.

Return to ToC

APPELLATE COURT OF MARYLAND

In the Matter of AutoFlex Fleet, Inc., No. 539, September Term 2022, filed March 5, 2024. Opinion by Zic, J.

Motion for reconsideration, filed April 4,2024, is pending before the Court.

https://www.mdcourts.gov/data/opinions/cosa/2024/0539s22.pdf

JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS – JUDICIAL NOTICE OF ADJUDICATIVE FACTS BY THE CIRCUIT COURT

JUDICIAL REVIEW – REMAND – MARYLAND STATE BOARD OF EDUCATION PROCUREMENT CONTRACT

Facts:

On August 31, 2020 Montgomery County Public Schools ("MCPS") requested proposals from "companies who have the experience, capability, equipment and services necessary to provide a turnkey budget neutral school bus electrification program for . . . the diesel school bus fleet" by October 6, 2020. Appellant, AutoFlex Fleet, Inc., submitted a proposal for consideration by MCPS. At the end of the procurement proceedings, MCPS awarded the contract to Highland Electric Trucking ("HET"), an entity affiliated with MCPS's existing diesel bus vendor.

Both the Montgomery County Board of Education (the "Local Board") and the Maryland State Board of Education (the "MSBE") affirmed the contract. AutoFlex petitioned for judicial review in the Circuit Court for Montgomery County alleging MCPS showed favoritism throughout the procurement proceedings based on selecting HET as the winning bidder, MCPS's rejection of qualified alternative bus models, MCPS's determination that AutoFlex's pricing was not competitive, and MCPS's admitted error in omitting AutoFlex's status as a minority contractor. After AutoFlex petitioned for judicial review, MCPS publicly announced that the Director and Assistant Director of MCPS's Department of Transportation, who managed the procurement proceedings and evaluated all of the proposals, had been suspended pending referrals for criminal investigation of financial improprieties. AutoFlex asked the circuit court to take judicial notice of the news articles due to the appearance of impropriety arising from the suspensions and criminal investigation. The circuit court denied the request for judicial notice and affirmed the decision to award the contract to HET.

AutoFlex appealed to this Court, and while this appeal was pending, the suspensions and investigation into the Director and Assistant Director ripened into guilty pleas to criminal charges arising from a theft scheme where the two employees deliberately violated MCPS protocols. AutoFlex again filed a request for judicial notice of the subsequent guilty pleas and the State's written proffer in support of the Assistant Director's plea agreement. The proffer explains in detail the guilty pleas for a felony theft scheme and misdemeanor misconduct in office. Soon thereafter, the Director also pleaded guilty, and his written proffer also details his misdemeanor misconduct in office and theft scheme.

Held: Vacated and remanded.

Vacated and remanded to the Circuit Court for Montgomery County with instructions to remand to the Maryland State Board of Education to remand to the Montgomery County Board of Education for further proceedings

We first address AutoFlex's judicial notice contentions, concluding that the circuit court should have taken judicial notice of the suspensions and investigation as requested by AutoFlex. Under Md. Rule 5-201, judicial notice is mandatory when a requesting party supplies the court with "the necessary information," and here, AutoFlex provided the court with the relevant information. Accordingly, this Court holds that a court reviewing an administrative decision does not abuse its discretion in taking judicial notice, then remanding, when the adjudicative facts concern events that occurred after the agency issued its decision. We then exercise our discretion and take judicial notice of the subsequent guilty pleas, proffers, and convictions as undisputed adjudicated facts with *prima facie* relevance to the instant case.

We remand to the MSBE with instructions to remand to the Local Board for administrative review because the judicially noted evidence bears on the core credibility and factual disputes central to AutoFlex's challenges to the HET contract and could impact a factfinder's view of AutoFlex's claims that MCPS showed favoritism, made material mistakes in evaluating proposals, and that there is an appearance of impropriety. The Local Board and the MSBE shall consider how these two officials impacted MCPS's award of the contract to HET.

Return to ToC

Corey Hannah v. State of Maryland, No. 1500, September Term 2022, filed March 1, 2024. Opinion by Wells, C.J.

https://www.mdcourts.gov/data/opinions/cosa/2024/1500s22.pdf

ANIMALS – INJURING OR KILLING ANIMALS IN GENERAL – CRIMINAL RESPONSIBILITY

STATUTES – CONSTRUCTION – OTHER LAW, CONSTRUCTION WITH REFERENCE TO – OTHER STATUTES – CONSTRUING TOGETHER; HARMONY

Facts:

Baltimore County police officers and Baltimore County Animal Services Department staff conducted a search of appellant Corey Hannah's property, seizing twenty-six dogs, animal medications and growth supplements, magazines and books on dog breeding, a hanging scale, and syringes. A grand jury issued an indictment charging Hannah with four counts of Aggravated Cruelty to Animal, CR § 10 606, in its torture modality, against four pit bull terriers. Hannah was also charged with sixteen counts of Abuse or Neglect of Animal, CR § 10 604, for failure to provide nutritious food in sufficient quantity, necessary veterinary care, proper drink, and proper space for each of the four dogs, and an additional count for failure to provide nutritious food in sufficient quantity to a fifth dog.

At trial, Animal Services and law enforcement officers who conducted the search of Hannah's property testified that several of the dogs had been kept chained outdoors in mixed mud and feces without access to potable water. Animal Services veterinarians testified that the dogs exhibited scarring and serious untreated medical conditions, opining that the conditions caused the dogs pain and suffering. A jury sitting in the Circuit Court for Baltimore County convicted Hannah of four felony counts of aggravated cruelty to animals and thirteen counts of abuse or neglect of animals.

Hannah appealed his convictions of aggravated cruelty to animals. He contended that the State's evidence proved nothing more than neglect of the dogs, which is insufficient to support a conviction for animal torture under CR § 10-604. Hannah argued that the legislature intended that conviction of the offense requires some showing of an intentional act of torture, not merely an omission or neglect. He also argued that CR § 10-604 requires a showing of specific intent to torture an animal, as opposed to a general intent to do some act which results in torture.

Held: Affirmed.

Evidence of animal abuse and neglect that would support conviction under CR § 10-604 may also support conviction for torture of an animal under CR § 10-606. First, conviction under CR § 10-604 does not prevent the defendant being convicted under CR § 10-606. Nothing in the plain text of the statutes, nor by the application of relevant canons of construction, evinces the legislature's intent that a defendant cannot be convicted of both offenses for the same conduct.

Second, common-sensical understanding of the word "torture" could include causing a dog suffering by intentionally omitting to provide proper food, water, shelter, and veterinary care. "Torture" is an undefined term in the text of CR § 10-606, and the meaning of words for which the legislature has not explicitly provided a definition is determined by applying the language's natural and ordinary meaning, the express and implied purpose of the statute, and basic principles of common sense. An act, omission, or neglect that causes or permits unnecessary or unjustifiable physical pain or suffering to an animal constitutes conduct satisfies the natural and ordinary definition of "torture" for the purpose of the aggravated animal abuse statute.

Here, the State presented sufficient evidence that Hannah's intentional conduct caused pain and suffering to his dogs, thus supporting conviction under CR § 10-606. Hannah acknowledged ownership of the animals, thus the jury could have rationally inferred that he was responsible for the dogs' care and the manner in which they were kept. Having accepted that, the jury could have rationally found that Hannah's failure to feed, water, shelter, or seek veterinary care for the dogs—or conscious decisions to not provide these for the dogs—caused their pain and suffering. Drawing all permissible inferences in the light most favorable to the State, a rational factfinder could have concluded beyond a reasonable doubt that the dogs' pain and suffering causally flowed from Hannah's conduct.

