



Court of Special Appeals

ROBERT C. MURPHY COURTS OF APPEAL BUILDING
361 ROWE BOULEVARD
ANNAPOLIS, MARYLAND 21401-1699

September 8, 2021

STATEMENT RE COURT OF SPECIAL APPEALS POLICY CONCERNING CITATION OF UNREPORTED OPINIONS OF COURTS OTHER THAN MARYLAND STATE COURTS

Maryland Rule 1-104 prohibits the citation of “[a]n unreported opinion of the Court of Appeals or Court of Special Appeals” as either “stare decisis []or persuasive authority.” No rule prohibits the citation to or by the Court of Special Appeals of unreported decisions of other federal or state courts as persuasive authority. However, in reported opinions, the Court of Special Appeals has stated that “it is the policy of this Court in its opinions not to cite for persuasive value any unreported federal or state court opinion.” *Kendall v. Howard County*, 204 Md. App. 440, 445 (2012), *aff’d* 431 Md. 590 (2013); *see also Poe v. IESI MD Corp.*, 243 Md. App. 243, 256 (2019); *Olivieira v. Sugarman*, 226 Md. App. 524, 553 (2016), *aff’d*, 451 Md. 208 (2017); *Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 718 (2015). The Court of Appeals has not followed a similar policy. *See, e.g., Gables Constr., Inc. v. Red Coats, Inc.*, 468 Md. 632, 663 (2020) (agreeing with an unreported decision of the United States District Court for the District of Maryland); *Finci v. Am. Cas. Co. of Reading, Pennsylvania*, 323 Md. 358, 375-76 (1991) (citing as support “recent unreported decisions” of federal district courts that “have rejected FDIC’s public policy contention”).

In two reported opinions issued on September 7, 2021, the Court of Special Appeals announced that it is no longer the Court’s policy to prohibit the citation of unreported opinions of federal courts or the courts of other states for persuasive value, provided that the jurisdiction that issued any particular opinion would permit it to be cited for that purpose. *See CX Reinsurance Company Limited, et al. v. Devon Johnson, et al.*, No. 691, Sept. Term 2020, slip op. at 20 n.6 (Md. Ct. Spec. App. Sept. 7, 2021); *Gambrill v. Board of Education of Dorchester County, et al.*, No. 0886, Sept. Term 2019, slip op. at 9 n.6 (Md. Ct. Spec. App. Sept. 7, 2021). The attached appendix contains a list of jurisdictions that the Court understands currently permit citation of unreported opinions for persuasive value.

As a caution, this change in policy does not apply to unreported opinions of the Court of Appeals or Court of Special Appeals, which are governed by Maryland Rule 1-104.

APPENDIX

Jurisdictions that Permit Citation to Unreported Opinions for Persuasive Value

All federal district and circuit courts

Appellate Courts in the States/Commonwealths of:

Alaska
Arizona
Delaware
Georgia
Hawaii
Iowa
Kansas
Kentucky
Louisiana
Massachusetts
Michigan
Minnesota
Nevada
New Hampshire
New Mexico
North Carolina
North Dakota
Ohio
Pennsylvania
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming