Amicus Curiarum

VOLUME 42
ISSUE 2 FEBRUARY 2025

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

Maryland State Board of Elections, et al. v. Anthony J. Ambridge, et al., No. 26, September Term 2024, filed January 28, 2025. Opinion by Booth, J.

https://www.courts.state.md.us/data/opinions/coa/2025/26a24.pdf

ELECTION LAW CHALLENGES – CHALLENGES TO CHARTER AMENDMENT BALLOT QUESTIONS INITIATED BY LEGISLATIVE BODY UNDER ARTICLE XI-A OF THE MARYLAND CONSTITUTION

ELECTION LAW CHALLENGES – DOCTRINE OF LACHES

ARTICLE XI-A "CHARTER MATERIAL" FRAMEWORK – APPLICABILITY TO CHARTER AMENDMENTS PROPOSED BY THE ELECTED LEGISLATIVE BODY OF A CHARTER COUNTY

ELECTION LAW – UNDERSTANDABILITY AND CLARITY OF BALLOT QUESTION LANGUAGE

Facts:

As part of a plan to redevelop the Harborplace pavilions in the Inner Harbor of Baltimore City, the Baltimore City Council introduced Bill No. 23-0444 ("Charter Bill"). The Charter Bill proposed an amendment to modify Article I, § 9 of the Baltimore City Charter by adding multi-family dwellings and off-street parking to the existing eating places and other commercial uses that are currently permitted in the 3.2-acre area located to the north of Conway Street, and by increasing the area in which these uses are permitted from 3.2 acres to 4.5 acres. The Baltimore City Council passed the Charter Bill on March 4, 2024, allowing the proposed amendment to the Baltimore City Charter, commonly referred to as "Question F," to be put forth to the voters on the 2024 general election ballot. Question F was approved for form and legal sufficiency by the Chief Solicitor on March 12.

One month later, Mr. Anthony J. Ambridge contacted the Chief Solicitor of the City Law Department by email. Mr. Ambridge asked to review the language of the ballot question and to be permitted to suggest changes to that language before the question was "sent to [the] State for Certification." Having received no response, Mr. Ambridge followed up on May 13 with a second email requesting an opportunity to "weigh[] in on the short title of the referendum before

it is sent to [the] State Board of Election." The Chief Solicitor responded that same day and declined input from "any group or individual other than those required by the law." Mr. Ambridge emailed the Office of the Attorney General on July 16 to make the same request for an opportunity to review the ballot question language. Two days later, Mr. Ambridge forwarded that email to the assigned assistant attorney general for the Maryland State Board of Elections ("State Board"), and the State Board's attorney acknowledged his personal receipt of the email.

On August 2, 2024, the City Solicitor transmitted to the State Board a letter certifying the language of the ballot question in accordance with § 7-103(c)(3)(i) of the Election Law Article ("EL") of the Maryland Code (2022 Repl. Vol., 2024 Supp.). On September 2, 2024, the State Board posted to its website the final content and arrangement of all ballots to be used in the 2024 general election. This included the general election ballot for Baltimore City, which presented Question F.

On September 5, 2024, Mr. Ambridge, along with 22 other Baltimore City registered voters, filed a petition for judicial review in the Circuit Court for Anne Arundel County, seeking review of the State Board's certification of Question F. The challengers asserted that the circuit court had the authority under §§ 9-209(b)(3), and 12-202(a)(1) to invalidate Question F, contending that (1) the subject matter of the proposed charter amendment was not proper "charter material," and (2) the language of the ballot was not understandable. Section 9-209 provides that a registered voter may seek judicial review of a ballot's content and arrangement, or to correct any administrative error, while § 12-202 allows a registered voter to seek judicial relief from any act or omission relating to an election if no other timely and adequate remedy is available under the Election Article.

On September 17, 2024, after a hearing, the circuit court issued a memorandum opinion and order in which it determined that the challengers' claims were not barred by laches and could be raised pursuant to § 9-209(a). On the merits, the circuit court determined that Question F: (1) "violates Article XI-A § 3 of the Maryland Constitution in that it is not proper charter material"; and (2) alternatively, violates EL § 9-205(2), which requires that each ballot contain "a statement of each question that has met all of the qualifications to appear on the ballot," because the language is not "easily understandable by voters," as required by § 9-203(1). As a remedy, the circuit court ordered that "the Baltimore City Board of Elections shall not certify the results of Ballot Question 'F' arising from the 2024 General Election for the City of Baltimore[.]"

The circuit court granted motions to intervene filed by the Mayor and City Council of Baltimore ("City") and MCB HP Baltimore LLC ("MCB")—the current owner of Harborplace. The State Board, City, and MCB each noted a direct appeal from the circuit court's judgment to the Supreme Court of Maryland pursuant to EL §§ 9-209(d)(1)(ii) and 12-203(a)(3).

Held: Reversed and remanded.

The Supreme Court held oral argument on October 9, and, on the following day, issued a per curiam order reversing the order issued by the circuit court and remanding the case to the circuit court for entry of judgment in favor of the State Board, City, and MCB. The Court ordered that the appropriate election authority may certify the results of Question F as presented on the November 2024 general election ballot.

The Supreme Court held that § 9-209(a) is not a proper mechanism to challenge either whether a proposed charter amendment is proper charter material or whether ballot question language for a proposed charter amendment comports with Maryland law. Under the plain language of the statute, judicial review under § 9-209(a) is limited to the "content" or "arrangement" of the ballot, as those duties are described by statute, and the relief is limited to the correction of "administrative errors." The Court determined that because the State Board has no legal duty or authority to review the substance of a proposed charter amendment, nor the responsibility for drafting the ballot question or reviewing its language for understandability or clarity, it followed that the limited judicial review provided under § 9-209(a) has no application to the type of claims asserted by the challengers.

