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# COURT OF APPEALS

*Attorney Grievance Commission of Maryland v. Jimmy Anthony Bell*, Misc. Docket AG 21, September Term 2012, filed July 8, 2013. Opinion by Greene, J.

<http://www.mdcourts.gov/opinions/coa/2013/21a12ag.pdf>

ATTORNEY DISCIPLINE - APPROPRIATE SANCTIONS

## **Facts:**

The Attorney Grievance Commission moved to impose sanctions against Jimmy Anthony Bell (“Bell”) for violations of Maryland Rules of Professional Conduct (“MLRPC”) 1.1, 1.15(a), and 8.4 and Rules 16-606.1(a)(1), 16-607(a) and 16-109(a)-(c) of the Maryland Rules.

The hearing judge assigned to the matter, among other things, found that Bell improperly handled client funds by using his trust account for personal matters, failing to maintain proper records, and allowing his trust account to fall to a negative balance, even though he replenished the funds promptly. The hearing judge also found that while Bell committed violations, he did not intentionally misappropriate funds. Finally, the hearing judge noted that none of Bell's clients alleges that he owes them money.

## **Held:**

The appropriate sanction is indefinite suspension with right to reapply in 30 days.

In cases, like the present one, where there is unintentional misappropriation not resulting in financial loss to the attorney's clients, we generally impose an indefinite suspension. Although Bell had two aggravating factors, namely multiple offenses and a past reprimand for obtaining an unreasonable fee from a client, there are several mitigating factors in the present case as well. These include that Bell voluntarily took corrective action including enrolling in a class to improve his record keeping, that his actions were unintentional, and that none of Bell's clients claim he owes them money. Considering all factors we concluded that an indefinite suspension with a 30-day “sit-out” period is appropriate.

*Attorney Grievance Commission of Maryland v. Jason A. Kobin*, Misc. Docket AG No. 18, September Term 2012, filed July 8, 2013. Opinion by Barbera, J.

<http://www.mdcourts.gov/appellate/coa/2013/18a12ag.pdf>

## ATTORNEY MISCONDUCT – SANCTIONS – DISBARMENT

### **Facts:**

The Attorney Grievance Commission (“Commission”), acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action against Respondent Jason A. Kobin. The petition alleged that Respondent committed professional misconduct by failing to manage his attorney trust account, comply with federal and state tax obligations, and supervise his nonlawyer assistant.

The matter was referred to the Honorable Angela M. Eaves of the Circuit Court for Harford County to make findings of fact and conclusions of law. Judge Eaves found that Respondent commingled client fees and personal funds in the firm’s trust account and improperly used client funds in that account to pay for personal and business expenses. Respondent did not advise his nonlawyer assistant of the rules regarding trust accounts, and did not train her how to comply with those rules. Respondent authorized his assistant to write checks from the firm’s trust account for employee paychecks and other business expenses. Respondent also failed to pay withholding taxes to the appropriate taxing authorities in 2010 and 2011, maintain withholding taxes in trust, and keep records of the amount of taxes withheld. Respondent failed to respond to the Commission’s request for discovery of Respondent’s trust account records, and did not inform Bar Counsel and the hearing judge until the hearing that he did not produce the trust account records because they did not exist in the form requested by the Commission.

Judge Eaves also made two findings of fact to which Respondent excepted. Judge Eaves found that Respondent lied to the Commission about the outstanding balance owed to Central Payroll Management (“CPM”), the company that managed Respondent’s taxes and employee payroll matters. Judge Eaves also found that Respondent lied when he stated that his former employee’s allegation that checks written from his Interest on Lawyers Trust Account (“IOLTA account”) had bounced was “absurd and completely false.”

Based on these factual findings, Judge Eaves concluded that Respondent violated Maryland Lawyers’ Rules of Professional Conduct (“MLRPC”) 1.15(a) and (b) (safekeeping property); 5.3 (responsibilities regarding nonlawyer assistants); 8.1(a) and (b) (bar admission and disciplinary matters); and 8.4(a), (b), (c), and (d) (misconduct). Judge Eaves also concluded that Respondent violated Maryland Rules 16-606.1 (attorney trust account record-keeping), 16-607 (commingling of funds), and 16-609 (prohibited transactions), as well as Maryland Code (2000, 2010 Repl. Vol.), § 10-306 of the Business Occupations and Professions Article (“BOP”) (misuse of trust money).

The Court of Appeals entered a Per Curiam Order disbaring Respondent on May 2, 2013.

**Held:**

The Court of Appeals overruled Respondent's exception to Judge Eaves's finding as to Respondent's misrepresentation of the outstanding balance owed to CPM. The Court sustained Respondent's exception to Judge Eaves's finding as to Respondent's characterization of his former employee's allegation that checks written from the IOLTA account had bounced. Based on an independent review of the record and Bar Counsel's concession at oral argument before the Court, the Court concluded there was no evidence to support the former employee's allegation that checks written from the IOLTA account had bounced.

The Court concluded that Respondent's failure to withhold employee taxes, keep withholding taxes in trust for the State, and maintain appropriate records of withholding taxes violated MLRPC 1.15(d). Respondent's failure to comply with federal and state tax obligations also violated MLRPC 8.4(b), (c), and (d). The Court concluded that Respondent violated MLRPC 1.15(a) and (b); Maryland Rules 16-606.1, 16-607, and 16-909; and BOP § 10-306 by depositing both client funds and personal funds into the trust account, using the trust account for wages and other personal expenses, and failing to maintain adequate trust account records.

The Court further concluded that Respondent violated MLRPC 5.3(a), (b), and (c) by failing to train his assistant to comply with the rules regarding trust accounts and by authorizing his assistant to manage the trust account in ways that were incompatible with Respondent's professional obligations under MLRPC 1.15.

The Court concluded that Respondent violated MLRPC 8.1(a) by misrepresenting his relationship with CPM to the Commission. The Court also concluded that Respondent's failure to respond to the Commission's discovery request violated MLRPC 8.1(b). By violating several Rules of Professional Conduct, Respondent also violated MLRPC 8.4(a). Finding no mitigating factors, the Court concluded that the appropriate sanction in this case is disbarment.

*Attorney Grievance Commission of Maryland v. John Edward Coppock, Jr.*, AG No. 66, September Term 2011, filed July 9, 2013. Opinion by McDonald, J.

Bell, C.J., dissents.

<http://www.mdcourts.gov/appellate/coa/2013/66a11ag.pdf>

ATTORNEY DISCIPLINE – DISHONEST CONDUCT – MISREPRESENTATIONS TO CREDITOR

ATTORNEY DISCIPLINE – CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE – MISREPRESENTATIONS TO CREDITOR

ATTORNEY DISCIPLINE – DISHONEST CONDUCT – SANCTION

**Facts:**

John Edward Coppock, Jr., represented multiple families in a lawsuit against a municipality alleging negligence that resulted in extensive property damage. During the appeal of the verdict in his clients' favor, Mr. Coppock obtained a loan from a private lender, ostensibly to consolidate litigation costs. The loan agreement granted the lender a security interest on the attorneys' lien that Mr. Coppock had on his clients' recovery, and required Mr. Coppock to keep the lender informed of all developments in the case. Mr. Coppock also agreed to pay the lender's attorneys' fees in preparing the loan agreement.

Mr. Coppock actually intended to use the loan for personal expenses. He subsequently made other misrepresentations to the lender and the lender's attorney, including that payment of the lender's attorney's fee had been sent when it had not. After the case settled, Mr. Coppock became embroiled in a dispute with his co-counsel over the split in fees, but he did not advise the lender of the conflict. Nor did he inform the lender when he failed to recover fees from two clients who had gone bankrupt.

Mr. Coppock gave the lender numerous false reasons for delays in collecting the fees. When Mr. Coppock did eventually receive a portion of the fees covered by the lender's security interest, he spent the money on other personal debts and lied to the lender about the status of the fees. The loan was ultimately settled during Mr. Coppock's bankruptcy proceedings. Based on the above facts, the Attorney Grievance Commission charged Mr. Coppock with violating several provisions of the Maryland Lawyers' Rules of Professional Conduct ("MLRPC"), including MLRPC 4.2 (a) (communication with person represented by counsel), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (conduct prejudicial to the administration of justice)

**Held:**

Mr. Coppock violated MLRPC 8.4(c) by misrepresenting the purpose of a loan obtained by virtue of his legal practice and expected legal fees, and later misrepresenting the status of the fee and its receipt. A lawyer with financial difficulties should utilize legal processes – such as bankruptcy, or, if confronting illegal lending or collection behaviors, other statutory remedies – rather than deliberately deceive creditors. Mr. Coppock did not violate MLRPC 8.4(d), however, because he did not misappropriate funds or commit fraud. (The hearing judge ruled that Mr. Coppock had not violated MLRPC 4.2(a) because he had not communicated with a represented person *on behalf of a client*. Bar Counsel had not excepted to that conclusion.) In the balance of aggravating and mitigating factors, a formal reprimand was the appropriate sanction.

*Daryl Jones v. Anne Arundel County, Maryland, et al.*, No. 32, September Term 2012, filed July 1, 2013. Opinion by Battaglia, J.

Harrell, Adkins & Barbera, JJ. dissent.

<http://www.mdcourts.gov/opinions/coa/2013/32a12.pdf>

COUNTY GOVERNMENT – EXPRESS POWERS ACT, SECTION 5(S) OF ARTICLE 25A, MARYLAND CODE (1957, 2011 REPL. VOL.) – ANNE ARUNDEL COUNTY COUNCIL – AUTHORITY TO REMOVE COUNCILMEMBER FOR CHANGE OF “RESIDENCE”

COUNTY GOVERNMENT – ANNE ARUNDEL COUNTY CHARTER – QUALIFICATIONS OF COUNCIL MEMBERS – MEANING OF “RESIDENCE” UNDER SECTION 202(C) – DOMICILE

EQUITABLE DEFENSES – CLEAN HANDS DOCTRINE

**Facts:**

In 2010, Daryl Jones, Appellant, was re-elected a member of the Anne Arundel County Council from the First Councilmanic District. In November 2011, he was convicted of failing to file a federal tax return and sentenced to 5 months incarceration in a federal correctional facility in South Carolina. In January 2012, the six remaining members of the Anne Arundel County Council passed Bill 85-11, which stated that Jones’s seat was vacated under Section 202(c) of the Anne Arundel County Code, which provides that a councilmember’s seat shall be vacated if he “move[s] his residence from the councilmanic district in which he resided at the time of his election.” In the Circuit Court for Anne Arundel County, Jones challenged that the County Council had no authority to vacate his seat. He further contended that the County Council misinterpreted “residence” under Section 202(c) to mean a temporary place of abode, requiring a councilmember to sleep and be physically present in his or her councilmanic district, rather than domicile, which is a person’s permanent legal home. The County and County Council contended that Jones was barred by the clean hands doctrine because he concealed the criminal investigation from voters during the 2010 election. The Circuit Court granted summary judgment in favor of the County and County Council, concluding that the County Council acted within its authority under the Express Powers Act, Section 5(S) of Article 25A, Maryland Code (1957, 2011 Repl. Vol.), which provides that the County authority “to pass all ordinances . . . as may be deemed expedient in maintaining the peace, good government, health and welfare of the county.” The Circuit Court further held that “residence” under Section 202(c) means place of abode, not domicile, so that Jones vacated his seat when he left his councilmanic district to serve his sentence in South Carolina. Jones appealed and, prior to any decision by the Court of Special Appeals, the Court of Appeals granted certiorari.

**Held:**

The Court of Appeals reversed. Initially, the Court addressed the County and County Council's argument that the removal of Jones was a political question, from which the Court should abstain from consideration. The Court explained that there was no provision rendering the County Council the sole arbiter of its members' qualifications, and therefore, the political question doctrine did not require the Court's abstention.

Turning to the merits of the case, the Court held that the County Council did not have the authority, under Section 5(S) of the Express Powers Act, to remove Jones from office. The Express Powers Act, the Court explained, was enacted to pass to local governments the General Assembly's power to enact public local laws. The provision at issue, Bill 85-11, was not a local law that applied to all persons in Anne Arundel County, but instead was a special law directed and applied only to Jones.

The Court further held that "residence," under Section 202(c) means domicile, not temporary place of abode, based on the Court's longstanding jurisprudence interpreting constitutional, statutory and charter provisions to equate residence with domicile unless contrary intent is shown.

Finally, the Court held that Jones's claim was not barred by the clean hands doctrine because the fraud alleged by the County, relating to the failure to disclose during the 2010 election, was not the source of the claim that Jones was unlawfully removed from office, which was derived from the County Council's interpretation of the residency requirement in Section 202(c) of the Anne Arundel County Charter.

*Benjamin Morgan Hawkes v. State of Maryland*, No. 76, September Term 2012, filed July 22, 2013. Opinion by Battaglia, J.

Harrell, Adkins and McDonald, J.J., concur and dissent.

<http://www.mdcourts.gov/opinions/coa/2013/76a12.pdf>

STATUTORY INTERPRETATION – SECTION 3-114 OF THE CRIMINAL PROCEDURE  
ARTICLE OF THE MARYLAND CODE – CONDITIONAL RELEASE

**Facts:**

The Court of Appeals considered the correct standard to be applied when a patient, who had been committed to a psychiatric hospital, petitioned for conditional release. Benjamin Hawkes had been confined to the Clifton T. Perkins (Perkins) hospital center after being found not criminally responsible for the killings of his mother and a boarder at his mother's home. During his time at Perkins, Mr. Hawkes was allowed increasing privileges and less restrictive living conditions, culminating in him being allowed to attend classes, unescorted, at a community college. After his successful exposure to that environment, the staff at Perkins recommended that he be approved for conditional release, for which he petitioned pursuant to Section 3-114 of the Criminal Procedure Article of the Maryland Code (2001, 2008 Repl. Vol.).

A hearing was held before an administrative law judge to determine Mr. Hawkes's eligibility for conditional release at which Mr. Hawkes's treating physician and his expert witness testified that he would not be a danger to himself or others if released with appropriate, specified conditions. The State, which opposed Mr. Hawkes's conditional release, called an expert witness who testified that the proposed conditions were not sufficient to ensure that Mr. Hawkes would not be a danger to himself or others. The administrative law judge ruled that Mr. Hawkes was eligible for conditional release, subject to 16 conditions, including restrictions regarding where he must live and the type of treatment he must receive. The State filed exceptions to the administrative law judge's determination, and a hearing was held in the Circuit Court for Howard County. The Circuit Court Judge ruled that the administrative law judge's decision was not based on substantial evidence because the risk assessment reports that were generated while Mr. Hawkes was at Perkins and were entered into evidence indicated that Mr. Hawkes posed some level of risk for future violence, rather than no risk for future violence. Mr. Hawkes appealed this decision to the Court of Special Appeals, arguing that the Circuit Court Judge erred by relying on the risk assessment reports because they did not take into consideration any of the conditions of release that were designed to mitigate any risk that Mr. Hawkes might pose and that "no risk" was not the appropriate standard. The Court of Special Appeals, in an unreported opinion, affirmed the judgment of the Circuit Court Judge.

