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SUPREME COURT OF MARYLAND

In Re: M. P., No. 3, September Term 2023, filed April 23, 2024. Opinion by Watts, J.

Biran and Gould, JJ., dissent

https://www.mdcourts.gov/data/opinions/coa/2024/3a23.pdf

COLLATERAL ORDER DOCTRINE – MOTION TO DISMISS – JURISDICTION OF JUVENILE COURT

Facts:

On May 5, 2022, prior to the June 1, 2022 effective date of the Juvenile Justice Reform Act ("the JJRA"), the State filed a juvenile petition in the Circuit Court for Prince George's County, sitting as a juvenile court, alleging that on March 12, 2022, M.P. committed motor vehicle theft and related delinquent acts. M.P. was 12 years old on the date of the alleged acts. On June 30, 2022, prior to the juvenile court's adjudication of the petition, counsel for M.P. filed a motion to dismiss for lack of jurisdiction because the JJRA had taken effect on June 1, 2022. The State opposed the motion. On August 8, 2022, the juvenile court held a hearing on the motion and denied it, ruling that the JJRA did not deprive the court of jurisdiction that had been established over M.P. at the time of the filing of the delinquency petition. The court stated that "the clear language of the statute[] does not appear to apply retroactively to any claims that arose prior to June 1st, 2022."

On August 12, 2022, M.P. noted an appeal to the Appellate Court of Maryland. The same day, M.P. filed in the juvenile court a motion to stay proceedings pending the appeal, which the court granted on August 15, 2022.

Before the Appellate Court resolved the appeal, M.P. petitioned the Supreme Court of Maryland for a writ of *certiorari*. In an answer to the petition, the State contended that the juvenile court's denial of M.P.'s motion to dismiss for lack of jurisdiction is an interlocutory ruling that is not immediately appealable, and that M.P.'s petition should be denied. The State advised that, if the Supreme Court disagreed or concluded that the appealability issue merited review, the State did not oppose the granting of the petition to consider M.P.'s question concerning the applicability of the JJRA. The State filed a motion to stay proceedings in the Appellate Court as the Supreme Court was considering M.P.'s petition for a writ of *certiorari*, and the Appellate Court granted

the motion. The Supreme Court granted M.P.'s petition. *See In Re: M. P.*, 483 Md. 269, 291 A.3d 779 (2023).

On September 8, 2023, after oral argument in the case, the Supreme Court of Maryland issued an order denying the State's motion to dismiss the appeal in the case, concluding that under the common law collateral order doctrine, an immediate appeal of the August 8, 2022 ruling of the juvenile court denying M.P.'s motion to dismiss for lack of jurisdiction was permitted. In the same order, the Supreme Court reversed the juvenile court's denial of M.P.'s motion to dismiss for lack of jurisdiction. *See In Re: M. P.*, 486 Md. 92, 93-94, 301 A.3d 1254, 1254-55 (2023) (per curiam). On April 23, 2024, the Supreme Court issued an opinion explaining the grounds for the order.

Held:

The Supreme Court of Maryland concluded that the juvenile court's denial of M.P.'s motion to dismiss for lack of jurisdiction fell within the narrow class of cases excepted from the final judgment requirement and presented one of the rare circumstances in which an immediate appeal of an interlocutory order was permitted by the collateral order doctrine. The Supreme Court determined that the first two elements of the collateral order doctrine were clearly met: the denial of the motion to dismiss fully resolved the jurisdictional question and the question at issue was one of great importance, as it concerned whether the juvenile court had properly exercised jurisdiction over M.P., when, under the JJRA, the juvenile court would not have jurisdiction over M.P., given his age and the acts that he was alleged to have committed. The Supreme Court concluded that the issue was also of great importance because it concerned the jurisdiction of the juvenile court over other children who are similar to M.P., *i.e.*, charged in a delinquency petition when under the age of 13 at the time of the alleged act, where the act would not constitute a crime of violence, and delinquency proceedings were pending at the time the JJRA became effective.