Further, there is nothing in the text or legislative history of CR § 10-606 to suggest that the legislature intended to impose a specific intent requirement. The State was therefore not required to prove that Hannah had the deliberate and conscious purpose of causing the dogs pain and suffering. The jury could have found, based upon the veterinarians' evidence, that the dogs each suffered from longstanding medical conditions. It could have rationally inferred from the evidence presented that he was aware that the dogs required veterinary care. It could have thus inferred that Hannah intentionally chose not to secure veterinary attention for his dogs, and thereby found beyond a reasonable doubt that he possessed the requisite intent.

Return to ToC

Levar Montez Brown v. State of Maryland, No. 2103, September Term 2022, filed March 1, 2024. Opinion by Graeff, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/2103s22.pdf

ARREST – SEARCHES AND SEIZURES

Facts:

Anne Arundel County Police initiated a routine traffic stop of Levar Brown, appellant, for a minor traffic infraction. After parking his vehicle, appellant fled on foot and was pursued and apprehended. Officers arrested appellant for driving under the influence ("DUI") based on appellant's statements, his flight, and the odor of alcohol emanating from his breath.

Incident to appellant's arrest, officers initiated a search of appellant's vehicle pursuant to *Arizona v. Gant*, 556 U.S. 332 (2009). During the search, police found a loaded handgun and crack cocaine. Appellant filed a motion to suppress, it was denied, and he entered a conditional plea of guilty on the charge of possession with intent to distribute. The State entered a *nolle prosequi* on each of the remaining charges.

Held: Affirmed.

The police had probable cause to arrest the defendant for DUI based on the officer's smell of the odor of alcohol, defendant's admission to drinking a large amount of an alcoholic beverage, and defendant's flight from police.

The police properly conducted a search of appellant's vehicle incident to arrest. The officer had a reasonable belief that evidence of DUI might be found in the vehicle based on appellant's flight after the traffic stop and the smell of alcohol on appellant, who admitted that he had consumed a half pint of D'ussé alcohol. Given these circumstances, the officer could reasonably believe that the remainder of the pint was inside the vehicle.

Return to ToC

In Re: J.B., Nos. 107 and 2168, September Term 2023, filed March 28, 2024. Opinion by Beachley, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0107s23.pdf

STATUTORY INTERPRETATION – PLAIN LANGUAGE – EXCLUSIVE ORIGINAL JURISDICTION

Facts:

In the Circuit Court for Harford County, sitting as a juvenile court, twelve-year-old J.B. (appellant) was charged with first- and second-degree assault. Pursuant to a plea agreement, J.B. admitted to "involvement" to second-degree assault, and the State nol prossed the first-degree assault charge. J.B. immediately moved to dismiss the juvenile petition for lack of jurisdiction, arguing that recent changes in Maryland's juvenile justice laws meant that the juvenile court lacked jurisdiction to adjudicate the second-degree assault charge. After the presiding magistrate agreed and recommended dismissal of the juvenile petition, the State filed exceptions.

At the exceptions hearing, the State argued that under CJP § 3-8A-03(a), the court retained jurisdiction over the second-degree assault charge because it arose out of the same incident as the crime of violence (first-degree assault) that initially brought the case within the juvenile court's jurisdiction. J.B. argued that the Juvenile Justice Restoration Act established, for the first time, minimum ages of jurisdiction for the juvenile court and that, because twelve-year-old J.B. could not be independently charged with second-degree assault under the new law, the court was divested of jurisdiction after the crime of violence was nol prossed. The circuit court granted the State's exceptions and remanded the case to the magistrate for disposition. J.B. then appealed.

Held: Affirmed.

Applying CJP § 3-8A-03(a)'s plain language, the Appellate Court of Maryland held that the juvenile court did not lose jurisdiction to adjudicate the second-degree assault charge after the State entered a *nolle prosequi* to first-degree assault. CJP § 3-8A-03(a)(1)(ii)(1) clearly granted the juvenile court exclusive original jurisdiction over first-degree assault, "a crime of violence as defined in § 14-101 of the Criminal Law Article." Likewise, subsection (a)(1)(ii)(2) expressly provided the juvenile court with jurisdiction to adjudicate the second-degree assault charge because that alleged act arose "out of the same incident" as the first-degree assault. Consistent with *Gray v. State*, 6 Md. App. 677 (1969), the Legislature did not intend to "oust" the juvenile court of jurisdiction where a juvenile accepts a plea to a lesser-included offense.

Return to ToC

Martique Vanderpool v. State of Maryland, No. 47, September Term 2023, filed March 27, 2024. Opinion by Ripken, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0047s23.pdf

CRIMINAL LAW – SEXUAL CONTACT WITH LAW ENFORCEMENT OFFICERS – CUSTODY

CRIMINAL LAW – SUFFICIENCY OF THE EVIDENCE

Facts:

In September of 2019, Police Officers Martique Vanderpool and Phillip Dupree conducted a traffic stop for a speeding vehicle. Vanderpool approached the vehicle and informed the driver, K.T., of the reason for the traffic stop and requested that K.T. provide her driver's license and the registration for the vehicle. K.T. explained to Vanderpool that she did not have a driver's license. Vanderpool then walked away from the vehicle and spoke with Officer Dupree after which he returned to the car and ordered K.T. to exit the vehicle. While conducting a search of the vehicle, Vanderpool located condoms and began asking K.T. questions sexual in nature. As a result of the questions, K.T. began pacing and was subsequently restrained and placed in handcuffs.

Vanderpool informed K.T. that the vehicle would be impounded because she did not have a driver's license. The vehicle was then towed from the location. Vanderpool and Officer Dupree transported K.T. in a police car to the police station. For the duration of the drive to the police station K.T. remained handcuffed.

Upon arrival at the police station, K.T. was seated in a chair and continued to remain handcuffed, while Vanderpool sat behind a desk. K.T. testified that she and Vanderpool began a conversation regarding how she would be able to get her car back. During the conversation, the topic of sexual activity was raised. Additionally, K.T. asked to use her phone or the office phone, but both requests were denied by Vanderpool. After which, Vanderpool suggested the two of them have sexual intercourse. K.T. testified that she did not think Vanderpool was serious until Officer Dupree asked if she was going to do as Vanderpool suggested.

Vanderpool left the room and when he returned, he asked K.T. if she had thought about his suggestion. K.T. testified that she felt like she could either "go to jail or have sex." At this point, K.T. agreed and Vanderpool removed his police belt before lowering his uniform pants and undergarments. Vanderpool proceeded to have sexual intercourse with K.T. After the sexual intercourse, K.T. was served with criminal and traffic citations, which were written by Vanderpool. Both officers and K.T. returned to the police cruiser and K.T. was taken to retrieve her vehicle from the tow lot. Without having paid, the vehicle was released to K.T. at the request of Vanderpool.

Vanderpool was subsequently indicted for multiple offenses, including law enforcement officer engaging in a sex act with a person in custody. The jury acquitted Vanderpool of all other offenses and convicted him of the offense law enforcement officer engaging in a sex act with a person in custody.

On appeal, Vanderpool alleges that the evidence was insufficient to find that K.T. was in his custody during the sexual intercourse, thus there was insufficient evidence to convict him of the offense. Vanderpool also challenged the trial court's ruling that prohibited two questions during cross-examination related to the potential lawsuit filed by K.T. as well as the trial court's denial of a motion to dismiss based on alleged *Brady* and discovery violations.