Turning to the challengers' claims under § 12-202, the Supreme Court held that these claims were barred by laches. With respect to the claim related to the ballot's subject matter, the Court noted that the challengers waited almost five months after the enactment of the Charter Bill to assert the claim. As for the understandability of the ballot question language, the Court observed that the challengers waited four weeks after the statutory deadline for the certification of the ballot question to raise their claim. The Court held that the unreasonable delay in filing the petition for judicial review caused prejudice not only to the State Board and the City Council, but, perhaps most importantly, to the Baltimore City electorate.

Given the Court's holding pertaining to laches, the Supreme Court declined to decide whether the circuit court erred in ruling that Question F's subject matter violated Article XI-A of the Maryland Constitution because it was not "proper charter material." Adhering to the Court's well-established policy to decide constitutional questions only when necessary, the Supreme Court concluded that it would save the issue for another case.

Finally, the Supreme Court held that the ballot question language comprising Question F conveyed, with minimum reasonable clarity, the actual scope and effect of the measure to permit an average voter, in a meaningful manner, to exercise an intelligent choice in voting for or against Question F.

Return to ToC

In the Matter of Cindy Isely, Personal Representative of the Estate of Bonnie Campbell, No. 16, September Term 2024, filed January 28, 2025. Opinion by Fader, C.J.

https://www.courts.state.md.us/data/opinions/coa/2025/16a24.pdf

OBStACLE PREEMPTION – PRESUMPTION AGAINST PREEMPTING STATE FAMILY LAW – FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

OBSTACLE PREEMPTION – FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986 – BENEFICIARY AND ORDER OF PRECEDENCE PROVISIONS – POST-DISTRIBUTION CONTRACT ACTION ARISING FROM DIVORCE SETTLEMENT AGREEMENT

OBSTACLE PREEMPTION – FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986 – ANTI-ASSIGNMENT CLAUSE – POST-DISTRIBUTION CONTRACT ACTION ARISING FROM DIVORCE SETTLEMENT AGREEMENT

Facts:

Bonnie Campbell, now deceased, was a federal employee who opened and contributed to a Thrift Savings Plan ("TSP") during her federal service. The TSP is governed by the Federal Employees' Retirement System Act of 1986 ("FERSA"). Ms. Campbell designated Michael Campbell, her then-spouse, as the sole beneficiary of the account. Sometime later, the Campbells divorced and entered into a property settlement agreement. Pursuant to the agreement, the parties agreed to waive and disclaim all rights in each other's retirement plans, including Ms. Campbell's TSP. The agreement further provided that notwithstanding any beneficiary designation made by a deceased party, the surviving party relinquished all rights as beneficiary to any retirement accounts. And in the event that the deceased party failed to change the beneficiary designation, the surviving party was required to take one of three paths: (1) disclaim entitlement to the benefits in writing, (2) assign all rights to receive the benefits to the deceased's estate or personal representative, or (3) pay the net after-tax benefits to the same.

Ms. Campbell did not remove Mr. Campbell as the beneficiary of her TSP account before her death. Despite the agreement, following Ms. Campbell's death Mr. Campbell completed and submitted a TSP form to claim the funds. On the form, Mr. Campbell indicated his relationship to Ms. Campbell as divorced after having been "married over 10 years" and wrote "divorce decree available on request" in response to a prompt about information relevant to the disposition of the TSP account. Mr. Campbell did not attach or separately provide the agreement. A few months later, the government transferred the full amount in Ms. Campbell's TSP account, less standard withholdings, to Mr. Campbell, totaling $734,334.35.

Ms. Campbell's estate (the "Estate") sued Mr. Campbell in the Circuit Court for Montgomery County for damages arising from breach of the agreement, among other things. Mr. Campbell moved to dismiss the suit, arguing that FERSA preempted the Estate's claim. The circuit court rejected Mr. Campbell's argument and granted summary judgment on the Estate's breach of contract claim for money damages. The Appellate Court reversed, holding that the Estate's claim was preempted by FERSA.

Held: Reversed.

The Supreme Court of Maryland identified that this case involved whether Maryland family property law was preempted by FERSA via obstacle preemption, a type of implied conflict preemption. The Court observed that obstacle preemption requires courts to determine the purposes and objectives of the particular federal law at issue to decide whether state law impermissibly impedes those purposes and objectives. And it noted that state family property laws must do major damage to clear and substantial federal interests before a court will find obstacle preemption.

The Court reviewed the seven express purposes of FERSA. It then summarized the relevant beneficiary-related provisions of FERSA, which elevate the requirements of a qualifying state property settlement agreement over a deceased participant's designated beneficiary if such an agreement (1) relates to the TSP and (2) notice of it has been received by the federal government before payment is made. The Court also reviewed FERSA's TSP anti-assignment clause, which prohibits funds in the TSP from being assigned, alienated, or subject to execution, levy, attachment, garnishment, or other legal processes. The Court then reviewed three United States Supreme Court decisions that had decided federal life insurance programs preempted state family property laws. The Supreme Court of Maryland emphasized that the preemption analysis of those cases requires an inquiry focused on the federal statute as a whole, not individual provisions removed from context.

With that analytical lens in mind, the Court concluded that the Maryland law at issue would not cause major damage to any of the seven primary purposes of FERSA. Next, the Court considered whether any implied purpose in FERSA's beneficiary-related provisions were impeded by the Estate's claim. Those provisions, the Court concluded, reveal a congressional intent to honor the requirements of a qualifying divorce property settlement agreement over a designated beneficiary. The Court observed that the only provision the agreement at issue here did not comply with was the notice requirement. It reasoned that the federal purposes and objectives served by the advance notice requirement are (1) administrative convenience and (2) precluding double payment by the government. A post-distribution suit to enforce contractual obligations in a divorce property settlement agreement does not hinder any governmental interest in administrative convenience or avoiding double payment, the Court determined. Accordingly, it concluded that the beneficiary-related provisions of FERSA do not preempt the Estate's claim. Finally, the Court held that the TSP anti-assignment clause did not preempt the Estate's claim because that clause applies only to money "in" the fund, and a post-distribution breach of

contract action concerns money already paid. The Court also concluded that the language of the anti-attachment clauses at issue in two of the relevant United States Supreme Court cases was distinguishable.