The Supreme Court of Maryland determined that the third element of the collateral order doctrine was met, as the ruling on M.P.'s motion to dismiss was collateral to, and separate from, the merits of the delinquency case against him. Unlike rulings on the waiver of juvenile court jurisdiction, which depend in part on an assessment of the nature of the offense, the juvenile court's resolution of M.P.'s motion to dismiss did not require any consideration of underlying facts that would bear on whether M.P. committed the acts in question. The Supreme Court determined that the fourth element—whether the issue would be effectively unreviewable if the appeal had to await entry of a final judgment—was also satisfied, concluding that the denial of the motion to dismiss in question was effectively not reviewable after final judgment and embodied a decision affecting the well-being of a juvenile that is unlike other determinations with respect to jurisdiction that the Court had held not to be immediately appealable.

The Supreme Court of Maryland agreed with M.P. and the State that the juvenile court erred in denying M.P.'s motion to dismiss. The Supreme Court held that a juvenile court does not have

jurisdiction over a child who was 10 to 12 years old at the time of an alleged delinquent act and charged in a petition for juvenile delinquency with the commission of an act that, if committed by an adult, is not a crime of violence as specified in Md. Code Ann., Crim. Law (2002, 2021 Repl. Vol., 2022 Supp.) ("CR") § 14-101, where the petition was pending adjudication of delinquency in the juvenile court as of the effective date of the JJRA. *See* Md. Code Ann., Cts. & Jud. Proc. (2006, 2020 Repl. Vol., 2022 Supp.) ("CJ") § 3-8A-03(a)(1), (d)(7).

Given that the petition charging M.P. with delinquent acts was pending adjudication at the time that the JJRA took effect and there was no dispute about M.P.'s age at the time of the alleged acts (he was 12 years old) or that he was charged with conduct that, if committed by an adult, would not have constituted a crime of violence under CR § 14-101, based on the plain language of the JJRA, its legislative history, and case law, the Supreme Court of Maryland concluded that the juvenile court erred in denying M.P.'s motion to dismiss. Therefore, the Supreme Court held that, in M.P.'s and any other case in which a juvenile delinquency petition was pending adjudication of delinquency on or after June 1, 2022, in which there was no genuine factual dispute concerning the juvenile's age or whether the juvenile was charged with having committed an act that would not be a crime of violence if committed by an adult, the juvenile court no longer has jurisdiction over the juvenile and must dismiss the case.

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Antonio E. Gonzalez v. State of Maryland, No. 23, September Term 2023, filed May 29, 2024. Opinion by Watts, J.

Gould, J., dissents.

https://www.mdcourts.gov/data/opinions/coa/2024/23a23.pdf

IMPEACHMENT – IMMIGRATION STATUS – U VISA APPLICATION – MARYLAND RULE 5-616(a)(4) – SUFFICIENT FACTUAL FOUNDATION – PROBATIVE VALUE VERSUS DANGER OF UNDUE PREJUDICE OR CONFUSION – HARMLESS ERROR

Facts:

According to testimony at trial, on the evening of March 13, 2020, Antonio E. Gonzalez, Petitioner, assaulted his then-wife M. and their then-12-year-old son F. in their home. When Mr. Gonzalez's counsel attempted to cross-examine M. about her application for a U visa, the State, Respondent, objected. During *voir dire*, outside of the presence of the jury, M. acknowledged that she had an immigration attorney assisting her with a U visa application. When asked whether she understood that she needed to be helpful to the prosecutor to obtain a U visa, M. responded in the affirmative and stated that she would do what her immigration attorney told her to do. In response to other questions about the U visa application, M. stated that she did not understand what Mr. Gonzalez's counsel was saying or what he wanted her to say and that Mr. Gonzalez's counsel could contact her immigration attorney if he wanted more information. M. denied knowing that she would be unable to obtain a U visa if she did not cooperate with the State.