Held: Affirmed.

Maryland Criminal Law, section 3-314(e)(1)(iii), prohibits a law enforcement officer from engaging in "sexual contact, vaginal intercourse, or a sexual act with a person . . . in the custody of the police officer." CR § 3-314(e)(1)(iii). The Appellate Court held that an individual is in the custody of the law enforcement officer for the purposes of this statute when a reasonable person would have felt he or she was not free to terminate the encounter and leave or was formally arrested.

The Appellate Court concluded that the term custody was ambiguous due to multiple interpretations of the term custody used throughout Maryland criminal law. Thus, the Appellate Court conducted statutory interpretation with a particular focus on the legislative history of the statute, including an examination of the purpose of the statute and the meaning of custody.

Applying the meaning of custody within CR section 3-314(e) to the facts at issue, the Appellate Court concluded that a rational trier of fact could have found beyond a reasonable doubt that K.T. was in the custody of Vanderpool during the sexual intercourse. The Appellate Court cited multiple facts in the record that support its conclusion, including a voice message Vanderpool shared with an acquaintance wherein Vanderpool admitted that K.T. was in custody during the sexual intercourse.

The Appellate Court concluded that Vanderpool did not preserve the exclusion of two questions regarding the potential civil lawsuit filed by K.T. Even so, the court did not abuse its discretion when precluding the questions because the court had already permitted the threshold level of inquiry into the subject.

Nor did the Appellate Court conclude that the trial court abused its discretion when it denied Vanderpool's motion to dismiss. The trial court exercised its discretion to address and remedy each incident as it was raised in the court. Thus, the trial court did not abuse its discretion when it denied the motion to dismiss, a sanction used in rare circumstances.

Return to ToC

In re: Z.A., K.P., No. 949, September Term 2023, filed March 28, 2024. Opinion by Wells, C.J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0949s23.pdf

CONSTITUTIONAL LAW – SEPARATION OF POWERS – JUDICIAL POWERS AND FUNCTIONS – ENCROACHMENT ON EXECUTIVE – POWERS, DUTIES, AND ACTS UNDER LEGISLATIVE AUTHORITY – JUDICIAL EXERCISE OF STATUTORY AUTHORITY AS ENCROACHING ON EXECUTIVE

INFANTS – DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED – JUDGMENT, ORDER, AND DISPOSITION – AMENDMENT, EXTENSION, OR MODIFICATION; PERIODIC REVIEW – AUTHORITY AND DISCRETION IN GENERAL

INFANTS – DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED – JUDGMENT, ORDER, AND DISPOSITION – AMENDMENT, EXTENSION, OR MODIFICATION; PERIODIC REVIEW – NEEDS, INTEREST, AND WELFARE OF CHILD IN GENERAL

Facts:

This appeal concerns an order facilitating Mother's in-person visitation with her two minor children pursuant to the juvenile court's Child In Need of Assistance ("CINA") permanency plan of reunification with Mother. On February 22, 2023, the Circuit Court for Montgomery County, sitting as a juvenile court, directed the Montgomery County Department of Health and Human Services (the "Department") to provide Mother with monthly in-person visitation with minor children Z.A. and K.P. in North Carolina. At a permanency planning review hearing held on June 9, 2023, the juvenile court further ordered the Department to pay for Amtrak train tickets and hotel accommodations for Mother's visitation.

The Department appealed, presenting the question of whether the juvenile court exceeded its authority and erred as a matter of law by ordering the Department to make specific expenditures.

Held: Affirmed, in part, vacated in part.

A juvenile court may order an executive agency to bear expenses where the legislature authorizes the court to do so by statute, notwithstanding the executive's discretion to allocate its budget. First, there is not a general, free-standing limitation in Maryland law barring juvenile court from ordering the executive to spend sums of money. Rather, statutory law sets the boundaries of the juvenile court's authority, and the proper question upon review is whether the court's order

directing a local department to pay money falls within that statutory authority. Second, a juvenile court does not violate separation of powers principles under the Maryland Declaration of Rights by ordering a local department to spend sums of money, though it may do so where it exceeds its statutory authority.

Under the statutory scheme relevant here, a juvenile court has the discretion to order a local department to expend sums of money in connection with CINA permanency planning, where the order is in the best interest of the minor child. Maryland Code, Courts & Judicial Proceedings Article ("CJP") § 3-803(b)(1)(i) grants juvenile courts jurisdiction over "[c]ustody, visitation, support, and paternity of a child whom the court finds to be a CINA." CJP § 3-802(c)(1) provides that the juvenile court "may direct the local department to provide services to a child, the child's family, or the child's caregiver to the extent that the local department is authorized under State law" in CINA proceedings. CJP § 3 823 provides that the court shall "determine the child's permanency plan," "take necessary measures to protect the child," and "[c]hange the permanency plan if a change in the permanency plan would be in the child's best interest[.]" Taken together, these provisions grant the juvenile court discretion to order a local department to provide services to support the court's permanency plan—including services that require it to spend sums of money—where in best interest of the minor child.

Here, the juvenile court acted within its statutory authority and did not abuse its discretion when it ordered the Department to pay Mother's travel expenses, as there was nothing manifestly unreasonable or untenable in that order. However, the juvenile court abused its discretion in specifying that the Department provide a *particular type* of transportation and accommodation in its order. Nothing in the record before the juvenile court suggested that the child's best interests required that Mother's visits specifically be by Amtrak, or that she stay in a hotel. Therefore, while the juvenile court acted within its discretion in ordering the Department to facilitate Mother's visitation, it abused its discretion by imposing specific requirements for how the visitation was to occur.

Return to ToC

In the Matter of the Petition of Featherfall Restoration LLC, No. 1313, September Term 2022, filed March 7, 2024. Opinion by Getty, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/1313s22.pdf

INSURANCE – INSURANCE POLICIES – ANTI-ASSIGNMENT CLAUSES

INSURANCE – STANDING – HEARING BEFORE INSURANCE COMMISSIONER

INSURANCE – STANDING – UNFAIR CLAIM SETTLEMENT PRACTICES COMPLAINTS

INSURANCE – UNFAIR CLAIM SETTLEMENTS PRACTICES VIOLATIONS

Facts:

Insured homeowners contacted Travelers Home and Marine Insurance Company ("Travelers"), their insurer, after they noticed damage to their roof. Travelers created an associated claim under the home's insurance policy. On the same day they contacted Travelers, the homeowners signed an "Assignment of Claim" with Featherfall Restoration LLC ("Featherfall"), a contractor, that purported to assign to Featherfall all rights and benefits associated with the claim in exchange for Featherfall conducting any necessary repairs. Featherfall was present when the Travelers claims adjuster visited the home. Travelers timely denied the claim, concluding that the damage resulted from normal wear and tear and therefore was not covered by the policy.

Featherfall then alerted Travelers to its purported assignment. Travelers refused to acknowledge the validity of the assignment, relying on the policy's anti-assignment clause, and would not communicate with Featherfall about the details of the claim. Featherfall filed a complaint with the Maryland Insurance Administration, claiming that Travelers had violated the Insurance Article of the Maryland Code by engaging in unfair claim settlement practices. After a hearing, the Insurance Commissioner dismissed the claim, finding that Featherfall lacked standing to request a hearing because the assignment was not valid. The Commissioner also found that Travelers had not violated the Insurance Article. Featherfall appealed to the Circuit Court for Baltimore City, which affirmed the Commissioner's order.

Held: Affirmed.