**Held:**

The Court of Appeals reversed the decisions of the Court of Special Appeals and the Circuit Court and remanded the case for a limited hearing before the administrative law judge. The Court determined that Section 3-114(c) of the Criminal Procedure Article, governing conditional release, did not require a showing that a patient would present no risk without any regard to the proposed conditions, because conditional release is part of the ongoing course of treatment. Because the provider specified in the administrative law judge's conditions for release had withdrawn its offer to provide Mr. Hawkes housing services, however, the Court remanded the case with instructions to determine whether a substitute housing provider could be obtained.

*Darnell Fields v. State of Maryland*, No. 53, September Term, 2012, and *Clayton Colkley v. State of Maryland*, No. 81, September Term 2012, filed July 9, 2013. Opinion by Barbera, J.

McDonald, J. concurs.

<http://www.mdcourts.gov/appellate/coa/2013/53a12.pdf>

CRIMINAL PROCEDURE – DISCOVERY – POLICE DEPARTMENT INTERNAL INVESTIGATION RECORDS

CRIMINAL PROCEDURE – CROSS-EXAMINATION – ALLEGED MISCONDUCT RESULTING IN A POLICE DEPARTMENT INTERNAL INVESTIGATION

**Facts:**

Petitioners, Darnell Fields and Clayton Colkley, were convicted in the Circuit Court for Baltimore City of multiple offenses stemming from a shooting that occurred in East Baltimore. Before trial, Petitioners attempted to subpoena records of a police department internal investigation concerning two State’s witnesses, both of whom were detectives in the Baltimore City Police Department. The Department filed a motion to quash the subpoena. At a hearing on the motion, Petitioners proffered that the complaint that prompted the internal investigation contained allegations that the detectives had submitted fraudulent timesheets. Petitioners further proffered that these allegations had been “sustained” by an investigating officer, a characterization that was not disputed by the Department. Petitioners argued that an inspection of the internal investigation files would reveal information corroborating the complaint, which would then permit Petitioners to cross-examine the detectives at trial regarding the alleged misconduct under Maryland Rule 5-608(b).

Following an *in camera* review of summaries of the internal investigation files, the court ruled that Petitioners were not any entitled access to the files on the grounds that (1) there had been no formal finding of guilt or penalty imposed against the detectives and (2) Petitioners already had the information they sought. At trial, the State moved *in limine* to preclude Petitioners from referring, during cross-examination of the detectives, to the internal investigation or the alleged misconduct underlying the complaint against them. The trial court ruled in the State’s favor, reasoning that because Petitioners had been denied access to the internal investigation records, they could not satisfy the “reasonable factual basis” requirement of Maryland Rule 5-608(b).

The Court of Special Appeals found no abuse of discretion by either the motion court on the discovery ruling or the trial court on the impeachment ruling. Petitioners each sought, and the Court of Appeals issued, a writ of certiorari to review the judgment of the Court of Special Appeals.

**Held:** Reversed and remanded.

The Court of Appeals held that both the motion court and the trial court committed legal error. The Court observed that, although the police internal investigation records at issue are confidential under the Maryland Public Information Act, that status does not necessarily make the records immune from discovery by a criminal defendant. The Court of Appeals held that the motion court erred in failing to apply the framework set forth in *Zaal v. State*, 326 Md. 54 (1992), and by reviewing *in camera* only summaries of the internal investigation records, rather than the entire files sought. The Court explained that, under *Zaal*, when a party demonstrates a “need to inspect,” the court should conduct an *in camera* review of the material sought, either alone or in the presence of counsel, and deny total access “[o]nly when the records are not even arguably relevant and usable.” The Court of Appeals noted various methods by which a court might strike a balance between the confidentiality interest at stake and the defendant’s interest in confronting adverse witnesses.

With respect to the impeachment ruling, the Court of Appeals explained that a witness may be impeached with prior acts bearing on his or her credibility, pursuant to Maryland Rule 5-608(b), when the trial court is satisfied that there is a “reasonable factual basis” for the inquiry and the questioning is not intended to harass or embarrass the witness or likely to obscure the issue at trial. The Court held that the trial court erred in denying Petitioners an opportunity to demonstrate a “reasonable factual basis” for raising the detectives’ alleged misconduct on cross-examination.

The Court concluded that these errors were not harmless beyond a reasonable doubt. As a result, Petitioners are entitled to a new trial.

*Karl Marshall Walker, Jr. v. State of Maryland*, No.74, September Term 2012, filed July 8, 2013. Opinion by Barbera, J.

Bell, C.J., Adkins and McDonald, J.J., concur.

[www.mdcourts.gov/appellate/coa/2013/74a12.pdf](http://www.mdcourts.gov/appellate/coa/2013/74a12.pdf)

CRIMINAL LAW – SEARCH AND SEIZURE – REASONABLE EXPECTATION OF PRIVACY

CRIMINAL LAW – SEXUAL ABUSE OF A MINOR – EXPLOITATION

**Facts:**

Petitioner Karl Marshall Walker, Jr. worked as a paraeducator, a type of instructional assistant, at a Howard County elementary school. He became friendly with an 8-year-old female student, C, with whom he began exchanging notes in which he professed his love for her, described kissing and hugging her, and shared fantasies in which they would take trips together. On March 17, 2010, a student teacher discovered one of the notes Petitioner gave C and alerted school officials. The school's principal called Petitioner and told him that, pending further investigation, he was not to come to work. The school also notified C's mother, who discovered in her daughter's room more than two dozen of the letters Petitioner had given C. She turned the notes over to police.

Detectives received permission from the school's principal to search the work desk used by Petitioner. Inside the desk, they discovered a small box that contained folded up notes from C to Petitioner. Detectives also interviewed Petitioner, who denied having romantic feelings for C and claimed he had no intention of committing any lewd acts. Petitioner was indicted by a Howard County grand jury on charges of sexual abuse of a minor and attempted sexual abuse of a minor. During a pre-trial hearing, the circuit court denied Petitioner's motion to suppress evidence obtained from the search of his school desk. Following a bench trial, Petitioner was convicted of sexual abuse of a minor and its attempt. He appealed his convictions, arguing that detectives violated the Fourth Amendment by searching his work desk and that the evidence against him was insufficient to prove sexual abuse of a minor or its attempt. The Court of Special Appeals affirmed the convictions.

**Held:** Affirmed.

The Court of Appeals noted that defendants who challenge a search under the Fourth Amendment must show that they had a subjective expectation of privacy in the area searched and that this expectation is one that society recognizes as reasonable. The Court observed that Petitioner's desk was in a well-traveled area, had labels on it suggesting there were materials in the desk for use by others, and was left unlocked, despite Petitioner having the ability to request a key.

Additionally, the Court observed that Petitioner did not testify at the suppression hearing or offer other evidence to support his claim. In light of these facts, the Court concluded that Petitioner did not meet his burden to demonstrate a subjective expectation of privacy in the desk. As a result, the Court held that the search did not implicate the Fourth Amendment.

The Court further held that Petitioner's conduct was legally sufficient to sustain convictions for sexual abuse of a minor and its attempt. The Court observed that Maryland Code (2002, 2012 Repl Vol.), § 3-602 of the Criminal Law Article prohibits a person with permanent or temporary responsibility for a child from committing sexual abuse against the child. The statute defines sexual abuse as "an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not," but does not define exploitation. The Court relied on previous cases to conclude that exploitation encompasses a wide range of behavior where a defendant takes advantage of a child for the defendant's own benefit. The Court concluded that a conviction for sexual abuse of a minor requires a fact-finder to determine, in viewing the totality of the circumstances, whether a defendant's actions created a sexually exploitative relationship. After reviewing the facts, the Court concluded that Petitioner's notes had undertones of an adult sexual relationship and thereby created such a relationship with the victim.

The Court also held that its construction of the statute was not impermissibly vague and gave sufficient notice of the type of conduct prohibited under the law.

*In Re: Adoption/Guardianship of Jayden G.*, No. 84, September Term, 2012, filed July 16, 2013. Opinion by Adkins, J.

Bell, C.J., and Harrell, J., join in judgment only.

<http://www.mdcourts.gov/opinions/coa/2013/84a12.pdf>

FAMILY LAW – STAY OF TERMINATION OF PARENTAL RIGHTS (“TPR”) PROCEEDINGS PENDING A PERMANENCY PLAN APPEAL – Whether to stay TPR proceedings pending appeal of the change in the child’s permanency plan from reunification with a parent to adoption by a non-relative in the Child in Need of Assistance (“CINA”) case is within the juvenile court’s discretion. In exercising that discretion, the juvenile court must be guided by the child’s best interests.

FAMILY LAW – TERMINATION OF PARENTAL RIGHTS – ATTACHMENT TO FOSTER PARENTS – As part of the child’s best interests analysis, the juvenile court did not abuse its discretion when it took into consideration the child’s attachment to his foster parents, who have expressed the desire to adopt him. Family Law Article § 5-323(d)(4) expressly requires courts to consider the child’s “emotional ties with and feelings toward the child’s parents, the child’s siblings, and others who may affect the child’s best interests significantly.”

**Facts:**

Over four years ago, on February 17, 2009, a sixteen-month-old boy, Jayden G., and his two older siblings, Daeshawn and Victoria, were removed from their mother’s custody and found to be Children in Need of Assistance (“CINA”). Daeshawn and Victoria were placed in one foster home, and Jayden was placed in another.

For twenty-seven months, the children’s permanency plans were reunification with the mother. Although during that time the mother made some efforts to adjust her situation, she was never able to address the very issues that led to the CINA findings. These included domestic violence by the children’s father, mental health issues, unemployment, and housing.

When it became clear that reunification with the mother was not likely, the Montgomery County Department of Health and Human Services (the “Department”) recommended, and the juvenile court ordered, a plan of adoption by a non-relative for Jayden and limited guardianship over Daeshawn and Victoria to the children’s paternal grandmother. The reason for the different plans was that the children had very different circumstances: Dashawn and Victoria changed foster care placements twice, but Jayden stayed with the same foster family the entire time, and that family was willing to adopt him.

The mother timely appealed Jayden’s plan change to the Court of Special Appeals, arguing that the juvenile court abused its discretion in changing his permanency plan to adoption by a non-relative,

when it could have placed him with his grandmother. But while the appeal was pending, in accordance with Section 3-823(g) of the Courts and Judicial Proceedings Article (“CJP”), the Department filed a TPR petition. The mother filed a motion to stay the TPR case, but the juvenile court denied it.

On December 21, 2011, the juvenile court terminated the mother’s parental rights, and she appealed.

The mother’s appeal of Jayden’s permanency plan change was not resolved until one month after her parental rights were terminated. The Court of Special Appeals vacated the juvenile court’s order and remanded the case for a determination of which permanency plan was in Jayden’s best interest.

The TPR case proceeded on a parallel appellate track, and the Court of Special Appeals affirmed the termination of the mother’s parental rights. The mother filed a petition for writ of certiorari in the Court of Appeals asking the Court to decide whether the termination of her parental rights, while the appeal of the permanency plan change was pending, was proper. She also challenged the TPR court’s consideration of Jayden’s attachment to his foster care providers.

**Held:** Affirmed

The mother advocated for a blanket rule, requiring automatic stays of TPR proceedings pending appeal of a permanency plan change. She based that argument on *In re Damon M.*, 362 Md. 429, 765 A.2d 624 (2001) and *In re Karl H.*, 394 Md. 402, 906 A.2d 898 (2006), in which we recognized a parent’s right to immediately appeal a change of the permanency plan from reunification with a parent to adoption by a non-relative. She also relied on our holding in *In re Emileigh F.*, 355 Md. 198, 733 A.2d 1103 (1999), according to which, a trial court may not enter an order that would frustrate a pending appeal in that case.

In contrast, the Department argued that a juvenile court must not stay TPR proceedings pending appeal because under Section 5-319(a) of the Family Law Article, TPR petitions are to be adjudicated within 180 days of filing.

The Court rejected both arguments. It explained that, although the parent has a right to appeal the plan change, that right does not foreclose or forestall the pursuit of other, overlapping statutory processes. It must coexist with the statutory provisions encouraging expediency in the resolution of TPR cases and the child’s paramount need for permanency, which underlies our CINA and TPR statutes. *Karl H.* itself recognized this as, in that case, the parental rights were terminated while the appeal of the permanency plan was pending.

The Court also distinguished this case from *Emileigh*, agreeing with the Department that there is a difference “between prohibited action that frustrates a party’s right to appeal and a juvenile court’s permitted action, in a child’s best interests, that has the incidental effect of rendering an appeal

moot.” The Court pointed out that, because there is a specific statutory provision that requires the juvenile court to act on a TPR petition, the juvenile court’s ruling in this case may not reasonably be considered a “prohibited action.” Furthermore, unlike in *Emileigh*, in which the juvenile court closed the very case that was being reviewed by the Court, in this case, there are two different cases. The CINA and the TPR cases are governed by different statutes, serve different purposes, depend on different factors, require different standards of proof, and follow different case tracks.

The Court was also unpersuaded by the Department’s argument that the 180-day provision in Section 5-319(a) of Family Law (“FL”) Article leaves juvenile courts no choice but to deny motions to stay TPR proceedings. The Court explained that the term “shall” in the statute is directory in nature and pointed out that, even without stays of TPR proceedings pending appeals, TPR cases are rarely resolved within 180 days.

Having rejected, on the one hand, the mother’s argument that the juvenile court had to stay the TPR proceedings and, on the other hand, the Department’s argument that the court was required to deny the motion, the Court of Appeals concluded that the decision was within the juvenile court’s discretion. In exercising the discretion in ruling on the motion to stay in the context of a TPR proceeding, the court’s paramount consideration is the child’s best interests. *In re Adoption/Guardianship of Ta Niya C.*, 417 Md. 90, 112, 8 A.3d 745, 758 (2010).

A critical factor in this analysis is the desire for permanency in the child’s life. Indeed, Maryland’s CINA and TPR statutory framework requires that “[e]very reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement.” CJP § 3-823(h)(3). When reunification with a parent is not an option, the adoption of the child is viewed—in terms of permanency—as the next best thing. *In re Adoption/Guardianship No. 10941*, 335 Md. 99, 120, 642 A.2d 201, 212 (1994).