During *voir dire*, the Circuit Court for Montgomery County admitted into evidence a letter from M.'s immigration attorney to the Montgomery County State's Attorney's Office dated April 23, 2021, in which M.'s attorney advised that M. was pursuing a U visa and that, to qualify, M. needed "a certification from a law enforcement agency corroborating that she was the victim of a crime and that she was helpful to law enforcement in the investigation or prosecution of the crime." The circuit court also admitted a form titled "Supplement B, U Nonimmigrant Status Certification," USCIS Form I-918, which showed that, on August 4, 2021, the Chief of the Special Victims Division of the Montgomery County State's Attorney's Office signed it, certifying that M. was being helpful in the investigation and prosecution of criminal activity and was "currently cooperating" with the Office.

Nonetheless, the circuit court ruled that it would not permit cross-examination of M. concerning "her immigration status" because Mr. Gonzalez's counsel had not established a "proper foundation[.]" The jury found Mr. Gonzalez guilty of two counts of second-degree assault of M. and one count of second-degree assault of F. In a split decision, the Appellate Court of Maryland affirmed the convictions. *See Antonio E. Gonzalez v. State*, No. 1075, Sept. Term, 2022, 2023 WL 5030170, at *14 (Md. App. Ct. Aug. 8, 2023). The Appellate Court reached two

conclusions. First, the Appellate Court upheld the circuit court's determination that there was an insufficient factual foundation for cross-examination of M. about her immigration status and U visa application. See *id*. at *6; id. at *18 (Friedman, J., concurring). And second, the Appellate Court held that, even if the circuit court had abused its discretion in prohibiting the questioning, any error was harmless. See *id.* at *9; id. at *18 (Eyler, J., concurring).

Mr. Gonzalez petitioned for a writ of *certiorari*, which the Supreme Court of Maryland granted. See *Gonzalez v. State*, 486 Md. 216, 305 A.3d 853 (2023).

Held: Affirmed.

The Supreme Court of Maryland held that the circuit court erred in precluding Mr. Gonzalez's counsel from cross-examining M. about her U visa application. The Supreme Court concluded that, given the nature of the requirement that, for a U visa to be approved, an applicant must be helpful in the investigation or prosecution of criminal activity and provide a certification from a law enforcement or government official to that effect, a sufficient factual foundation for impeachment of a witness concerning a U visa application is established under Maryland Rule 5-616(a)(4) where there has been a showing that a U visa application, based on the witness being a victim of a crime that the defendant is charged with, has been submitted to the government for approval. Additionally, evidence that the required certification has been provided on the witness's behalf by the prosecutor's office or law enforcement official responsible for investigating or prosecuting the defendant's case is sufficient to establish the required factual foundation regardless of whether the application has been submitted by the witness. The Supreme Court stated that these circumstances were not intended to be exhaustive or all inclusive of the circumstances that may warrant cross-examination of a witness about a U visa application under Maryland Rule 5-616(a)(4). As with all determinations with respect to cross-examination under Maryland Rule 5-616(a)(4), a trial court must on a case-by-case basis determine whether there are circumstances that constitute an adequate factual foundation for cross-examination and, if so, whether the probative value of the cross-examination is substantially outweighed by the danger of undue prejudice.

The Supreme Court of Maryland concluded that Mr. Gonzalez's counsel established a sufficient factual foundation for impeachment of M. under Maryland Rule 5-616(a)(4), as his counsel demonstrated that a U visa application had been submitted on M.'s behalf on the ground that she was the victim of an assault allegedly committed by Mr. Gonzalez, that M. acknowledged that such an application had been submitted, and that M. knew that to obtain a U visa she was expected to help government and law enforcement officials in the investigation or prosecution of Mr. Gonzalez's case. Equally important, Mr. Gonzalez's counsel demonstrated that a member of the State's Attorney's Office, which was responsible for prosecuting Mr. Gonzalez, had signed the requisite certification on M.'s behalf, already bestowing a benefit by certifying that M. had been or would be helpful in the prosecution of Mr. Gonzalez. The Supreme Court determined that even without M.'s acknowledgment that she understood she had an obligation to be helpful

to the prosecution, based on her having submitted the U visa application, a reasonable trier of fact could have inferred that she was aware of the requirement.