The Appellate Court of Maryland affirmed, holding that Maryland law enforces anti-assignment clauses in insurance policies and does not distinguish between pre- and post-loss assignments. This holding relies on *Clay v. Government Employees Insurance Co.*, 356 Md. 257 (1999), which is the most recent Maryland decision to discuss post-loss assignments and concluded that the anti-assignment clause in the subject insurance policy prohibited a post-loss assignment of

benefits. Further, the Appellate Court discussed the Restatement (Second) of Contracts and declined to adopt Section 322, as urged by Featherfall, because it is contrary to Maryland law.

Because the purported assignment was invalid due to the insurance policy's anti-assignment clause, Featherfall lacked standing to request a hearing before the Insurance Commissioner and to bring a complaint against Travelers for alleged unfair claim settlement practices. To request a hearing, a party must be an "aggrieved party" with a personal, pecuniary, or property interest different from the general public that is adversely affected by the Maryland Insurance Administration's decision. Without a valid assignment, Featherfall had no property interest different from the public. Featherfall also lacked standing to bring a complaint for unfair claim settlement practices. Section 27-301(a) of the Insurance Article of the Maryland Code (2011, 2021 Repl. Vol.) states that the intent of the subtitle on unfair claim settlement practices is "to provide an additional administrative remedy to a claimant for violation of this subtitle." "Claimant" is defined by regulation and is limited to a person asserting a right to payment under an insurance policy the person is insured by or "a person asserting a claim against a person insured under an insurance policy." Md. Code Regs. 31.15.07.02B(4), (11). Featherfall meets neither of these definitions and thus cannot file a complaint for unfair claim settlement practices.

The Insurance Commissioner did not err in finding that Travelers did not violate the Insurance Article. Travelers made a determination on the homeowners' claim within a reasonable time and provided an explanation for its denial without request from the homeowners. Featherfall did not demonstrate that Travelers' alleged unfair claim settlement practices occurred with such frequency as to constitute a general business practice. Finally, the Insurance Commissioner did not abuse her discretion in declining to find a non-enumerated unfair claim settlement practice, as such a finding is squarely within the Insurance Commissioner's discretion.

Return to ToC

Dale Cecil v. American Federation of State, County, and Municipal Employees, No. 2049, September Term 2022, filed March 28, 2024. Opinion by Albright, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/2049s22.pdf

STATUTORY ABROGATION OF COMMON LAW – DUTY OF FAIR REPRESENTATION – NEGLIGENCE – FIELD PREEMPTION

STATUTES OF LIMITATIONS – 28 U.S.C. § 1367(D) TOLLING – RELATION BACK OF STATE CLAIMS – ADDING VERSUS CLARIFYING A STATE CLAIM

Facts:

Dale Cecil, a former employee of the Maryland State Highway Administration ("SHA"), within the Department of Transportation, alleges he was wrongfully terminated from the SHA. The American Federation of State, County, and Municipal Employees ("AFSCME" or "the Union") was the exclusive representative of certain Maryland employees at the time. AFSCME represented Mr. Cecil in his wrongful termination proceedings against the SHA. After settlement proceedings failed, Mr. Cecil notified AFSCME that he wanted to continue the appeal to the Office of Administrative Hearings ("OAH"). Mr. Cecil alleged that the Union did not timely file his appeal, and the OAH dismissed Mr. Cecil's appeal a few months later.

Just under six months after the OAH's dismissal of Mr. Cecil's appeal, Mr. Cecil brought suit against AFSCME in the U.S. District Court for the District of Maryland. His original complaint alleged one count of breach of the duty of fair representation. One month later, he amended his complaint to include a federal claim and a state claim for breach of the duty of fair representation. Eventually, he voluntarily dismissed this federal suit and refiled suit in the Circuit Court for Baltimore City. His circuit court complaint alleged two state claims, for breach of the duty of fair representation and negligence.

The circuit court dismissed Mr. Cecil's case. It held that Mr. Cecil was not required to exhaust his administrative remedies before bringing a judicial action, and the case was therefore rightfully before the court. However, the court also held that Mr. Cecil's fair representation claim abrogated his common-law claim for negligence, so he could not maintain a negligence claim. Finally, the court held that Mr. Cecil's fair representation claim was not timely because his amended federal complaint did not relate back to his original federal complaint, meaning he could not take advantage of 28 U.S.C. § 1367(d)'s tolling provision. Thus, neither of Mr. Cecil's claims could proceed, and they were dismissed.

Mr. Cecil timely filed this appeal.

Return to ToC

Held: Affirmed.

First, the Appellate Court held that Mr. Cecil was not required to exhaust his administrative remedies prior to bringing his judicial cause of action. While courts presume administrative remedies are primary, the factors in this case rebutted that presumption, so the Court held that the administrative remedies were concurrent. When remedies are concurrent, a plaintiff can file a cause of action at the same time as or even before pursuing their administrative remedies.

Second, the Appellate Court held that the existence of a state-law fair representation claim abrogated Mr. Cecil's common-law negligence claim. The legislature intended to occupy the field of state fair representation claims so fully as to abrogate related common-law negligence claims based on a state union's representation.

Third, the Court held that because Mr. Cecil filed an original federal complaint within the state statute of limitations alleging one count, and later filed an amended federal complaint outside the state statute of limitations alleging one federal count and one state count, the amended complaint did not relate back to the date of the original complaint for purposes of 28 U.S.C. § 1367(d) tolling. By only asserting one count in his original federal complaint and not stating anything about state law or supplemental jurisdiction, Mr. Cecil impliedly asserted the complaint under federal question jurisdiction. Therefore, the original federal complaint alleged one federal count. Mr. Cecil's amended complaint adding the state count did not merely clarify his original complaint but instead added a new cause of action. Where an amended complaint adds a new cause of action rather than clarifying the original complaint, that amended complaint cannot relate back to the date of the original complaint for purposes of § 1367(d) tolling. Without the advantage of the tolling provision, Mr. Cecil's fair representation claim was not filed timely.

Return to ToC

Donald Gresham, et al. v. Baltimore Police Department, et al., No. 307, September Term 2023, filed March 27, 2024. Opinion by Nazarian, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0307s23.pdf

LEGISLATION – UNIVERSITY POLICE – NONJUSTICIABLE

Facts:

The Maryland General Assembly enacted the Community Safety and Strengthening Act to authorize The Johns Hopkins University to create its own police force. Under this legislation, Johns Hopkins and the Baltimore Police Department signed a Memorandum of Understanding to establish the university police. Donald Gresham, Joan Floyd, and Kushan Ratnayake filed suit in the Circuit Court for Baltimore City to challenge the memorandum. The circuit court dismissed the suit because it was nonjusticiable, as (1) there was no standing, (2) the claims were not ripe, (3) the claims raised political questions, and also because (4) the Challengers failed to state a claim.

Held: Affirmed.

The Appellate Court of Maryland affirmed, holding that the issues were nonjusticiable and that the Challengers failed to state a claim. The Challengers had no standing because the mere fact that they lived "near" The Johns Hopkins University did not signify that they were personally aggrieved by the impending police force. Nor did it demonstrate that they were affected uniquely by the Memorandum of Understanding. Additionally, because the Challengers could not point to any current injuries arising from the Memorandum, the claims were not ripe. Next, because the Challengers effectively opposed the General Assembly's policy decisions, their contentions posed political questions. Finally, as the Challengers' complaints never alleged that the Memorandum violated the authorizing legislation, there was a failure to state a claim.