But, unless the natural parent gives consent, there can be no adoption (and no permanency) until the natural parent’s rights to the child are terminated. *Id.* It is at that time that “the circuit court has authority to grant the department’s petition for guardianship,” enabling the Department to consent to adoption. *Id.* Thus, in the event that reunification with the natural parent is not possible, the termination of parental rights serves as the segue to permanency.

A stay of TPR proceedings pending the appeal of a permanency plan would inevitably cause a delay. Nevertheless, in some instances, a stay would not be in accordance with the child’s best interest. Agreeing with Jayden that “[t]he best interests of the child demand flexibility,” the Court held that whether a stay would be in a child’s best interest depends on a given case.

With regard to Jayden, the Court reasoned that, in the twenty-seven months that he was in foster care, the mother and the grandmother had their chance to give him permanency but neither provided any tangible hope of doing so. Considering the length of time the appellate process takes, the juvenile court did not abuse its discretion in not making Jayden wait another year or more before achieving permanency.

Next, the Court went on to consider the mother's argument that the court improperly took into account "Jayden's prospect of being adopted by, as well as the quality of care being provided by, his current care providers." But against the backdrop of the juvenile court's methodical analysis of the FL § 5-323(d) factors, the mother's contentions fell flat. Acknowledging that a comparison of the mother to Jayden's foster parents (his potential adoptive parents), as if they were on equal footing, indeed, would not have been proper, the Court held that was not what the juvenile court did in this case.

FL § 5-323(d)(4) requires courts to consider the child's "emotional ties" and "feelings" toward individuals "who may affect the child's best interests significantly," and the child's adjustment to community, home, placement and school. Thus, the juvenile court was required to consider Jayden's emotional attachment to his foster parents and the impact terminating parental rights would likely have on his well-being. And, that was what the court did when it found that Jayden was strongly attached to his foster parents and sister, that he adjusted well in the foster family community, that a severance of the relationship with the Mother would not have a detrimental effect on Jayden, but that it would allow him to achieve permanency. Thus, there was no error.

*Long Green Valley Ass'n, et al. v. Bellevale Farms, Inc., et al.*, No. 65, September Term 2012, filed June 24, 2013. Opinion by Harrell, J.

<http://mdcourts.gov/opinions/coa/2013/65a12.pdf>

REAL PROPERTY – EASEMENTS – AGRICULTURAL PRESERVATION – STATE AGENCY – CHARITABLE TRUSTS – STANDING TO ENFORCE

PETITIONERS LACKED STANDING TO ENFORCE AN AGRICULTURAL EASEMENT AS A CHARITABLE TRUST WHERE THE EASEMENT WAS SOLD THROUGH A GOVERNMENT AGENCY AGRICULTURAL PRESERVATION PROGRAM. THE DEED OF EASEMENT DID NOT INDICATE THAT THE PROPERTY OWNERS OR THE GOVERNMENT AGENCY MANIFESTED AN INTENT TO CREATE A CHARITABLE TRUST WITH A CHARITABLE PURPOSE.

**Facts:**

Bellevale Farms Limited Partnership (“Bellevale”) and Robert E. and Carol A. Prigel (“the Prigels”) own and operate Bellevale Farms, Inc. (“Bellevale Farms”), as an organic dairy farm, on 199 acres in the Long Green Valley area of Baltimore County. In 1997, Bellevale sold an agricultural preservation easement on Bellevale Farms (“the Bellevale Easement”) to the Maryland Agricultural Land Preservation Foundation (“MALPF”), which coordinates a program that purchases easements from landowners who seek to improve the profitability of their land for agricultural enterprise by providing restrictions and appraisal methods that increase land profitability and ensuring the agricultural use of farmland. A decade later, Bellevale requested the MALPF to permit, under the terms of the easement, the construction of a creamery operation (currently operated by Prigel Family Creamery, Inc.) on Bellevale Farms that would market to the public locally-produced dairy products. This venture was opposed by Petitioners here, the Long Green Valley Association (“LGVA”), a community association of Long Green Valley residents dedicated to the preservation of Long Green Valley, and John W. and Susan M. Yoder (“the Yoders”), who own real property adjacent to Bellevale Farms. The MALPF approved the creamery proposal.

Petitioners filed a Complaint against Bellevale, Bellevale Farms, the Prigels, the Prigel Family Creamery, and the MALPF in the Circuit Court for Baltimore County, seeking a declaration that the creamery violated the Bellevale Easement and an order prohibiting the construction and operation of the creamery. The Circuit Court concluded that Petitioners lacked standing to enforce the Bellevale Easement. Petitioners appealed to the Court of Special Appeals, arguing that they possessed standing as third-party beneficiaries to the easement, as “aggrieved” parties, and/or as “interested persons” under Md. Code Est. & Trusts Art., § 14-302(a) because the Bellevale Easement constituted a charitable trust. The intermediate appellate court held that the Bellevale Easement did not create a charitable trust. *Long Green Valley Ass'n v. Bellevale Farms*,

*Inc.*, 205 Md. App. 636, 683, 46 A.3d 473, 501 (2012). It affirmed the judgment of the Circuit Court as to the Petitioners' lack of standing under the charitable trust theory. *Id.*

The Court of Appeals granted Petitioners' petition for writ of certiorari. 428 Md. 543, 52 A.3d 978 (2012).

**Held:** Affirmed.

For the Easement to be a charitable trust, the Easement's terms must manifest the parties' intent for it to constitute a charitable trust, and, second, the Easement must have a charitable purpose.

The Court held that the terms of the Bellevale Easement did not indicate that Bellevale Farms, as Grantor, intended for the MALPF to deal with the property for the benefit of the public, which is a requirement of a valid charitable trust. Rather, the language of the Easement explained that the parties intended the land to be preserved solely for the agricultural use of Bellevale Farms and the MALPF, the Grantee. Further, the Easement provided that only the MALPF, and no other entity, was entitled to determine whether any proposed use of Bellevale Farms may violate the provisions of the Easement.

Lastly, the Court concluded that the Bellevale Easement lacked a charitable purpose. The language of the Easement demonstrated that the principal objective of the Bellevale Easement was to maintain the agricultural use of Bellevale Farms as a profitable endeavor. Moreover, the statutory and regulatory scheme of the MALPF program demonstrated that the Bellevale Easement had no charitable purpose. Petitioners argued that, because the MALPF is a state agency, the undisputed objective of the MALPF program is charitable because the public-at-large benefits from the agricultural preservation easements purchased by the MALPF. Although acknowledging that the public benefits potentially and incidentally from the MALPF program, the Court reasoned that the overarching purpose of the MALPF program is not charitable because its primary goal is to promote and enable profitable farming by purchasing easements in privately-maintained land through a rigorous, market-driven application, purchase, and compliance process. This purpose was achieved through the purchase of easements on lands committed to agricultural use, such as the Easement purchased on Bellevale Farms. Hence, the Court held that Petitioners did not have standing under Est. & Trusts § 14-302(a) to maintain a cause of action to enforce the Easement.

*William J. Warr, Jr., et al. v. JMGM Group, LLC, d/b/a Dogfish Head Alehouse*, No. 57, September Term 2012, filed July 25, 2013. Opinion by Battaglia, J.