Under these circumstances, Mr. Gonzalez's counsel established an adequate factual foundation to ask questions pursuant to Maryland Rule 5-616(a)(4) aimed at uncovering whether M. had an interest in the outcome of the proceeding, or a motive to testify falsely or to embellish her testimony, either to obtain the benefit of a U visa or retain the prosecutor's certification for the visa, and the circuit court erred in precluding cross-examination on the ground that the requirement had not been satisfied.

The Supreme Court of Maryland concluded that the circuit court's error was harmless beyond reasonable doubt as Mr. Gonzalez testified to committing the acts that formed the basis of the offenses for which he was convicted, M.'s testimony was corroborated by F.'s testimony, other evidence corroborated that M. and F. had been assaulted by Mr. Gonzalez, and M.'s testimony at trial was consistent with her initial description of incident. The Supreme Court concluded that the impact of potential cross-examination of M. about her U visa application was undercut by the other evidence corroborating M.'s testimony, including F.'s testimony and the medical records, photographs, and other testimony that corroborated M.'s injuries.

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Troy Mason v. State of Maryland, No. 21, September Term 2023, filed May 30, 2024. Opinion by Hotten, J.

https://www.mdcourts.gov/data/opinions/coa/2024/21a23.pdf

DISCOVERY – SANCTION FOLLOWING VIOLATION OF THE RULES – EXERCISE OF DISCRETION BY THE CIRCUIT COURT

CRIMINAL LAW – MISTRIAL – ABUSE OF DISCRETION

CRIMINAL LAW – CURATIVE INSTRUCTION – ABUSE OF DISCRETION

Facts:

In August 2021, Deputy Carbaugh ("Dep. Carbaugh") and Corporal DeAngelis ("Cpl. DeAngelis") of the Westminster Police Department in Carroll County, Maryland, responded to a domestic dispute. Cpl. DeAngelis interviewed the complaining witness, who alleged Petitioner, Troy Mason, assaulted and strangled her, while Dep. Carbaugh interviewed Petitioner. Thereafter, Dep. Carbaugh arrested Petitioner and later submitted, among other required forms, a "Strangulation Supplement" ("strangulation form") to his supervising officer. The back page of this form provides check boxes and a diagram where officers document injuries of the complaining witness. The form Dep. Carbaugh provided in discovery, did not contain any checked boxes or depict any injuries to the complaining witness on the diagram.

During cross-examination of Dep. Carbaugh, Petitioner introduced the blank strangulation form he was provided through discovery. When questioned regarding the absence of any checked boxes, Dep. Carbaugh indicated that he completed the strangulation form based on information provided to him by Cpl. DeAngelis. During cross-examination, to the surprise of both Petitioner and the State, Cpl. DeAngelis asserted that he had completed a separate strangulation form which contained checked boxes. Petitioner requested a curative instruction which would have limited the jury to consider only what was introduced into evidence. However, the circuit court instead permitted Petitioner to examine Cpl. DeAngelis outside the presence of the jury.

During that subsequent examination, Cpl. DeAngelis confirmed that he had completed a strangulation form with checked boxes and that he suspected Dep. Carbaugh had lost his original form. Cpl. DeAngelis also testified to injuries he observed on the complaining witness. Following this testimony, the circuit court offered Petitioner the opportunity to recess trial for the day so that he might consider how best to approach Cpl. DeAngelis's testimony. Petitioner proceeded to examine Cpl. DeAngelis before the jury, choosing to "let the truth come out[]" and eliciting the same information Cpl. DeAngelis testified to outside the presence of the jury. The next day, Petitioner moved for a mistrial or a curative instruction, both of which were denied. At the close of trial, Petitioner was convicted of assault in the second-degree.

The Appellate Court of Maryland upheld his conviction, holding that there was no prejudice warranting a mistrial. The Appellate Court also opined that the inadvertence of the discovery violation alone could be dispositive in concluding that a mistrial was not warranted.

Held: Affirmed.

The Supreme Court held that it was error for the Appellate Court to have opined that the inadvertence of a discovery violation alone could justify the denial of a mistrial. The Court re-affirmed that prejudice to the non-offending party must be considered when a circuit court exercises discretion on whether to impose sanction following a discovery violation. *Thomas v. State*, 397 Md. 557, 572, 919 A.2d 49, 58 (2007).

The Court also held that, in accordance with *Thomas v. State*, the discretion afforded to the circuit court in deciding whether to impose sanction following a discovery violation may allow for the admission of evidence not properly disclosed during discovery, so long as the exercise of discretion was sound.

The Court then held that the circuit court had not abused its discretion in denying Petitioner's request for a mistrial or curative instruction. A circuit court may exercise its discretion to declare a mistrial "only if a high degree of necessity demands" it. *State v. Hart*, 449 Md. 246, 276, 144 A.3d 609, 626 (2016). "[T]o declare a mistrial, the trial judge must weigh the unique facts and circumstances of each case, explore reasonable alternatives, and determine that no reasonable alternative exists." *Id*. at 277, 144 A.3d at 627. Further, "judges are accorded broad discretion in determining whether a particular instruction should be given on a particular occasion[.]" *Carter v. State*, 366 Md. 574, 584, 785 A.2d 348, 353 (2001). Here, no mistrial or curative instruction was warranted where Petitioner availed himself of an opportunity to elicit the testimony he later asserted was prejudicial. The circuit court did not abuse its considerable discretion in providing alternative opportunities for Petitioner to address any surprise presented by Cpl. DeAngelis' testimony and the discovery error it represented.

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APPELLATE COURT OF MARYLAND

In the Matter of Cheryl Lewis, et al., No. 951, September Term 2023, filed May 30, 2024. Opinion by Harrell, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0951s23.pdf

ADMINISTRATIVE LAW – NUISANCE – RIGHT-TO-FARM LEGISLATION – STATUTORY INTERPRETATION – LEGISLATIVE HISTORY

Facts:

Property owners filed complaints with the Talbot County Agricultural Resolution Board alleging that a nearby farm was causing offensive odors and health concerns. The farm had shifted its nutrient management program from chemical fertilizers to Class A bio-solids and soil conditioners, stockpiling those materials on-site before land application on that farm and other farms that were owned or operated by the same farmer.

After a hearing, the Board determined that the application and stockpiling of those materials amounted to a generally accepted agricultural practice. The Board ruled that the farm was immune, under the Maryland Code and County ordinances regulating the right-to-farm, from the property owners' nuisance claims. The Board noted also that the farming practices at issue complied with the Maryland Department of Agriculture's nutrient management program.

The Circuit Court for Talbot County reversed the Board's decision.

Held: Reversed.

The Appellate Court of Maryland examined Maryland's right-to-farm statute, codified as Md. Code, Cts. & Jud. Proc. ("CJP") § 5-403(c). Under CJP § 5-403(c), non-negligent agricultural operations — that comply with applicable health, environmental, zoning, and permit requirements — are immune from private nuisance claims, if the operation has been under way for a period of 1 year or more. Because the plain language CJP § 5-403(c) is ambiguous as to whether the one-year period resets when an agricultural operation changes its methodology/approach, the Court resolved this ambiguity by examining the legislative intent behind the enactment of CJP § 5-403(c).

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The legislative history of CJP § 5-403(c) revealed that the General Assembly had repealed and re-enacted the one-year requirement for changes in otherwise compliant agricultural operations. When the General Assembly re-addressed that requirement, it contemplated a scenario like the one at issue here: an expanded nutrient management system.

Moreover, the Court inspected the plain language of Talbot County Code § 128, which demonstrates that a farm may change the modality of its operations without losing liability protection under these circumstances. As a result, the expanded use of soil conditioners and Class A biosolids at the farm was a protected activity under CJP § 5-403(c) and Talbot County Code § 128.