The Court therefore held that FERSA did not preempt the Estate's claim. Accordingly, the Estate was entitled to summary judgment on its breach of contract claim for damages. The Supreme Court of Maryland reversed the judgment of the Appellate Court with instructions to affirm the judgment of the Circuit Court for Montgomery County.

Caruso Builder Belle Oak, LLC v. Ronalda Sullivan, No. 2, September Term 2024, filed January 28, 2025. Opinion by Eaves, J.

https://www.mdcourts.gov/data/opinions/coa/2025/2a24.pdf

MD. CODE ANN., REAL PROPERTY § 14-117(a)(3)(i) – ACCRUAL OF CLAIMS

Facts:

In July 2015, Caruso Builder Belle Oak, LLC ("Caruso") and Ronalda Sullivan entered into a contract for the sale of a piece of real property located in Prince George's County. That contract was subject to § 14-117(a)(3)(i) of the Real Property Article ("RP") of the Annotated Code of Maryland, which requires a seller to disclose eight pieces of information where the real property at issue is subject to deferred water and sewer payments. Among the information Caruso was required to disclose at the time of contract was the amount of Ms. Sullivan's annual assessment, the rate of interest on the assessment, the total remining value of the assessment, and a statement that the assessment could be paid off in full without penalty. At the time of contract, Caruso's disclosure to Ms. Sullivan indicated that current balance—including interest—on the deferred water and sewer assessment was $20,700. Caruso also listed that same figure for the current estimated payoff amount. Caruso and Ms. Sullivan settled on the contract in February 2016.

In February 2019, Ms. Sullivan filed a complaint against Caruso, alleging that it violated RP § 14-117(a)(3)(i) when it provided her a non-compliant disclosure, preventing her from realizing that she could have paid off the deferred water and sewer assessments at a substantial discount. Caruso filed a motion to dismiss, arguing that Ms. Sullivan's claim was beyond the three-year statute of limitations found in § 5-101 of the Courts and Judicial Proceedings Article ("CJP"). Caruso posited that a violation of RP § 14-117(a)(3)(i) has one element—the failure to provide a compliant disclosure at the time of contract—and that the statute of limitations for Ms. Sullivan's claim ran from that date (July 2015). Ms. Sullivan disagreed, arguing that the RP § 14-117(b) provided Ms. Sullivan with three options of remedies from which to choose, which constituted her cause of action. Because she did not incur the financial obligation to pay the deferred water and sewer charges until settlement, he claim could not have accrued until the day of settlement, making her current claim timely. The Circuit Court for Prince George's County agreed with Caruso and dismissed Ms. Sullivan's complaint.

On appeal, the Appellate Court of Maryland reversed. *Sullivan v. Caruso Builder Belle Oak, LLC*, No. 153, 2024 WL 353625, at *1 (Md. Ct. App. Jan. 31, 2024). The court adopted Ms. Sullivan's interpretation of RP § 14-117, noting that "a cause of action under" RP § 14-117(b)(2)(i) "has two elements[:]" (1) "a violation of RP § 14-117(a)(3)(i), which occurs when a seller makes a deficient disclosure regarding the deferred water and sewer charges in the contract for the initial sale of residential property[]" and (2) the purchaser becomes liable to pay the deferred water and sewer assessments, which can occur only after settlement occurs. Id. at *5 Therefore, "the earliest date that the purchaser incurs damages, meeting all elements of a cause

of action under RP § 14-117(b)(2)(i), and commencing the statute of limitations, is the date of settlement." *Id*. Because Ms. Sullivan sought remedies under RP § 14-117(b)(2)(i), the Appellate Court held, she had three years from the date of settlement to file her claim. And, because her claim was filed within that window, the Appellate Court determined that her action was timely under CJP § 5-101 and reversed the circuit court. *Id*. at *7.

Caruso filed a petition for a writ of certiorari, which the Supreme Court of Maryland granted on February 16, 2024. *Caruso Builder Belle Oak, LLC v. Sullivan*, 486 Md. 388 (2024).

Held: Reversed.

The Supreme Court of Maryland reversed the judgment of the Appellate Court. The Court began by outlining the distinction between causes of action and remedies, as well as Maryland's discovery rule for determining when a statute of limitations begins to run. The Court then held that the plain language of RP § 14-117 unambiguously showed that a violation of RP § 14-117(a)(3)(i) gives rise to a cause of action and that the cause of action has one element: a seller provides a noncompliant disclosure on the date of contract. The Court then clarified that subsection (b) provides for three distinct remedies from which an aggrieved purchaser may elect and that subsections (b)(1)–(3) are not themselves independent causes of action.

Applying that conclusion to the case at bar, the Court held that Ms. Sullivan's cause of action accrued in July 2015—on the date she entered into the contract with Caruso—because she knew or should have known that Caruso provided a noncompliant disclosure given that the disclosure reported the same financial figure for both the immediate payoff amount and the total amount that would be paid with interest over the course of 23 years. Because Ms. Sullivan filed suit in February 2019, she was beyond the three-year statute of limitations contained in CJP § 5-101, and the circuit court was correct to dismiss her claim. Therefore, the Court reversed the judgment of the Appellate Court.