<http://www.mdcourts.gov/opinions/coa/2013/57a12.pdf>

TORT LAW – NEGLIGENCE – DUTY – DRAM SHOP LIABILITY

**Facts:**

William and Angela Warr (Warrs) filed suit against the corporate owner of a tavern, the Dogfish Head Alehouse (Dogfish Head), for injuries they and their daughter sustained in a car accident and for the death of their other daughter. The car that struck the Warrs' vehicle was driven by Michael Eaton, who had been drinking heavily at the Dogfish Head before he attempted to drive home. The Warrs asserted that because Dogfish Head served Mr. Eaton while he was visibly intoxicated, the tavern should have been held liable for any damage Mr. Eaton caused. Dogfish Head filed a motion for summary judgment, in which it argued that dram shop liability did not exist in Maryland, that the Circuit Court Judge granted, because, while maintaining his belief that dram shop liability should exist, he recognized that the Circuit Court was not the proper place for changing the common law. The Warrs appealed this decision, but, before any proceedings in the Court of Special Appeals, the Court of Appeal granted the Warrs' petition for certiorari.

**Held:** Affirmed

The Court of Appeals affirmed the decision of the Circuit Court for Montgomery County. The Court focused its analysis on the issue of whether the tavern owed a duty to the Warrs and concluded, based on Maryland precedent, that there was no such duty absent a special relationship, which was not alleged, between the tavern and the Warrs or the Warrs and Mr. Eaton. The also Court noted that adopting dram shop liability would be tantamount to declaring the public policy of the State with respect to liquor sales and that setting forth public policy is squarely within the province of the Legislature rather than the judiciary.

# COURT OF SPECIAL APPEALS

*Larry Finch, et al. v. LVNV Funding LLC*, No. 704, September Term 2012, filed June 28, 2013. Opinion by Berger, J.

<http://mdcourts.gov/opinions/cosa/2013/0704s12.pdf>

VOID JUDGMENTS – COLLATERAL ATTACK

## **Facts:**

In 2008, appellee, LVNV Funding, LLC (“LVNV”), filed debt collection suits against co-appellants Larry Finch (“Finch”) and Kurt A. Dorsey (“Dorsey”) (collectively, “appellants”) in the District Court for Baltimore City. Default judgments were entered against each appellant. Appellants thereafter filed a class action in the Circuit Court for Baltimore City, alleging that LVNV was not licensed as a collection agency, as required by Maryland law, when it obtained the underlying district court judgments. Appellants sought to represent a class comprised of all persons against whom LVNV had obtained a judgment for an alleged debt in Maryland state courts during the period of time in which LVNV was unlicensed. The class action complaint asserted five claims. Appellants sought declaratory and injunctive relief, damages for unjust enrichment, and damages for alleged violations of the Maryland Consumer Debt Collection Practices Act and the Maryland Consumer Protection Act. The circuit court dismissed appellants’ complaint on the basis that it constituted an impermissible collateral attack on the district court judgments.

On appeal, appellants argued that the circuit court erred by dismissing appellants’ class action. In particular, appellants’ contended that the underlying district court judgments were void, and, therefore, the complaint did not constitute an impermissible collateral attack.

**Held:** Reversed.

The Court of Special Appeals held that a judgment entered in favor of an unlicensed collection agency is void as a matter of law. Moreover, the Court of Special Appeals concluded that a void judgment may be collaterally attacked in another court. Accordingly, the Court of Special Appeals held that the district court judgments entered in favor of LVNV while unlicensed constituted void judgments subject to collateral attack.

*Hugo M. Falero v. State of Maryland*, No. 184, September Term 2012, filed June 28, 2013. Opinion by Zarnoch, J.

<http://mdcourts.gov/opinions/cosa/2013/0184s12.pdf>

CRIMINAL LAW – PLEA OF GUILTY – VOLUNTARY CHARACTER – REPRESENTATIONS, PROMISES, OR COERCION – PLEA BARGAINING

**Facts:**

In July of 2011, Hugo Falero pled guilty to first degree assault in the Circuit Court for Montgomery County. Under terms of a plea agreement, the court ordered a presentence investigation (“PSI”) and agreed to make no change to Falero’s bond conditions. The court then directed Falero to comply with the PSI and appear for sentencing in October. When presentence investigation agents tried to contact Falero numerous times over the next several months, he would not answer the phone and was not at his reported address. Falero did not appear for the presentence investigation interview and did not appear for sentencing. The court issued a bench warrant. Falero had fled the country, with a co-defendant and a child, going to El Salvador, then to Uruguay, and finally to Puerto Rico. He was not found until six months later, when he was brought back to Maryland. The circuit court found that Falero had induced the court’s acceptance of his plea through fraud because he planned to flee the country when he pled guilty. The court further found that Falero had not complied with the terms of the plea agreement, namely, the PSI and his bond conditions. Based on these findings and at the State’s request, the court vacated Falero’s plea agreement returning the case to square one, as if the guilty plea had never been entered. Falero appealed, arguing that the circuit court was obligated to give him the sentence provided for in the plea agreement.

**Held:** Affirmed.

The Court of Special Appeals reasoned that the circuit court’s finding that Falero procured the court’s acceptance of guilty plea through fraud was not clearly erroneous based on Falero leaving the country with a co-defendant and a child likely within one month of pleading guilty; traveling to El Salvador, Uruguay, and Puerto Rico; failing to return to the United States for at least four months; and having to be extradited back to Maryland. The Court also found no error in the factual finding that Falero breached his plea agreement because he clearly failed to comply with the presentence investigation and did not appear for sentencing in defiance of his bond conditions.

As for whether the court was required to sentence Falero according to the sentencing terms or could vacate the agreement, the appellate court discussed how plea agreements are to be fairly and equitably executed. Thus, there must be exceptions to the general rule that a court must enforce an accepted guilty plea. The Court concluded that a trial court is permitted to vacate a guilty plea when the defendant obtained the court’s acceptance of the plea agreement through fraud and when

the defendant breached the terms of the plea agreement. Falero did both, and the court did not err in putting the parties back in their original positions.

*Linda Martin et al. v. Allegany County Board of Education*, No. 1070, September Term 2012, filed June 28, 2013. Opinion by Hotten, J.

<http://mdcourts.gov/opinions/cosa/2013/1070s12.pdf>

EDUCATION LAW – PUBLIC SCHOOLS – SCHOOL ENROLLMENT – ELIGIBILITY FOR ADMISSION – RESIDENCY REQUIREMENT

**Facts:**

The Allegany Education Board voted to close a school in the most eastern region of its county, and to consolidate students from the closing facility to nearby institutions. To address the parents' apprehension regarding the consolidation, the Allegany County Board of Education ("Allegany Education Board") and the Washington County Board of Education ("Washington Education Board") entered into an agreement, which allowed students, who resided in Little Orleans, Allegany County, Maryland to attend secondary school in Hancock, Maryland in Washington County.

The superintendent of Allegany County Public Schools drafted letters to the parents whose children opted to attend school in Washington County, which indicated that as a result of loss of state revenues, the Allegany Education Board considered terminating its agreement with Washington Education Board to allow Little Orleans residents to continue to attend school in Washington County. After an extensive debate and public meeting, the Allegany Education Board terminated the agreement, but allowed those children who had begun high school in Washington County to complete their educational requirements there.