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Karl Joseph Tomanek v. State of Maryland, No. 972, September Term 2022, filed May 1, 2024. Opinon by Ausby, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0972s22.pdf

GEOFENCE WARRANTS – GOOGLE ACCOUNT INFORMATION WARRANTS - IN GENERAL – NECESSITY OF PROBABLE CAUSE

SEARCH, SEIZURE, AND ARREST – SEARCH WARRANTS – GROUNDS FOR ISSUANCE – IN GENERAL – NECESSITY OF PROBABLE CAUSE AND PARTICULARITY

Facts:

Howard County police officers obtained a geofence warrant in connection with an investigation of theft of property from a vacant farm. The warrant revealed subscriber information for a device located at the scene of the theft. Police conducted additional investigation which developed appellant Karl Tomanek as the suspect. Police obtained and executed a search warrant at the residence of Tomanek. Upon police arrival, Tomanek fired a shotgun at the officers' vehicle. Tomanek was arrested and police obtained a second search warrant as a result of the shooting. The second search warrant yielded various firearms and ammunition. Tomanek was charged with attempted murder, assault, reckless endangerment, and weapons related offenses.

Prior to trial, Tomanek filed a motion to suppress, arguing that the initial geofence warrant was an illegal "general warrant" because it lacked sufficient particularity and probable cause. Tomanek claimed that, because the geofence warrant directly led to the issuance of the two warrants at his property, any evidence obtained as a result of those searches should be suppressed. The Circuit Court denied the motion to suppress. Thereafter, a jury sitting in the Circuit Court for Howard County convicted Tomanek of attempted manslaughter, second degree assault, use of a firearm in the commission of a crime of violence, and several counts of possession of a firearm and ammunition while prohibited.

Tomanek appealed his convictions raising the same arguments raised in his motion to suppress. He contends that the Circuit Court erred in denying his motion to suppress because the geofence warrant was an "illegal general warrant" which lacked probable cause and particularity, and therefore, violated the Fourth Amendment.

Held: Affirmed.

A geofence warrant authorizes the seizure of location data collected from smartphones of individuals within a particular area over a specified range of time. It seeks cell phone location data stored by third-party companies like Google. The scope of location data captured by a

geofence is limited by geographic and temporal parameters, thus, geofence warrants identify the physical area and the time range in which there is probable cause to believe that criminal activity occurred. Geofencing is used when the crime location is known but the identities of suspects is not. Most geofence warrants authorize initial disclosure of anonymized subscriber information and require a second warrant for disclosure of personal identifying information.

Like all search warrants, geofence warrants must be 1) based on probable cause, 2) describe with particularity the place to be searched, and 3) be issued by a neutral and detached magistrate. Unlike other warrants, however, geofence warrants have an inherent potential for seizure of a profusion of personal device data, given the ubiquity of cell phones in our society. Therefore, analysis of the probable cause and particularity requirements will always be fact intensive and must be scrutinized with great caution and diligence. So long as the warrant application provides a fair probability that evidence will be found in the place being searched, and so long as the warrant itself is definite enough to ensure that the police can identify the place being searched and conduct the search without any unauthorized or unnecessary invasion of privacy rights, then the probable cause and particularity requirements have been met.

Here, the geofence warrant application averred that on April 11, 2020, police responded to a report of theft of tractors from a vacant farm. The property was described as a vacant, twelve-acre farm that included a residence, two barns, and several outbuildings. The stolen items were last seen on April 4, 2020. On April 11, 2020, the owner observed that the items were missing and that some of the buildings had been broken into. "No trespassing" signs were posted on the property. A witness observed a tractor, matching the description of the stolen tractor, being hauled away from the property between April 3 and April 5, 2020. The affiant requested permission to search Google's business records for anonymized device data of cell phone users that reported a location within a 100-meter radius of the main residence of the property between April 3 and April 11, 2020. The application included the latitude and longitude coordinates corresponding to the location of the main residence on the property. The application noted that a second warrant would be needed to access any personal identifying information related to an account.

The geographic and temporal parameters were precise when considered in conjunction with the circumstances of the crime. Police had probable cause to believe that the theft occurred during that time period, and probable cause to believe that the perpetrator's identity was stored in Google's records via location data. Limiting the search area to within a 100-meter radius of the main residence, virtually ensured that any cell phone activity that met the search's parameters would have had to come from within the property's boundaries. The search parameters were therefore carefully tailored to the search's justifications. Moreover, given that the property was privately owned and included "no trespassing" signs, the chance that the search would result in any unauthorized or unnecessary invasion of privacy rights was almost non-existent.