Return to ToC

SM Landover, LLC v. Wynton Sanders and *SM Parkside, LLC v. Tosha Lindsey*, No. 1, September Term 2024, filed February 4, 2025. Opinion by Biran, J.

https://www.mdcourts.gov/data/opinions/coa/2025/1a24.pdf

REAL PROPERTY – MD. CODE ANN., REAL PROP. ("RP") § 14-117(a)(3)(i) (2023 REPL. VOL.) – FAILURE TO DISCLOSE REQUIRED INFORMATION RELATING TO DEFERRED WATER AND SEWER FEES – ACCRUAL OF CAUSE OF ACTION

BUSINESS REGULATION – MD. CODE ANN., BUS. REG. ("BR") §§ 4.5-101(g) & 4.5-301 (2015 REPL. VOL.) – HOME BUILDER REGISTRATION

BUSINESS REGULATION – BR § 4.5-605 – ENFORCEABILITY OF CONTRACT BY UNREGISTERED HOME BUILDER

Facts:

Petitioners/Cross-Respondents, SM Landover, LLC and SM Parkside, LLC (together, the "Sellers"), contracted with Respondents/Cross-Petitioners, Wynton Sanders and Tosha Lindsey (together, the "Homeowners"), for the sale of their new homes in Landover, Maryland, and Upper Marlboro, Maryland, respectively. Under the Home Builder Registration Act (the "HBRA"), BR § 4.5-605, a contract for the performance of any act for which a home builder registration number is required is not "enforceable" unless the home builder was registered at the time the homeowner signed the contract. The Sellers were not registered under the HBRA as home builders at the time the contracts were signed. The contracts contained a provision stating that the parties would have up to one year in which to bring any claims relating to the contracts or the properties. The Homeowners filed class action complaints against the Sellers in the Circuit Court for Prince George's County more than one year after they signed their contracts, but less than one year after they settled on their new homes. In their complaints, the Homeowners asserted, among other claims, that the Sellers failed to make certain disclosures concerning deferred water and sewer charges that are required under RP § 14-117(a)(3)(i) (the "Disclosure Act") in contracts for the sale of new homes in Prince George's County.

The circuit court granted the Sellers' motions to dismiss the Homeowners' complaints with prejudice, finding significant that another party to the contracts, Stanley Martin Companies, LLC ("SMC"), was registered as a home builder under the HBRA; therefore, according to the circuit court, the Sellers did not have to also register under the HBRA. The Appellate Court of Maryland affirmed in part and reversed in part. *Sanders v. SM Landover, LLC*, Nos. 1876, 1880, and 1884, Sept. Term, 2021, 2023 WL 1097343 (Jan. 30, 2023). The Appellate Court determined that the Sellers qualified as "home builders" under the HBRA. However, because SMC was registered as a home builder under the HBRA, the Appellate Court concluded that the Sellers could enforce the contractual limitations provisions against the Homeowners. Nevertheless, the Appellate Court held that the Homeowners' claims for violations of the Disclosure Act were

timely under the contractual one-year limitations period because their claims accrued on the date of settlement on their new homes, not on the earlier date of contracting.

Held: Affirmed in part and reversed in part.

The Supreme Court of Maryland first addressed the issue of when a cause of action accrues for violation of the Disclosure Act. The Court held that its recent decision in *Caruso Builder Belle Oak, LLC v. Sullivan*, No. 2, Sept. Term 2024, resolved this question in favor of the Sellers. Under *Caruso Builder*, a cause of action under RP § 14-117(a)(3)(i) ordinarily accrues at the time the contract for the initial sale of residential real property is executed, not at the time of settlement. *See Caruso Builder*, Slip. Op. at 22-23. Applying the reasoning of *Caruso Builder*, the Court held that the Homeowners' claims for violations of the Disclosure Act accrued at the time of contracting, not at the time of settlement. Thus, the Court explained that the Homeowners' claims were untimely under the contractual one-year limitations period unless the Sellers were barred from invoking that shortened limitations period due to their failure to register as home builders.

Next, the Court determined that the Sellers were not permitted to act as home builders without registering under the HBRA. The Court concluded that the Sellers met the HBRA's definition of "home builder" under BR §§ 4.5-101(g)(2)(ii) and 4.5-101(g)(2)(iv). The Sellers argued that, despite meeting that definition, because SMC was both a party to the contracts and registered under the HBRA as a home builder prior to entering into the contracts with the Homeowners, the HBRA did not require the Sellers also to be registered as home builders before entering into the contracts. The Court determined that, under the plain language of the HBRA, the Sellers were required to register as home builders before acting as home builders. Under the HBRA, "a person may not act as a home builder … unless the person is registered as a home builder under this title." BR § 4.5-301(a). The HBRA provides exceptions from the registration process under BR § 4.5-101(g)(3), but does not provide an exception for a person who acts as a home builder with respect to a transaction where another party to the sales contract is a registered home builder. The Court further determined that the pertinent legislative history of the HBRA supports this interpretation.

Lastly, the Court concluded that an unregistered home builder may not invoke a contractually agreed-upon period of limitations in defense of a claim brought by a homeowner. The Court rejected the Sellers' argument that BR § 4.5-605 only bars an unregistered home builder from *affirmatively* enforcing a new home sales contract in a lawsuit the home builder files against a homeowner, and does not prohibit an unregistered home builder from invoking a contract or its terms in *defense* of claims brought against it. The Court reasoned that invoking the limitations period in defense of a claim is synonymous with "enforcing" it. Thus, under the plain meaning of BR § 4.5-605, the Sellers were prohibited from raising a timeliness defense based on the contractual limitations period. The Court determined that the General Assembly abrogated Maryland's common law of contracts to the extent it otherwise might permit an unregistered home builder to invoke a contractual provision in defense of a claim brought against it. Because

the one-year contractual limitations period could not be raised as a defense by the Sellers, the Homeowners' claims for violations of the Disclosure Act were timely under the default three-year statute of limitations for civil actions under Maryland law.