Appellants—parents alleged that the Allegany Education Board violated Md. Code (1978, 2008 Repl. Vol.), § 4-121 of the Education Article [hereinafter "Education Article § 4-121"], which governed cross-boundary school enrollment for non-residents. Appellants requested that the State Board of Education ("State Education Board") review the Allegany Education Board's decision. The State Education Board granted review and determined that (1) Education Article § 4-121 included the word "may," so there was no requirement of a cross-boundary school attendance and (2) it was incumbent on county education boards to consider the validity of all expenditures and to balance the needs of all students in difficult fiscal times. Appellants sought judicial review of the State Education Board's determination, and the Circuit Court for Allegany County affirmed.

**Held:** Affirmed.

The Court of Special Appeals held that the State Education Board's determination was not contrary to law, arbitrary, or capricious. The Court considered additional provisions of the Education Article, and recent legislative history of the statute. The Court noted that Education Article §

4-121 included the word “may” as opposed to “shall” or “must.” As a result, the Court surmised that the General Assembly did not require or command that the county education boards enter into a joint agreement to allow cross-boundary school enrollment for non-resident students. Instead, the Court concluded that the General Assembly provided the county education boards with discretion and authority concerning allowing students to obtain schooling in non-residential educational institutions.

*Paul Edery, et al. v. David Edery, et al.*, No. 909, September Term 2012, filed June 28, 2013. Opinion by Eyler, Deborah S., J.

<http://mdcourts.gov/opinions/cosa/2013/0909s12.pdf>

ORPHANS' COURT – STRIKING OF NOTICE OF APPEAL TAKEN FROM JUDGMENT OF ORPHANS' COURT TO COURT OF SPECIAL APPEALS – TIME FOR FILING NOTICE OF APPEAL – JANUARY 2004 AMENDMENT TO RULE 6-461 MAKING RULES MAKING RULES 2-534 AND 2-535 AUTOMATICALLY APPLICABLE IN ORPHANS' COURT PROCEEDINGS – TOLLING OF TIME TO FILE NOTICE OF APPEAL FROM ORPHANS' COURT JUDGMENT TO COURT OF SPECIAL APPEALS, PURSUANT TO RULE 8-202(C), WHEN TIMELY RULE 2-534 OR RULE 2-535 MOTION IS FILED.

**Facts:**

Sultana Edery died testate, leaving six surviving adult children -- Hanan, Paul, David, Michael, Hanna, and Samuel. Her will nominated Hanan as the Personal Representative and Paul as the Substitute Personal Representative. For over two years after the decedent's death neither took steps to submit her Will to probate. David, joined by his three remaining siblings, petitioned for probate of the Will and sought to be appointed Personal Representative. On December 5, 2011, the Orphans' Court entered an order appointing David as Personal Representative. Within 10 days, Hanan filed a motion for reconsideration under Rule 2-534. The Orphans' Court denied the motion by order entered on January 3, 2012. Within 30 days of that date, Hanan and Paul filed a notice of appeal to the Court of Special Appeals, pursuant to section 12-501(a) of the Courts and Judicial Proceedings Article. The appeal proceeded as usual for four months.

On May 30, 2012, upon motion by David and his allied siblings, the Orphans' Court struck the notice of appeal on the ground that it was not timely filed. As a consequence of that ruling, the appeal in this Court was closed administratively.

Hanan and Paul noted an appeal from the order of the Orphans' Court striking the notice of appeal.

**Held:**

The Orphans' court erred in striking the notice of appeal to this Court of its December 5, 2011 order. In 2004, Rule 2-641 was amended to state expressly that Rule 2-534 and 2-535 motions apply to proceedings in the orphans' courts. Before that amendment, case law established that a revisory motion filed in an orphans' court did not toll the time for noting an appeal under Rule 8-202(a), which establishes that, in general, a notice of appeal to the Court of Special Appeals must be filed within 30 days of the entry of the judgment appealed from. Under Rule 8-202(c), however, a timely filed 10-day post-judgment motion for reconsideration, to amend, or to revise, including motions under Rule 2-534 and 2-535, tolls the time for filing a notice of appeal to the

Court of Special Appeals until 30 days after notice that the motion is being withdrawn or 30 days after the motion is ruled upon.

The 2004 amendment to Rule 2-641 stating that motions under Rules 2-534 and 2-535 apply in the orphans' courts changed the established law by transporting the tolling provision of Rule 8-202(c) to notices of appeal from orphans' courts to the Court of Special Appeals when timely 10-day Rule 2-534 or 2-535 motions have been filed in the orphans' court. Here, within 10 days after the Orphans' Court's order appointing David as Personal Representative, Hanan filed a Rule 2-534 motion for reconsideration. His doing so had the effect, under Rule 8-202(c), of tolling the time for noting an appeal to this Court until 30 days after the Orphans' Court denied the motion. The notice of appeal was filed within that 30-day period, and therefore was timely. Accordingly, the Orphans' Court erred as a matter of law in striking the notice of appeal as untimely. The order striking the notice of appeal is vacated and the appeal that was closed administratively as a consequence of the erroneous striking of the notice of appeal is reopened.

*Enzo Martinez, A Minor, By and Through His Parents and Next Friends, Rebecca Fielding and Enzo Martinez, et al. v. Johns Hopkins Hospital*, No. 1394, September Term 2012, filed July 3, 2013. Opinion by Berger, J.

<http://mdcourts.gov/opinions/cosa/2013/1394s12.pdf>

## MEDICAL MALPRACTICE – NON-PARTY NEGLIGENCE

### **Facts:**

Appellant and cross-appellee, Enzo Martinez (“Martinez”), a minor, by and through his parents, alleged that appellee and cross-appellant, The Johns Hopkins Hospital (“the Hospital”), negligently failed to perform a timely Caesarean section, causing Martinez to suffer from cerebral palsy, retardation, and other disorders.

The Hospital asserted that it was not a cause of Martinez’s injury. In particular, the Hospital alleged that a non-party midwife negligently treated Ms. Fielding before she was admitted to the Hospital. In the Hospital’s view, the midwife’s negligent treatment was the sole cause of Martinez’s injuries. The trial judge, however, precluded any evidence of the midwife standard of care, and any breach thereof by the non-party midwife.

The trial judge admitted evidence at trial regarding whether the Hospital had offered Ms. Fielding general anesthesia. The trial judge ruled that such evidence was relevant to Martinez’s general negligence claim. The Hospital, however, contended that such evidence improperly conflated the negligence issue with an unpled informed consent claim.

After a two week trial, a jury awarded Martinez \$4 million for lost wages, \$25 million for future medical expenses, and \$26 million for non-economic damages. The court entered judgment in favor of Martinez in the amount of \$55 million. Thereafter, the Hospital filed a motion for new trial, to alter or amend judgment, and for remittitur. The trial court denied the Hospital’s request for a new trial. The trial court further reduced the jury’s award for lost wages from \$4 million to \$2,621,825, and reduced the jury’s \$26 million award for non-economic damages to \$680,000. Martinez filed a notice of appeal on September 18, 2012. The Hospital filed a cross-appeal on September 19, 2012.

On appeal, Martinez argued that the circuit court erred by reducing the jury’s damages award on the basis that Maryland’s cap on non-economic damages is unconstitutional because it violates the separation of powers doctrine under the Maryland Declaration of Rights. The Hospital argued in its cross-appeal that the circuit court abused its discretion by: (1) admitting evidence that Ms. Fielding was never offered general anesthesia; and (2) precluding evidence regarding the standard of care applicable to nurse-midwives, and any breach of that standard of care by the non-party midwife.