Return to ToC

AXE Properties & Management, LLC v. Leonard Merriman, IV, No. 1627, September Term 2022, filed March 1, 2024. Opinion by Leahy, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/1627s22.pdf

IMPLIED AND CONSTRUCTIVE CONTRACTS – NATURE AND GROUNDS OF OBLIGATION – EFFECT OF EXPRESS CONTRACT – IN GENERAL

JUDGMENT – AMENDMENT, CORRECTION, AND REVIEW IN SAME COURT – FORM AND REQUISITES OF APPLICATION IN GENERAL

ELECTION OF REMEDIES – NECESSITY AND TIME FOR ELECTION

DAMAGES – GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES – DIRECT OR REMOTE, CONTINGENT, OR PROSPECTIVE CONSEQUENCES OR LOSSES – IN GENERAL – NATURE AND THEORY OF COMPENSATION

APPEAL AND ERROR – PRESENTATION AND RESERVATION IN LOWER COURT OF GROUNDS OF REVIEW – ISSUES AND QUESTIONS IN LOWER COURT

Facts:

AXE Properties, LLC ("AXE") purchased, renovated, and subsequently sold a single-family home to Leonard Merriman, IV ("Merriman") for $255,000, without disclosing certain latent defects in the home prior to the sale. Thus aggrieved, Merriman brought suit in the Circuit Court for Prince George's County on multiple claims. Problems arose when the jury awarded Merriman $200,000 for unjust enrichment, $70,000 for breach of contract, and $130,000 for negligent misrepresentation, for a total of $400,000—all premised on the same proof of damages arising out of a single set of facts.

AXE filed two motions for JNOV. The motions complained a plaintiff may not recover under *both* breach of contract and unjust enrichment for claims covered by the contract, even if the bad faith or fraud exception of *County Commissioners of Caroline County v. J. Ronald Dashiell & Sons, Inc.*, 358 Md. 83 (2000), is applicable. Further, the motions asserted that the evidence did not support the level of damages awarded for the breach of contract and negligent misrepresentation claims, and therefore the awards must be reduced. However, neither motion raised Maryland's 'one recovery rule' or otherwise asserted that the compensatory awards constituted a double recovery. The circuit court denied both motions, and AXE noted a timely appeal to the Appellate Court of Maryland.

Held: Reversed in part and affirmed in part.

Judgment in the amount of $200,000 for unjust enrichment reversed. Judgments for breach of contract and negligent misrepresentation affirmed.

First, the Appellate Court held that although a plaintiff may *allege* causes of action for breach of contract and unjust enrichment concurrently when there is evidence of fraud or bad faith in the formation of the contract, *Dashiell*, 358 Md. at 100, a plaintiff may not recover under both for any claim covered by the contract. Accordingly, the Court further held that the $200,000 award for unjust enrichment was erroneous as a matter of law and that the circuit court erred in failing to revise the judgment. The Court explained that, although a motion for JNOV would typically not be the appropriate motion to raise an issue concerning the election of inconsistent remedies, AXE's motions for JNOV were sufficient to invoke the revisory power of the court under Maryland Rule 2-535. *See S. Mgmt. Corp. v. Taha*, 378 Md. 461, 493-95 (2003); *Allstate Ins. Co. v. Miller*, 315 Md. 182, 189 (1989). It was not necessary to remand the case to afford Merriman the opportunity to elect which claim to recover under because his post-trial conduct demonstrated his election to enforce the contract rather than rescind it. Namely, Merriman filed a motion post-trial for attorneys' fees as part of his breach of contract claim, which the circuit court granted.

Second, the Appellate Court determined that the remaining awards for breach of contract ($70,000) and negligent misrepresentation ($130,000) also conferred a double recovery on Merriman. In a nutshell, the evidence at trial supported, at *most*, $132,925 in damages for either claim. Unlike the awards for unjust enrichment and breach of contract, these damages awards were not inconsistent. However, under Maryland's 'one recovery rule,' Merriman was entitled to just one—not separate—compensatory awards, because the compensatory claims were merely "different legal theories premised on a single set of facts." *Beall v. Holloway-Johnson*, 446 Md. 48, 71 (2016). However, this issue was never raised before the trial court, as AXE's motions for JNOV failed to make any argument under *Beall* or the one recovery rule. Therefore, the Court held that AXE failed to preserve the argument it raised for the first time on appeal pertaining to double recovery under *Beall*. For that reason, the Court did not disturb the jury's combined compensatory award in the amount of $200,000 on the counts of negligent misrepresentation and breach of contract.

Return to ToC

Cicada Investments, LLC v. Harbour Portfolio VII LP, et al., Case No. 2001, September Term 2022, filed March 27, 2024. Opinion by Berger, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/2001s22.pdf

TAX SALE – MOTION TO VACATE JUDGMENT – REOPENING TAX SALE PROCEEDING – JURISDICTION TO REOPEN JUDGMENT RENDERED IN TAX SALE FORECLOSURE PROCEEDING – NULL AND VOID TAX SALE WHEN NO TAXES OVERDUE – JURISDICTION TO SELL PROPERTY FOR TAX DEBT UNDER $750 IN BALTIMORE CITY – CONSTRUCTIVE FRAUD

Facts:

In 2020, Frederick Williams, an unsophisticated first-time homebuyer of limited means, purchased a home in Baltimore City (the "Property") via an unrecorded quitclaim deed. He moved into the home after purchasing it and has resided there since. In April 2021, Williams paid the City $13,478.67 via a check dated April 21, 2021 and postmarked April 22, 2021. The City cashed the check on May 17, 2021. The City's receipts indicate that of the total amount paid by Williams, $9,203.04 was attributed to prior year taxes, and the remaining $4,275.63 was recorded as a credit to the current year's property taxes. Due to the delay in cashing Williams's check, the Property was erroneously not removed from the list of properties to be auctioned at the City's 2021 tax sale, and on May 17, 2021 -- the same day the City cashed Williams's check -- the Property was offered for sale at the City's annual tax sale for a stated tax debt of $9,998.53. Caret Bay, LLC was the successful bidder for the Property at the May 17, 2021 tax sale with a bid of $11,300.00. On the same day, the City issued a tax sale certificate that provided that $9,998.53 was "the total amount of taxes and other municipal liens due on the property at the time of the sale." Caret Bay, LLC subsequently assigned the tax sale certificate to Appellant Cicada Investments, LLC ("Cicada") on or about September 10, 2021.

Cicada subsequently filed a request for foreclosure of redemption for the Property, but the court denied the request because of a discrepancy between the amount listed on the complaint -- $638.51 -- and the amount reflected on the tax sale certificate -- $9,998.53. Williams had sought assistance from Maryland Legal Aid Bureau, Inc., and, in May 2022, Legal Aid discovered that the Property had been sold at the 2021 tax sale. Legal Aid contacted Cicada and the City to determine the amount of outstanding taxes required for Williams to redeem the Property. The City, having recognized its prior mistake, informed Williams's attorney at Legal Aid that the City would be moving to void the tax sale because the taxes had been paid prior to the sale. An email from Cicada confirmed to Williams's attorney that "the tax sale that was held for this property will be voided" because "the City law department . . . will be filing a Motion to Void the sale." The City, however, did not promptly file a motion to vacate, and Cicada subsequently filed a motion for leave to amend its complaint. Despite Cicada's prior representations to Williams's attorney that the tax sale would be voided, the amended complaint seeking foreclosure stated that $9,998.53 was owed.

In August 2022, the City finally filed a Motion to Vacate Judgment and Declare Tax Sale Void Ab Initio and Dismiss Case. In the motion, the City set forth in detail the procedural and factual history underlying this case. The City's motion explained that "[b]ecause the real property taxes were paid prior to the tax sale and the remaining charges were not in a sufficient amount to meet the threshold for inclusion in [the] tax sale," the "sale should never have taken place due to substantive reasons and is void ab initio." The City argued that "[w]hen a tax sale, for substantive reasons, never should have taken place to begin with, it is void at [its] inception." The City further argued that Cicada was "not entitled to receive interest or costs and [wa]s entitled only to a refund of its lien amount from the City." Cicada opposed the City's motion.

On December 9, 2022, the circuit court granted the City's motion in part. The circuit court ordered that the judgment foreclosing the right of redemption for the Property be vacated and that the tax sale certificate be declared void. The court emphasized that TP § 14-820(a)(4) required the tax sale certificate to set forth "the total amount of taxes due on the property at the time of sale together with interest, penalties, and expenses incurred in making the sale" and that the tax sale certificate filed with Cicada's complaint erroneously listed $9,998.53 as the total amount of outstanding taxes. Accordingly, the circuit court determined that the certificate of tax sale was void.

The circuit court, having accepted the City's mistaken representation that $620.71 of outstanding liens (attributable to miscellaneous bills, rental registration, and environmental charges) remained at the time of the tax sale, determined that the tax sale was not void *ab initio* because a tax sale is only void *ab initio* when no taxes were owed at the time of the sale, either because the taxes were paid in full prior to the sale or because the taxes were improperly assessed. The circuit court ordered that the City repay Cicada "the amount paid at tax sale, with interest at the rate provided in the Certificate of Tax sale, together with all taxes that accrue after the date of sale . . . and all expenses properly incurred." On January 13, 2023, Cicada noted an appeal of the circuit court's ruling.

Held: Affirmed.

The first issue the Appellate Court of Maryland addressed on appeal was whether the circuit court erred by granting the City's motion to vacate and declaring the tax sale certificate void. The Court explained that Md. Code (1986, 2019 Repl. Vol.), § 14-845(a) of the Tax - Property Article ("TP") allowed for a judgment in a tax sale foreclosure proceeding to be reopened under certain circumstances. Specifically, a judgment may not be reopened except on the ground of lack of jurisdiction or fraud, and no reopening of any judgment on the ground of constructive fraud in the conduct of the proceedings to foreclose shall be entertained by any court unless an application to reopen a judgment rendered is filed within one year from the date of the judgment. Because the motion to vacate was filed within one year of the judgment, the circuit court was permitted to reopen the judgment and consider both the jurisdictional and constructive fraud arguments raised by Baltimore City.

The Court rejected Cicada's assertion that it was undisputed that taxes were due and owing during the pendency of the proceeding, observing that Williams had paid the City over $13,000 one month before the tax sale, when less than $10,000 was owed. The Court further explained that even if the liens for miscellaneous bills, rental registration, and environmental charges were outstanding, the amount owed was not enough to place the Property into the tax sale under Maryland law because, pursuant to TP § 14-811(b)(2), in Baltimore City, owner-occupied residential property may not be sold at a tax sale when total taxes on the property amount to less than $750. The Court held that the statute that confers the circuit court with jurisdiction to foreclose the right of redemption in tax sale cases, TP § 14-834, does not confer jurisdiction to sell a property for a tax debt under $750 in Baltimore City. The Court further held that a tax sale is null and void when there are no taxes overdue, and a circuit court has no jurisdiction to entertain a foreclosure action based upon such a void tax sale.

The Court further addressed the City's assertion that its own errors and Cicada's misrepresentations, each separately and both together, constitute constructive fraud. The Court explained that it need not address the constructive fraud argument in detail in light of its earlier holding, but we exercised its discretion to address it briefly. The Court determined that there was ample evidence in the record that supported the City's constructive fraud argument, including the City's failure to cash Williams's check promptly and credit his account correctly and the City's failure to promptly file a motion to void, which were compounded by Cicada's conduct. The Court emphasized that Cicada explicitly advised Williams's attorney that the tax sale would be voided via an email to Williams's attorney. Nonetheless, ten days later, Cicada moved to amend its complaint, affirmatively misrepresenting the amount Williams owed in order to match the amount to the tax sale certificate that listed the incorrect amount of tax owed. The Court determined that whether Cicada was intentionally misleading the court or whether Cicada's actions were inadvertent mistakes was of no moment for the constructive fraud analysis. The Court, therefore, held that the sum total of the actions taken by the City as well as Cicada was more than enough to constitute constructive fraud under Maryland law. The Appellate Court of Maryland, therefore, affirmed the judgment of the Circuit Court for Baltimore City.

Janet Jarvis Street, et al. v. Upper Chesapeake Medical Center, Inc., et al., No. 696, September Term 2022, filed March 1, 2024. Opinion by Eyler, D., J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0696s22.pdf

"RELATED SPECIALTY" UNDER STATUTE GOVERNING BOARD CERTIFICATION OF EXPERT WITNESS WHO MAY TESTIFY TO STANDARD OF CARE IN MEDICAL NEGLIGENCE CASE – INFORMED CONSENT DUTY TO ADVISE OF ALTERNATIVE TREATMENT OPTIONS – STANDARD OF CARE BASED ON INTERNAL RULE OF HEALTH CARE PROVIDER – SEPARATE STRIKES FOR DEFENDANTS WITH CONFLICTS – JURY INSTRUCTION ON PROXIMATE CAUSATION.

Facts:

The appellant was seen in emergency room with complaints of her right foot being cool and pale, with symptoms increasing when leg elevated. Emergency medicine doctor found pedal pulses but ankle brachial index score for the right foot was abnormal. The doctor found diminished arterial blood flow that was not emergent/urgent. She advised the appellant to see a vascular surgeon in three to five days, giving her a name and contact information, and to return to the emergency room before then if her symptoms worsened. Two days later the appellant returned to the emergency room with increased symptoms and was admitted to the hospital. A vascular surgeon was called for a consult, which was not labeled "stat," but did not see the appellant that day or the next. The appellant was suffering from right lower extremity ischemia due to diminished arterial blood flow. When other interventions did not work, she underwent a below-the-knee amputation of the right leg. She and her husband sued the emergency room physician and the vascular surgeon (and other physicians later dismissed) and the entities they worked for, alleging ordinary medical negligence against both and lack of informed consent against the emergency medicine physician. At trial, at the close of the appellant's case-in-chief, the court granted judgment in favor of the emergency medicine physician on the informed consent claim. The jury returned a defense verdict on all counts submitted to it.

Held: Affirmed in part and vacated in part.

The trial court precluded the appellant's board-certified vascular surgery expert from testifying that the emergency medicine physician breached the standard of care by not arranging an immediate consultation by a vascular surgeon. Because the emergency medicine physician was board certified, standard of care testimony against her only could be given by a physician board certified in the same or a "related" specialty. Specialties are related for this purpose when under the circumstances of the case they overlap or involve symmetry of treatment. Here, the emergency medicine physician's role was to evaluate patients on the front-line. The vascular surgeon was not a front-line caregiver who would determine whether a consultation was needed

but was a specialist who saw patients upon referral or consultation. As such, the trial court's ruling that the physicians were not in related specialties in the context of this case was not an abuse of discretion.