Return to ToC

APPELLATE COURT OF MARYLAND

Swinton Home Care, LLC v. Lillian Tayman, No. 1671, September Term 2023, filed January 31, 2025. Opinion by James R. Eyler, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1671s23.pdf

CONTRACTS-FRAUD IN THE INDUCEMENT

Facts:

An agent of Swinton Home Care, LLC, an entity that provides home health care services, represented to Lillian Tayman, the sister of Mary Tayman, who was then hospitalized, that Lillian Tayman could sign a contract on behalf of Mary Tayman even though Lillian Tayman did not have a power of attorney or other authorization. Lillian Tayman signed the contract in the name of Mary Tayman but also signed a Guaranty using her own name. Swinton Home Care, LLC provided health care services to Mary Tayman after she was discharged from the hospital. Mary Tayman paid for the services for a period of time, then defaulted, and subsequently died. Swinton Home Care, LLC sued Mary Tayman's estate and Lillian Tayman for breach of contract, quantum meruit, and unjust enrichment.

Following a bench trial, the Circuit Court for Montgomery County found that Swinton Home Care, LLC fraudulently induced Lillian Tayman to sign Mary Tayman's name, thus voiding the contract. Therefore, there was no obligation to guarantee. Based on the finding of fraud, the entity could not pursue equitable remedies.

Held: Affirmed.

The evidence was sufficient to support the findings and, thus, the judgment.

Return to ToC

In re I.Q., No. 2039, September Term 2023 & No. 741, September Term 2024, filed January 3, 2025. Opinion by Nazarian, J.

Zic, J., dissents.

https://www.mdcourts.gov/data/opinions/cosa/2025/2039s23.pdf

APPEALABILITY – INTERLOCUTORY ORDERS – CHANGING THE TERMS OF A CUSTODY OR VISITATION ORDER

LAW OF THE CASE – CHILD IN NEED OF ASSISTANCE AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS

JUVENILE LAW – CHILD IN NEED OF ASSISTANCE – MODIFICATION OF PERMANENCY PLAN AND VISITATION

JUVENILE LAW – TERMINATION OF PARENTAL RIGHTS – MODIFICATION OF VISITATION

Facts:

On January 9, 2019, three-month-old I.Q. ("I.") was admitted to Johns Hopkins Hospital following five days of extreme irritability, projectile vomiting, abnormal "blank" staring, and decreased appetite. Hospital staff diagnosed I. with severe head trauma and several fractures to his limbs and ribs that were in various stages of healing. Child abuse experts determined I.'s injuries were caused by nonaccidental abuse. Both I.'s mother ("Mother") and father ("Father") denied abusing I., and, as to why she delayed seeking medical care for I., Mother claimed she did not think his symptoms were that serious. Due to his injuries, I. is permanently blind and suffers from multiple ongoing medical issues.

The Department placed I. in shelter care on January 9, 2019. The next day, the Department filed a Child in Need of Assistance ("CINA") Petition with Request for Shelter Care in the Circuit Court for Baltimore City sitting as the juvenile court. The court granted the petition. On May 15, 2019, the court held an adjudicatory hearing and found I. to be a CINA, committed him to the Department, and granted limited guardianship to the Department.

The Department conducted an internal investigation and found both Mother and Father responsible for indicated child abuse. Mother appealed. Following two hearings in July and October 2020, the Office of Administrative Hearings changed the finding as to Mother to indicated child neglect for her failure to timely seek medical care for I.

The Department filed a petition to terminate Mother's parental rights on March 18, 2021, initiating I.'s termination of parental rights ("TPR") proceedings. On June 11, 2021, in I.'s CINA case, the juvenile court changed I.'s permanency plan to adoption by a nonrelative. The court

then held a multi-day hearing on the Department's TPR petition in October and November 2022. The court denied the petition, after which both I. (sometimes the "Child") and the Department appealed.

While this TPR appeal was pending, the juvenile court held a review hearing in I.'s CINA case. On November 9, 2023, while the CINA review hearing was still in progress, the Appellate Court issued an opinion in I.'s TPR case vacating the juvenile court's denial of the TPR petition and remanding for further proceedings. *See In re I.Q.*, No. 0108, Sept. Term 2023 (Md. App. Nov. 9, 2023) (the "2023 TPR opinion"). On December 13, 2023, the CINA court ordered a change in I.'s permanency plan back to reunification and granted Mother unsupervised visits. Both the Child and the Department appealed.

While the CINA appeal was pending, Mother filed a motion in the TPR case to dismiss the TPR petition or to hold it *sub curi*a until the CINA appeal was resolved. The court held a hearing on May 30, 2024, during which Mother requested, for the first time, that the court allow Mother monthly overnight visits with I. The court granted Mother's petition to hold the petition *sub curia* and granted her request for overnight visitation. Both the Child and the Department appealed.

On July 18, 2024, the Appellate Court granted the parties' joint motion to consolidate the CINA and TPR appeals.

Held: Affirmed.

In their appeal from the CINA court's December 13, 2023 order, the Child and the Department asked the Appellate Court to determine: (1) whether the court erred in concluding that the Appellate Court's 2023 TPR opinion was not the law of the case in I.'s CINA proceedings; (2) whether collateral estoppel barred the court from reconsidering issues addressed in the 2023 TPR opinion; (3) whether the court erred by conducting a permanency plan hearing while the first TPR appeal was pending; and (4) whether the court abused its discretion in changing I.'s permanency plan visitation structure.

As a threshold matter, the Court interpreted Md. Code (1974, 2020 Repl. Vol.) § 12-303(3)(x) of the Courts & Judicial Proceedings Article ("CJP") as allowing the Child and the Department to appeal the juvenile court's order despite no deprivation of Mother's care and custody of I.

As to the four arguments presented by the Child and the Department, the Court held first that the 2023 TPR opinion was not the law of the case in I.'s CINA proceedings because CINA and TPR proceedings involve related but, ultimately, separate issues. Second, the Court held that collateral estoppel did not bar the juvenile court from revisiting issues that the Court address in the 2023 TPR opinion because the Court did not reach a final judgment on the merits as to those issues. Third, the Court held that the juvenile court did not err in conducting a CINA review hearing while the first TPR appeal was pending because the juvenile court followed the correct statutory

procedures and concluded properly that the changes to I.'s permanency plan and visitation structure were in I.'s best interest. Finally, the Court held that the juvenile court did not abuse its discretion when it changed I.'s permanency plan and visitation structure because the juvenile court reviewed all required factors in Md. Code (1999, 2019 Repl. Vol.) §§ 5 525(f)(1)(i)–(vi) and 9-101 of the Family Law Article and concluded properly that it would be in I.'s best interest to modify the permanency plan and visitation order.