Finally, there is nothing in the record to suggest that the issuing magistrate was misled, that the magistrate abandoned his detached and neutral judicial role, or that the warrant was so lacking in probable cause as to render belief in its existence unreasonable; consequently, the police were

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acting in good faith in executing the warrant, such that suppression of the evidence derived therefrom would not be appropriate.

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901, LLC v. Supervisor of Assessments of Baltimore City, No. 491, September Term 2023, filed April 3, 2024. Opinion by Leahy, J.

https://www.mdcourts.gov/data/opinions/cosa/2024/0491s23.pdf

TAXATION – PROPERTY TAXES – EXEMPTIONS – IN GENERAL – TRANSFER OF EXEMPTION OR OF PROPERTY EXEMPT

Facts:

Appellant 901, LLC, is a for-profit lessee and developer of land that is owned by the Maryland Transit Administration ("MTA"). As contemplated by a ground lease and related agreements entered into back in 2000, Appellant and Appellant's predecessor in interest constructed several buildings on MTA's land and, thereafter, subleased units of the improved properties to government, non-profit, for-profit, and residential end-users. A parking garage was similarly built and, subsequently, licensed by Appellant to its various subtenants and others. Because government entities constituted a significant portion of Appellant's subtenants, Appellant sought partial exemptions from property tax under Maryland Code, Tax-Property Article ("TP"), § 7-210(a). Under this statute, government-owned property is generally exempt from property tax, "[e]xcept as otherwise provided in [TP] § 6-102[,]" if the property is "devoted to a governmental use or purpose[.]" TP § 7-210(a).

The applications were denied by the Supervisor of Assessments for Baltimore City ("Supervisor") because Appellant's interest in the government-owned property is taxable under TP § 6-102(e). Under this statute, a leasehold in property is subject to property tax "as though the lessee or the user of the property were the owner of the property, if the property is leased or otherwise made available to that person: (1) by [the government]; and (2) with the privilege to use the property in connection with a business that is conducted for profit." TP § 6-102(e). The Supervisor's denial of the applications was affirmed by the Property Tax Assessment Board, the Maryland Tax Court, and the Circuit Court for Baltimore City.

Held:

The Appellate Court of Maryland affirmed the decision of the Tax Court and held that the applications for partial exemptions were property denied because, under TP § 6-102(e), Appellant is a lessee of qualifying government property with the privilege to use the property "in connection with a business that is conducted for profit." While the requirements of TP § 7-210(a) are satisfied in that the MTA is the record owner of the property, and portions of the property are used for government uses or purposes, application of TP § 7-210 is expressly made subject to the operation of TP § 6-102. Significantly, under the ground lease and related agreements, Appellant enjoys the freedom to lease/license units of the buildings and garage to

whomever it likes, charge rent at any rate it chooses, and Appellant is not required to lease any spaces or offices to specific tenants, i.e., to governmental tenants. As noted by the Appellate Court, Appellant does have a limited obligation—in consideration for a $6.8 million grant toward the construction of the parking garage—to provide parking spaces for governmental and commercial tenants in the vicinity of the property. However, there is no express requirement that specific parking spaces be provided to specific tenants, nor is there an explicit guarantee of a lease back to the MTA.

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ATTORNEY DISCIPLINE

REINSTATEMENTS

By Order of the Supreme Court of Maryland

FERDINANT UCHECHUKWU IBEBUCHI

has been replaced on the register of attorneys permitted to practice law in this State as of May 31, 2024.

*

DISBARMENTS/SUSPENSIONS/INACTIVE STATUS

By Order of the Supreme Court of Maryland dated May 31,2024, the following attorney has been suspended for six months, accounting from November 1, 2023:

RICHARD J. TAPPAN

*

By Order of the Supreme Court of Maryland dated May 31, 2024, the following attorney has been placed on disability inactive status:

MATTHEW PETER NELSON, JR.

*

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

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