The appellant contended that the emergency room physician's recommendations were a "treatment plan" and therefore she was required to obtain the appellant's informed consent, including advising her of reasonable alternative treatment options. These included treatments the emergency medicine physician was not recommending, such as admission to the hospital, because in her medical judgment the appellant did not need them at that time. They were the same treatments the appellant was claiming the emergency medicine physician breached the standard of care by not performing. The trial court granted judgment in favor of the emergency medicine physician, ruling that this evidence was legally insufficient to prove breach of the disclosure duty imposed by the doctrine of informed consent. The trial court did not err. The recommendations were not a treatment plan and, if they were, the doctrine of informed consent does not impose on a physician a duty to disclose treatment options that he or she does not recommend because they are not indicated. Such a claim is grounded in ordinary medical negligence, not informed consent.

The trial court abused its discretion by ruling that the appellant's vascular surgery expert could not opine that the vascular surgeon breached the standard of care by failing to perform a consult on the appellant within two to three hours of being advised of her condition. The court accepted that an internal rule of the vascular surgeon's medical practice, that a consult request that is not designated "stat" may be performed within 24 hours of the request, established the standard of care, and ruled that the appellant's expert witness could not testify to the contrary. However, an internal rule of a defendant, and in particular of a health care provider, does not fix the standard of care, which under well-settled Maryland law is a national standard of care.

The trial court did not abuse its discretion by allowing two groups of defendants - - the emergency medicine physician and the entities she was associated with and the vascular surgeon and the entity he was associated with - - separate peremptory strikes because their positions were adverse and hostile, especially with respect to the issue of causation.

The trial court did not err by giving a proximate cause jury instruction based on the 5th edition of the Maryland Civil Pattern Jury Instructions then in effect and denying the appellant's requested jury instruction from the prior 4th edition of that volume. The instruction as given properly stated the law and covered the topic that the appellant's instruction covered. The 5th edition instruction does not undermine the precept that a defendant's negligence must be a cause, not the only cause, of the plaintiff's injuries.

Return to ToC

Mayor and City Council of Baltimore v. Jamie Wallace, No. 1644, September Term 2022, filed February 1, 2024. Opinion by Shaw, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/1644s22.pdf

NEGLIGENCE – PREMISES LIABILITY – RECREATIONAL USE STATUTE

Facts:

Jamie Wallace was commuting on a bicycle home from work one evening through the Waterfront Promenade located in Baltimore City, in an area designated as "Inner Harbor Park." She fell off her bicycle and into the Harbor, after the wheel of her bicycle became stuck in a gap between the granite bulkhead and brick pavers on the promenade. Ms. Wallace sustained multiple injuries. Baltimore City is the owner of the area where Ms. Wallace fell, and Baltimore City's Department of Transportation is responsible for its maintenance. Ms. Wallace sued Baltimore City for negligent maintenance of the premises.

At the jury trial, Baltimore City moved for judgment under the Maryland Recreational Use Statute (MRUS), codified under Maryland Code (1974, 2023 Repl. Vol.), Natural Resources Article ("NR"), sections 5-1101-1109, at the conclusion of all evidence. The purpose of the statute is to encourage landowners to make land available to the public for any recreational and educational purpose, by limiting the owner's liability toward any person who enters the land for these purposes. NR § 5-1102(b).

The circuit court determined that the statute was not applicable because Ms. Wallace was not subjectively engaged in recreation at the time of the incident, but instead was commuting from work. The jury found Baltimore City negligent and awarded Ms. Wallace $100,000 in damages. Baltimore City appealed.

Held: Affirmed.

Consistent with the General Assembly's intent, the Recreational Use Statute does not shield local governments from the well-established common law principle that local governments are not immune from tort liability if performing a proprietary or corporate function, such as maintaining a sidewalk. *See Mayor & City Council of Balt. v. Eagers*, 167 Md. 128, 136 (1934). This includes the maintenance of "public highways" and "walkways" that serve as connectors through parks. *See Haley v. Mayor & City Council of Baltimore*, 211 Md. 269, 273 (1956). The statute does not override local governments' common law duty of care.

Return to ToC

Homer Walton, et al. v. Premier Soccer Club, Inc., et al., No. 1691, September Term 2022, filed March 1, 2024. Opinion by Eyler, D., J.

https://www.mdcourts.gov/data/opinions/cosa/2024/1691s22.pdf

STATUTE OR ORDINANCE RULE – HEALTH GENERAL § 14-501(b) – NEGLIGENCE – PROXIMATE CAUSATION.

Facts:

Fourteen-year-old player on private youth soccer team suffered a concussion during practice when she hit her head on the wall surrounding the indoor soccer field. She and her parents sued the team, the coach, two team parents, and certain employees of Baltimore County, which operated the indoor soccer field, for negligence, on two theories: 1) that they violated the Statute or Ordinance Rule by not making available to players, parents, and coaches certain information prescribed by statute; and 2) that they allowed the practice to take place on an inadequately lighted field. Summary judgment was granted to the team parents on the Statute or Ordinance Rule, for lack of proximate causation, and partial summary judgment was granted to the team and the coach. Evidence of the statute was ruled inadmissible, also on the basis of proximate cause. The case was tried on the negligent lighting claim, and the jury returned a defense verdict. The parents and daughter appealed, arguing that the court incorrectly ruled that on the undisputed material facts, there was legally insufficient evidence of proximate causation.

Held: Affirmed.

Health General ("HG") § 14-501(b) requires youth sports programs to make available to youth athletes, their parents/guardians, and coaches information about concussions and head injuries developed by the State Department of Education pursuant to the Education Article. Under the Statute or Ordinance Rule, proof that the appellees violated HG § 14-501(b) is evidence that the appellees violated a duty of care they owed to the appellants. To make out a *prima facie* case of negligence, however, the appellants also had to produce evidence that the violation of that duty was a proximate cause of the injury. Assuming, without deciding, that HG § 14-501 (b) was violated, there was no evidence of proximate causation. First, notwithstanding a specific request by the circuit court judge, the appellants failed to include in the summary judgment record the actual information that the statute required be provided. Second, even if we take judicial notice of the contents of the State Department of Education material that must be provided under HG § 14-501 (b), there is nothing in that material that, if provided, would have prevented or protected this player from sustaining a concussion. The material to be provided is general information about concussions and the importance of ceasing play after a head injury, and additional information about safeguarding players who have sustained concussions from returning to play too early. Most of the information concerns steps to be taken post-concussion. In this case, the

player was removed from the field immediately and there was no issue regarding post-concussion care. The court correctly ruled that as a matter of law there was no evidence that providing the information would have made any difference in the outcome.

Return to ToC

ATTORNEY DISCIPLINE

DISBARMENTS/SUSPENSIONS

By Order of the Supreme Court of Maryland dated March 20, 2024, the following attorney has been disbarred by consent:

BRIAN MARTIN KURTYKA

*

By an Order of the Supreme Court of Maryland dated March 21, 2024, the following attorney has been disbarred by consent:

THOMAS IAN MOIR

*

By an Order of the Supreme Court of Maryland dated March 19, 2024, the following attorney has been disbarred by consent, effective March 31, 2024:

JEFFREY STEPHEN GOLDSTEIN

*

RESIGNATIONS

By its March 6, 2024 order the Supreme Court of Maryland has accepted the resignation of the following attorney from the practice of law in this state:

JOSEPH W. KING, JR.

*

Return to ToC

JUDICIAL APPOINTMENTS

*

On February 16, 2024, the Governor announced the appointment of **Magistrate Hope Tipton** to the Circuit Court for Baltimore City. Judge Tipton was sworn in on March 18, 2024, and fills the vacancy created by the retirement of the Hon. Gregory Sampson.

*

On February 16, 2024, the Governor announced the appointment of **Levi Stuart Zaslow** to the Circuit Court for Baltimore City. Judge Zaslow was sworn in on March 18, 2024, and fills the vacancy created by the retirement of the Hon. Christopher L. Panos.