In their appeal from the TPR court's May 20, 2024 order, the Child and the Department asked the Appellate Court to determine: (1) whether the court violated the mandate rule when it held the TPR petition *sub curia*; (2) whether the court erred by holding an impromptu visitation hearing during a guardianship status hearing; and (3) whether the court abused its discretion by granting Mother overnight visits.

Again, as a threshold matter, the Court held that CJP § 12-303(3)(x) permitted the Child and the Department to appeal the juvenile court's ruling granting Mother overnight visitation despite no deprivation of Mother's care and custody of I. The Court held, however, that the court's decision to hold the TPR petition *sub curia* was not appealable. The Court explained that this order was not a final judgment but rather a temporary postponement that did not place the parties out of court for an unreasonable amount of time. Additionally, this order was not appealable under the collateral order doctrine because the guardianship proceedings were not essential to achieving permanency for I., and the Court decision in the CINA appeal would not terminate the TPR proceedings. Thus, the Court did not reach the merits of the first issue presented by the Child and the Department.

As to the remaining two questions, the Court held first that, although not the best or recommended practice, the juvenile court has jurisdiction to address visitation matters during a TPR proceeding. Thus, the court did not err when it ruled on Mother's sudden visitation request during the TPR hearing. Second, the Court held that the juvenile court did not abuse its discretion when it granted Mother's request for monthly overnight visits because the court made the required finding under FL § 9-101 that further abuse is unlikely to occur and concluded properly that a change in I.'s visitation structure would be in I.'s best interest.

Return to ToC

Deborah Kasmir v. Retail Services & Systems, Inc., No. 1778, September Term 2023, filed January 30, 2025. Opinion by Graeff, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1778s23.pdf

EMPLOYMENT – RETALIATION – SUMMARY JUDGMENT

Facts:

Deborah Kasmir began working at Retail Services and Systems, Inc. ("RSSI") in 2009. Toward the end of 2018, Ms. Kasmir's supervisor, Ryan Hill, began to express concerns about Ms. Kasmir's work performance, and in April 2019, Mr. Hill rated her performance as "meets expectations." In May 2019, Ms. Kasmir lodged a complaint with human resources alleging age and gender discrimination. In August 2019, Mr. Hill placed Ms. Kasmir on an action plan to help Ms. Kasmir improve her performance. In January 2020, senior management placed Ms. Kasmir on a performance improvement plan. In July 2020, RSSI demoted Ms. Kasmir, citing concerns over her poor performance and a need to restructure her position.

Ms. Kasmir filed a complaint in the Circuit Court for Montgomery County, alleging that RSSI engaged in gender discrimination, age discrimination, and retaliation in violation of Montgomery County Code ("MCC") § 27-19. RSSI filed a Motion for Summary Judgment, which the circuit court granted.

Held: Affirmed.

An employee claiming retaliation must first establish a prima facie case of retaliation. Once the employee meets this burden, the burden shifts to the employer to establish a non-retaliatory reason for the adverse action. If the employer does so, the burden shifts back to the employee to show that the proffered reasons were a pretext. To overcome a motion for summary judgment, the non-moving party must present evidence that supports the assertions made, rather than speculation or personal opinion.

To establish a prima facie case, a plaintiff must produce evidence that: (1) the plaintiff engaged in a protected activity; (2) the employer took an adverse action against the plaintiff; and (3) the employer's adverse action was causally connected to the protected activity. Ms. Kasmir failed to produce evidence that her demotion in July 2020 was casually connected to her complaint of age and gender discrimination in May 2019. Even assuming that other events shortened the relevant time period between the protected activity and the adverse action to nine months, that time period is too long, by itself, to establish a prima facie case of causation based on temporal proximity. Ms. Kasmir failed to show causation based on a "proximity plus analysis." Although she was placed on an action plan several months after she filed her complaint, and she

subsequently was placed on a performance improvement plan, these actions were insufficient to support an inference of causation between her protected activity and her demotion where Ms. Kasmir failed to show that Mr. Haubenstricker, the person who made the decision to demote her, was involved in these actions or had knowledge of her protected activity. The circuit court properly found that Ms. Kasmir failed to make a prima facie case of retaliation because she failed to show a causal connection between her protected activity and her demotion.

The circuit court also properly found that Ms. Kasmir failed to establish any disputes of material fact that would permit a jury to find that employer's proffered reasons for the demotion, poor job performance requiring a restructuring of her position, were pretextual. Ms. Kasmir offered no evidence, other than speculation, that these reasons were false. Her own view of her performance was not relevant to her employer's belief regarding her ability.

Return to ToC

MKOS Properties, LLC v. Bradley W. Johnson, et al., No. 713, September Term 2023, filed January 31, 2025. Opinion by Arthur, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0713s23.pdf

REAL PROPERTY – WATER RIGHTS – MEAN HIGH WATER LINE

Facts:

In 2010, Bradley and Nancy Johnson purchased two plots of land on the shore of Wetipquin Creek in Quantico, Maryland. The Johnsons constructed a boardwalk that allows the public to reach Wetipquin Creek and an intertidal beach, which is at least partially submerged at high tide. The portion of the boardwalk running over the intertidal beach is not on the Johnsons' property. The Johnsons also constructed a bench and a weather station on that beach to facilitate the use of a sailboat.

MKOS Properties LLC purchased a plot of land adjacent to the Johnson parcels. MKOS demanded that the Johnsons remove the boardwalk, the bench, and the weather station from what MKOS said was its property. The Johnsons did not remove the improvements, and MKOS filed a complaint in the Circuit Court for Wicomico County, alleging one count of trespass and ejectment. MKOS alleged that the Johnsons' improvements interfered with its property rights, its riparian rights, or both. The Johnsons filed a countercomplaint, and both parties moved for summary judgment. The circuit court granted the Johnsons' motion for summary judgment and issued a declaratory judgment in the Johnsons' favor.

MKOS appealed to the Appellate Court of Maryland, which remanded the case because the circuit court failed to define whether the fixtures were located above or below the mean high water line ("MHWL"), which ordinarily marks the division between state and private ownership of the shoreline.

On remand, MKOS called an expert who testified that the boardwalk and the weather station were on MKOS's property, not the Johnsons' property. The circuit court found that MKOS's expert was not credible. The court found that he failed to establish the MHWL and conducted his land survey without sufficient precision. The court denied MKOS's requests for relief with respect to its trespass/ejectment action and refused to address its riparian rights arguments. MKOS appealed the circuit court's order.

Held: Affirmed.

Return to ToC

The Appellate Court of Maryland held that the circuit court did not err in ruling that MKOS failed to prove that the improvements at issue were on its property. The Court also held that the circuit court did not err in declining to address MKOS's riparian rights arguments.

Title 26 of the Code of Maryland Regulations dictates that one may ascertain the location of the MHWL by correlating on-site measurements with tidal datums published by the National Oceanic and Atmospheric Administration. For purposes of obtaining a private tidal wetlands permit, a person may also ascertain the location of the MHWL with an "evaluation of the project site conditions" based upon four factors: (i) predicted tide range elevations, (ii) meteorologic conditions, (iii) vegetation and other biological factors at the site including barnacles and algae lines, and (iv) physical indicators at the site such as wrack lines, stain marks on nearby structures, and beach particle sorting. The Court concluded that MKOS's expert did not employ any of the methods of finding the MHWL allowed by COMAR. The Court also held that, even had MKOS's expert employed a permissible method of locating the MHWL, his calculations were insufficiently precise. The circuit court did not err when it found that MKOS's expert failed to reliably establish the MHWL.

Additionally, the Court held that the circuit court was correct to decline to address MKOS's argument that the improvements interfered with MKOS's riparian rights. The term riparian rights indicates a "bundle of rights that turn on the physical relationship of a body of water to the land abutting it." *Conrad/Dommel, LLC v. W. Dev. Co.*, 149 Md. App. 239, 268 (2003). MKOS argued that, by virtue of its ownership of land on Wetipquin Creek, it has riparian rights such that a court can eject the Johnsons from property over which MKOS asserts possessory rights. The Court held that common law ejectment is a pure possessory action, and riparian rights are not possessory rights. Riparian rights relate almost exclusively to use and access. MKOS asked the circuit court to be restored to possession of water it may have the right to use and access but does not have the right to possess. The Court applied similar reasoning to the trespass portion of MKOS's complaint, holding that because riparian rights are non-possessory, MKOS cannot prove that the Johnsons negligently intruded upon any possessory interest.

Return to ToC

Osiris Holding of Maryland LLC, et al v. Patricia Daniels, No. 1774, September Term 2023, filed January 30, 2025. Opinion by Graeff, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1774s23.pdf

NEGLIGENCE – DISINTERMENT – STANDARD OF CARE

Facts:

Patricia Daniels filed a complaint in the Circuit Court for Prince George's County, alleging negligence in connection with the disinterment of her son, Gregory Daniels, after her son was interred in the wrong burial plot. Mrs. Daniels testified that she had her son buried "as a Muslim." In a Muslim burial, the decedent's remains are wrapped and shrouded in cloth and placed directly in an outer burial container ("OBC"), not into a casket or coffin.

During the disinterment, the lid to the OBC cracked. The cemetery operators nevertheless attempted to lift the OBC out of the ground, but the lid fell off, the OBC fell back into the freshly excavated hole, and Mr. Daniels' remains "partially spilled on the ground." Osiris Holding of Maryland, LLC, and Osiris Holding of Maryland Subsidiary, Inc. ("Osiris"), appealed from the judgment awarding Mrs. Daniels $3,040 in expenses and $357,000 in noneconomic damages, as well as the court's denial of the motion for judgment notwithstanding the verdict.

Held: Affirmed.

A cemetery has a duty of care in disinterring or otherwise handling a dead body. Although expert testimony may be required in a negligence suit against a cemetery, it was not required in this case. Industry standards can be admitted to show the applicable standard of care in a negligence cause of action, and in this case, Mrs. Daniels presented evidence that the industry standard is to have a mortician present at a disinterment, and if the outer burial container becomes compromised before it is removed from the ground, the mortician should transfer the remains to a new outer burial container. Based on this evidence, a reasonable fact finder could determine that the applicable standard of care owed by Osiris during the disinterment was to have a mortician present, and once the lid cracked and the OBC became compromised, the mortician present should have moved Mr. Daniels' remains from the compromised OBC to the new OBC before continuing to bring Mr. Daniels' remains out of the grave.

Based on the evidence presented, and the inferences that could be drawn from that evidence, a reasonable fact finder could determine that Osiris breached its duty to exercise reasonable care by failing to have a mortician present to transfer Mr. Daniels' remains to a new OBC when the OBC in which he was buried became compromised.

Return to ToC

ATTORNEY DISCIPLINE

DISBARMENTS/SUSPENSIONS

By an Order of the Supreme Court of Maryland dated January 27, 2025, the following attorney has been suspended for 150 days by consent:

PHILIP ALLEN DAVIS

*

By an Order of the Supreme Court of Maryland dated January 27, 2025, the following attorney has ben disbarred:

BRUCE ALLEN JOHNSON, JR.