**Held:** Reversed.

The Court of Special Appeals held that Martinez's appeal regarding the constitutionality of Maryland's cap on non-economic damages was moot in light of its decision to reverse the circuit court's decision pursuant to the Hospital's cross-appeal.

The Court of Special Appeals held that evidence of a non-party's negligence is relevant to a party's defense that it was not a cause of the plaintiff's injury. Accordingly, the Court of Special Appeals held that the trial judge abused his discretion in precluding evidence of the non-party midwife's standard of care, and any breach of that standard of care by the midwife.

Additionally, the Court of Special Appeals held that because Martinez asserted only a negligence claim, and did not allege a lack of informed consent, it was an abuse of discretion to admit evidence regarding whether the Hospital offered Ms. Fielding general anesthesia. In particular, Martinez's arguments and testimony at trial focused on whether Ms. Fielding -- the patient -- was given a choice of anesthesia, and whether a reasonable patient would have accepted the risks of such treatment in order to save her child. As such, the evidence was improperly used to conflate the negligence issue with an unpled informed consent claim.

*Richard Glenn Crise v. Maryland General Hospital, Inc. d/b/a Maryland General Hospital*, No. 2562, September Term 2011, filed June 27, 2013. Opinion by Eyler, Deborah S., J.

<http://mdcourts.gov/opinions/cosa/2013/2562s11.pdf>

TORTS – NEGLIGENCE – MEDICAL MALPRACTICE – RULE 2-502 – DECISION BY THE COURT ON AN ISSUE SOLELY WITHIN ITS PROVINCE – ERROR BY COURT IN DECIDING, UNDER RULE 2-502, NATURE AND SCOPE OF STANDARD OF CARE IN MEDICAL MALPRACTICE CASE AND IN FAILING TO GIVE THE PARTIES NOTICE THAT THE COURT INTENDED TO INVOKE RULE 2-502 AT ALL.

**Facts:**

On a cold night in December, Richard Crise, the appellant, presented to the ER at Maryland General Hospital (“MGH”), the appellee, with complaints of chest pain and palpitations. Crise had a long history of serious mental illness and had been admitted to MGH for psychiatric care on four previous occasions, most recently just six months prior. His family members who were present in the ER with him reported that he had not taken his prescribed psychiatric medications, eaten, or slept for five days; that he was manic; and that if he was not watched, he would try to leave MGH. The ER nurse who triaged Crise checked a box indicating that he was experiencing auditory hallucinations.

An EKG and tests were performed. Crise’s EKG was normal and his bloodwork showed he was not under the influence of alcohol or drugs. The ER doctor who examined Crise ordered that he be evaluated by a crisis evaluator. While Crise was awaiting this evaluation, however, he became increasingly agitated. At the request of the nurse overseeing his care, he was administered a sedative. He continued to be agitated, however, pacing around and pulling out his IV. A hospital worker volunteered to be a “sitter,” to watch him one-on-one, but was told by a nurse that MGH did not have sufficient staff to allow that and that she (the nurse) would “eyeball” Crise from the nearby nursing station.

When not being watched, Crise exited the ER through a rear door wearing only his hospital gown. He walked toward his home along Howard Street. Upon noticing he was gone, MGH called the police. The police located Crise walking along the Howard Street bridge. Upon being confronted by the police, Crise jumped off the bridge, sustaining broken bones and other injuries. In his deposition, Crise testified that he jumped because he was in such a paranoid and delusional state that he did not think jumping off the bridge would be a big deal.

In the Circuit Court for Baltimore City, Crise sued MGH for negligence asserting, *inter alia*, that it owed him a duty of care as his health care provider and that it breached that duty by failing to properly monitor him to ensure he did not leave the hospital, ultimately resulting in his injuries. MGH moved for summary judgment on the issue of causation, asserting that it was not

reasonably foreseeable that Crise would jump off a bridge and, in any event, that Crise's claim was barred by the doctrines of assumption of the risk and contributory negligence. Crise opposed the motion. On the second day of trial, after hearing argument on the motions and selecting a jury, the court granted judgment in favor of MGH on its own initiative pursuant to Md. Rule 2-502, concluding that MGH owed Crise no legal duty of care because it lacked the legal authority to detain him at the time he left the ER.

**Held:** Reversed.

The trial court erred in invoking Rule 2-502 to decide what it viewed as a purely legal issue. The issue of whether MGH owed Crise *any* legal duty of care was one of law capable of determination on a motion to dismiss or for summary judgment. That was not the issue in this case, however, as the health care provider-patient relationship gave rise to a duty of care on the part of MGH as a matter of law. The issue in this case was the nature and scope of the duty of care that was owed and was not within the province of the court to decide. Moreover, whether MGH had the legal authority to detain Crise was not dispositive of the nature and scope of the duty owed.

The trial court also abused its discretion by invoking Rule 2-502 to decide the issue of duty without giving the parties any notice of its intention to do so.

In addition, in invoking Rule 2-502, the trial court abused its discretion by failing to give the parties any notice that it was going to do so, thus preventing them from engaging in necessary preparation.

# ATTORNEY DISCIPLINE

By an Opinion and Order of the Court of Appeals dated July 2, 2013, the following attorney has been reprimanded:

ROBERT NORMAN LEVIN

\*

By an Order of the Court of Appeals dated July 3, 2013, the following attorney has been indefinitely suspended by consent:

CHARLES LAMONT GREEN

\*

By an Opinion and Order of the Court of Appeals dated July 5, 2013, the following attorney has been indefinitely suspended:

JONATHAN DANIEL SPERLING

\*

By an Opinion and Order of the Court of Appeals dated July 8, 2013, the following attorney has been indefinitely suspended:

JIMMY ANTHONY BELL

\*

By an Order of the Court of Appeals dated June 10, 2013, the following attorney has been disbarred by consent, effective July 8, 2013:

CHRISTOPHER M. JOHNS

\*

By an Order of the Court of Appeals dated July 9, 2013, the following attorney has been indefinitely suspended by consent:

DUSTIN PAUL DAVIS

\*

By an Opinion and Order of the Court of Appeals dated July 10, 2013, the following attorney has been disbarred:

GINA MICHELLE O'LEARY

\*

By an Order of the Court of Appeals dated July 18, 2013, the following attorney has been reprimanded by consent:

MICHAEL WENYUE LU

\*

By an Order of the Court of Appeals dated July 22, 2013, the following attorney has been reprimanded by consent:

MALIK JAMES TUMA

\*

# JUDICIAL APPOINTMENTS

\*

On July 3, 2013, the Governor announced the appointment of the Honorable **MARY ELLEN BARBERA** as the Chief Judge of the Court of Appeals. Chief Judge Barbera was sworn in on July 8, 2013.

\*

On July 3, 2013, the Governor announced the appointment of **LISA ANGELA HALL JOHNSON** to the District Court of Maryland – Prince George’s County. Judge Johnson was sworn in on July 22, 2013 and fills the vacancy created by the retirement of the Honorable Jean Szekeres Baron.

\*

On July 3, 2013, the Governor announced the appointment of the Honorable **SHIRLEY MARIE WATTS** to the Court of Appeals. Judge Watts was sworn in on July 31, 2013 and fills the vacancy created by the retirement of the Honorable Robert M. Bell.

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# **RULES ORDERS AND REPORTS**

An Emergency Rules Order pertaining to the One Hundred Seventy-Ninth Report of the Standing Committee on Rules of Practice and Procedure was filed on July 2, 2013:

<http://www.mdcourts.gov/rules/rodocs/ro179emergency.pdf>