*

Return to ToC

RULES ORDERS

*

A Rules Order pertaining to the 220th Report of the Standing Committee on Rules of Practice and Procedure was filed on March 1, 2024.

http://mdcourts.gov/sites/default/files/rules/order/ro220.pdf

*

A Rules Order pertaining to the Supreme Court proposed amendment to Rule 16-701 was filed on March 1, 2024.

https://www.mdcourts.gov/sites/default/files/rules/order/ro16701.pdf

*

Return to ToC

UNREPORTED OPINIONS

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

https://mdcourts.gov/appellate/unreportedopinions

	Case No.	*Decided*
B		
Bailey, Christian Nikia v. State	0086	March 5, 2024
Bell, Kent M. v. State	1566	March 7, 2024
Bellamy, Reginald v. State	0279	March 13, 2024
Boyd, David v. Goodman-Gable Gould Co.	2089 *	March 11, 2023
Brooks, Malik Jamel v. State	1420 *	March 22, 2024
Butler, Courtney Darnell v. State	1138	March 6, 2024
Butler, Courtney v. State	0067	March 6, 2024
C		
Cannon-Earl, Denise v. SSC Silver Spring Op. Co.	1019	March 18, 2024
Carrol, Michael v. State	1612 *	March 5, 2024
Castillo, Elmer Roberto v. State	0639 *	March 7, 2024
Collick, Eddie A. v. State	0868	March 6, 2024
CoreLife, Inc. v. Penninsula Health Ventures	0823	March 25, 2024
Coyle, Seamus Anthony v. State	1440 **	March 25, 2024
D		
Darien, Lydell v. State	2291 *	March 18, 2024
Deleon, Chris v. Pruso	1508 *	March 13, 2024
Doe, Jane v. Charles E. Smith Jewish Day School	0129	March 7, 2024
Dunsmore, Lee Roy v. State	0450	March 5, 2024
Dunsmore, Lee Roy v. State	0451	March 5, 2024
E		
Edwards, Robert v. State	0245	March 8, 2024
Erich, Jesse B. v. State	0051	March 13, 2024
Evans, Hakeem M. v. State	1270	March 20, 2024
Evans, Isaac v. Robinson	0975	March 8, 2024
F		
Freeland, Eric v. Clark Construction Group	0040	March 6, 2024

September Term 2023
* September Term 2022
** September Term 2021

Return to ToC

Fullard, Vincent P. v. Tark Development	1120	March 8, 2024
G		
Green, Terence Anthony, Jr. v. State	0308	March 7, 2024
H		
Hameen, Muhammad Ibn v. State	0763	March 6, 2024
Harvey, Jason v. Harvey	0750 *	March 22, 2024
Hencken, Melissa Jerro v. Professional Restorations	1108 *	March 4, 2024
Hencken, Melissa Jerro v. Servpro of Carroll Cty.	1104 *	March 4, 2024
Hencken, Melissa Jerro v. USAA Casualty Insuance	1110 *	March 4, 2024
Hitt, Thomas William v. Dimensions Healthcare Corp.	2211 *	March 21, 2024
Hounlekpo, Ferdinand v. Hounlekpo	0255	March 19, 2024
Hughes, Winston Christopher v. State	2249 *	March 21, 2024
Hunter, Mike v. State	2251 *	March 29, 2024
Hurwitz, Daryl Anthony v. Esque	1161	March 25, 2024
I		
In re: C.L.	0330	March 18, 2024
In re: Estate of Herold, Frederick William	1299 *	March 1, 2024
In re: Estate of Walters, Richard Alan	2337 *	March 7, 2024
In re: L.D.	0854	March 29, 2024
In re: T.F.-C., R.F.-C., An.F.-C., As.F.-M.	1497	March 19, 2024
In the Matter of Bradshaw, Tanya	0427	March 4, 2024
In the Matter of Gothard, Joseph	0169	March 6, 2024
In the Matter of Red Maple Place Ltd. Pship.	1317 *	March 14, 2024
In the Matter of Riley, Ashley	0947	March 19, 2024
In the Matter of the Petition of Payton, Eric A.	1122 *	March 4, 2024
Ingersoll, John Michael, Jr. v. State	1477 **	March 15, 2023
J		
Janifer, Antonio Oliver v. State	1814 *	March 20, 2024
Johnson, Diana v. Hargrove	1183	March 14, 2024
Jolley, Cody Jeffery Dyllan v. State	1067 *	March 5, 2024
Jones, Tyrece A. v. State	2009 *	March 11, 2023
L		
Leiweke, Timothy v. Bernstein	0712	March 13, 2024
Lewis, Grant v. State	0815	March 18, 2024
M		
Martin, Diann v. 21st Mortgage Corp.	0123	March 11, 2023

September Term 2023
* September Term 2022
** September Term 2021

Return to ToC

Mason, Tekneca v. Mason	0778	March 1, 2024
Matthews, Dominic v. State	1355	March 7, 2024
Maye, Troy Eugene v. State	0572	March 22, 2024
Maye, Troy Eugene v. State	2188 *	March 22, 2024
Mayor & City Cncl. Of Balt. v. Snyder	2068 *	March 29, 2024
McClaine, Ricoh Lamar v. State	1333 *	March 5, 2024
Meyers, Rahzir v. State	0642 *	March 29, 2024
Mickens, Damien v. State	1359 *	March 25, 2024
Miller, Tamara L. v. Miller	0941 *	March 7, 2024
Mitchell, Brenda v. Waterford Cove HOA	0342	March 15, 2023
N		
Nolan, Stephen v. Dept. of Public Safety & Corr. Servs.	2007 *	March 29, 2024
O		
Ogueri, Bright v. State	1152 *	March 13, 2024
Onitiri, Adeboye Olayinka v. State	0481	March 29, 2024
P		
Penick, Robert L. v. State	2300 *	March 6, 2024
Perez, Anibal v. Around the Clark Trucking	0355	March 28, 2024
Piney Narrows Yacht Haven v. Corson	0472	March 5, 2024
R		
Ramsey, Lacree Thomas v. State	1973 *	March 5, 2024
Reisinger, Mark C. v. Sams	0521	March 18, 2024
Robellard, James Matthew v. State	1429 *	March 29, 2024
Roberts, Lemuel Lee v. State	0416	March 22, 2024
Robinson, Patricia A. v. Darbeau	1975 *	March 18, 2024
Rosales, Jose v. State	2143 *	March 14, 2024
S		
Saunders, Sharon v. Gilman	0463 *	March 8, 2024
Savage, Anthony Robert v. State	0829	March 5, 2024
Savage, William Eric v. State	0830	March 6, 2024
Sermeno, Walter v. Garcia	1011	March 6, 2024
State v. Marshall, Marlon Jermaine	0323	March 28, 2024
T		
Taylor, Raymond Thomas v. State	1356	March 7, 2024
Tilghman, Bradford v. State	1856 *	March 13, 2024

September Term 2023
* September Term 2022
** September Term 2021

Return to ToC

U

Ucheomumu, Andrew v. Prosper	1141	March 14, 2024

W

Whipps, Randolph v. Farelly	0502	March 22, 2024
Williams, Richard Alexander A. v. Interstate Holdings	0643	March 6, 2024
Worsham, Michael C. v. Oriental Trading Company	0218	March 5, 2024

Y

Young, Dwayne v. State	2151 *	March 29, 2024

September Term 2023
* September Term 2022
** September Term 2021