*

By an Order of the Supreme Court of Maryland dated January 27, 2025, the following attorney has been indefinitely suspended by consent:

BRYAN KEITH MARSHALL

*

By an Order of the Supreme Court of Maryland dated January 27, 2025, the following attorney has been temporarily suspended:

STEPHEN LAWRENCE SNYDER

*

Return to ToC

JUDICIAL APPOINTMENTS

*

On December 20, 2024, the Governor announced the appointment of **Claude de Vastey Jones** to the District Court for Howard County. Judge de Vastey Jones was sworn in on January 23, 2025, and fills the vacancy created by the retirement of the Hon. Pamila J. Brown.

*

On December 20, 2024, the Governor announced the appointment of **Philip Thomas Cronan** to the Circuit Court for Talbot County. Judge Cronan was sworn in on January 24, 2025, and fills the vacancy created by the elevation of the Hon. Stephen H. Kehoe to the Appellate Court of Maryland.

*

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*
A		
Alston, Lando Nesbitt v. State	1350 **	January 24, 2025
Atkins, William v. Wheeler	0214	January 31, 2025
B		
Bhairava, Shiva v. State	1471 *	January 2, 2025
Bluefeld, Barry v. Annuity Associates	1113 *	January 27, 2025
Boston, Darius Tyler v. State	0819 *	January 13, 2025
C		
Clark, David Lawrence v. Darcars Leasing	0619	January 14, 2025
Coates, Nigel v. State	1573 *	January 14, 2025
D		
Davis, Jermaine v. State	2030 **	January 10, 2025
DeChalus, Michelle Rae v. State	1012 *	January 28, 2025
Diggins, Michael v. State	2177 **	January 30, 2025
F		
Fenner, Lamar Pierre v. State	1662 *	January 31, 2025
Ferris Charitable Operating Foundation v. Meyer	1651 *	January 6, 2025
G		
Gaskins, April v. State	1420 *	January 10, 2025
Green, Jonathan Blake v. State	1127 *	January 24, 2025
Green, Tavon Jamal, Jr. v. State	1640 *	January 9, 2025
Gross, Leslie D. v. Clarke	2384 *	January 23, 2025
Guzman, Mauricio v. Drouliskos	1853 *	January 17, 2025

September Term 2024
* September Term 2023
** September Term 2022
*** September Term 2021

H

Hencken, Melissa Jerro v. Jacobs	2209 *	January 23, 2025
Hill, Orlando Cedric v. State	0350 *	January 3, 2025
Hill, Orlando Cedric v. State	0779 *	January 3, 2025
Hinton, Kenneth Adolphus v. State	0134	January 14, 2025
Holder, Justin K. v. Dept. of Environment	1710 *	January 27, 2025

I

Immel, Todd E. v. State	1925 *	January 13, 2025
In re: D.O.	0839	January 13, 2025
In re: Estate of Rader, Rita Anne	0515 *	January 17, 2025
In re: J.T. & R.T.	1134	January 23, 2025
In re: M.R.	0785	January 14, 2025
In re: Z.J.	0999	January 21, 2025
In the Matter of Flamer, Sheryl W.	2179 *	January 28, 2025
In the Matter of Ford, Marlon	2084 *	January 14, 2025
In the Matter of Hicks, Jacquelyn	1205 *	January 10, 2025
In the Matter of Hinton, Kenneth	0819	January 2, 2025
In the Matter of Stanforth, Branden	0016	January 9, 2025

J

Jackson, Dorrell v. State	0447 *	January 21, 2025
Jeter, Jermaine Joseph, Jr. v. State	2102 *	January 2, 2025
Jones, Daya v. State	1026 *	January 29, 2025

K

Kalantary Design Grp. v. Kelly Dorsey, PC	2389 *	January 21, 2025

L

Lewis, Shaila E. Settles v. Lewis	2043 *	January 14, 2025
Little, Mitchell F., Jr. v. Hyde	1681 *	January 13, 2025

M

McBride, Zarion Juwan v. State	1591 *	January 21, 2025
McKnight, Jhatavus Lamar v. State	0589 *	January 29, 2025
Miller, Terrance v. State	1155 *	January 16, 2025
Montgomery Cnty. v. Engage Armament	2319 *	January 24, 2025
Mood, Shawn Alan v. Mood	1829 *	January 24, 2025
Murray, George Colin v. State	0012	January 31, 2025

September Term 2024
* September Term 2023
** September Term 2022
*** September Term 2021

Return to ToC

N		
New Life Evangelical Baptist Church v. Hallan	0860 *	January 13, 2025
R		
R.B. v. Hinting	1266 *	January 14, 2025
Retreat Road v. Miscellaneous Metals	0943 *	January 29, 2025
Rosa, Yariel J. v. State	1333 *	January 24, 2025
S		
Sexton, John Paul v. State	1922 *	January 22, 2025
Sheppard, Keimoni v. State	0640 *	January 23, 2025
Shorter, Shane A. v. Gibbons	0975	January 21, 2025
Shropshire, Antonio v. State	1770 *	January 2, 2025
Spriggs, Alvin v. State	1914 *	January 13, 2025
Springer, Pamela v. Phillips	0406	January 3, 2025
State v. Beasley, Andre M.	0176 **	January 30, 2025
State v. Moore, Willie Matthew	2440 *	January 6, 2025
Stone, Michael Eugene v. State	1488 *	January 24, 2025
T		
Thompson, Seana R. v. State	1542 *	January 2, 2025
Twigg, Linda Kay v. Twigg	2180 **	January 16, 2025
W		
Williams, Darius v. State	1227 *	January 28, 2025
Willingham, Genethia G. v. Dept. of Human Services	1738 ***	January 31, 2025
Wolf, Ellen Paulisick v. Wolf	0090	January 27, 2025
Y		
Y.D. v. State, et al.	1818 *	January 14, 2025

September Term 2024
* September Term 2023
** September Term 2022
*** September Term 2021