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Table of Contents

COURT OF APPEALS

Attorney Discipline	
Conduct Prejudicial to the Administration of Justice	
Attorney Grievance v. Charles Stephen Rand	3
Criminal Law	
Crimes of Exploitation of a Vulnerable Adult and Conspiracy to Commit that Crime	
Tarray v. State	7
Determining Whether a Child Witness is Competent to Testify	
Jones v. State	10
Insurance	
Regulation of Health Insurers	
MAMSI v. Wu	12
Juvenile Law	
Education	
In Re: Gloria H.	14

COURT OF SPECIAL APPEALS

Attorney's Fees	
Maryland Rule 1-341	
Frison v. Mathis	16
Merger	
AccuBid v. Kennedy Contractors	17
Monarc v. Aris	19
Courts and Judicial Proceedings	
Recusal	
Abrishamian v. Barbely	21
Criminal Law	
Jury Instructions	
LaPin v. State	23
Motion for Judgment of Acquittal	
Malarkey v. State	26
Evidence	
Addison v. State	28
Probable Cause	
Williams v. State	29

Employment Discrimination Based on Gender
Giant v. Taylor 32

ATTORNEY DISCIPLINE 34

RULES REPORT 36

COURT OF APPEALS

Attorney Grievance Commission v. Charles Stephen Rand, Misc. Docket AG No. 27, September Term, 2008, filed 8 October 2009, Opinion by Harrell, J.

<http://mdcourts.gov/opinions/coa/2009/27a08ag.pdf>

ATTORNEY DISCIPLINE - CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE - FAILURE TO RESPOND TIMELY TO LETTERS FROM OPPOSING COUNSEL AND RETENTION OF EVIDENCE BEYOND THE TIME PERIOD SPECIFIED IN A CONFIDENTIALITY AGREEMENT IS NOT SANCTIONABLE CONDUCT UNDER THE CIRCUMSTANCES OF THIS CASE.

Facts: The Attorney Grievance Commission ("Petitioner") filed a Petition for Disciplinary or Remedial Action against Charles S. Rand ("Respondent" or "Rand"), charging him with professional misconduct arising out of his representation of Alison Welles Snowden in a divorce action in the Circuit Court for Montgomery County. Petitioner charged Respondent with violating Rules 4.4(a) (Respect for Rights of Third Persons) and 8.4(a) and (d) (Misconduct) of the Maryland Rules of Professional Conduct ("MRPC").

Respondent entered his appearance in the divorce case on 14 August 2005. In preparation for trial, Respondent sought production of his client's husband's (Martin Snowden) mental health treatment records from various providers, including the Priory Hospital in London, England. Mr. Snowden's counsel, Allen J. Kruger, Esquire, responded with a Motion for Protective Order and Sanctions. After a hearing, the Circuit Court ordered that Mr. Snowden sign a release for the mental health records. The court also ordered counsel to draft a Confidentiality Agreement (the "Agreement") to limit dissemination of the records only to counsel and experts scheduled to testify on issues of alimony and spousal support. The Court's order also prohibited Ms. Snowden from using the records for any other purposes. Respondent drafted the Agreement. The Agreement provided that at the conclusion of the divorce litigation, Respondent was required to place his copies of the mental health records in a sealed envelope in Ms. Snowden's file. The Agreement also required Respondent to provide Kruger with all other copies in his possession together with a list of those persons who received all or a portion of the records and whether such copies were returned or retained by such persons. He was also to require all persons to whom he has provided copies to return the copies to him.

Finally, Respondent was required to destroy the records at the conclusion of the case. All parties and counsel signed the Agreement on 5 April 2006.

The parties subsequently placed an agreement on the record and the Circuit Court granted a Judgment of Absolute Divorce to the parties. The Judgment was entered on 19 April 2006. The Judgment indicated that an agreement as to all outstanding issues had been reached and "that all prayers for relief by either party, except as provided in this Judgment of Absolute Divorce, are hereby denied." Nevertheless, Respondent informed Kruger on 9 December 2006 that he had asked another attorney to become involved in the case and that she would be reviewing the medical records. Kruger responded that the case was resolved and, thus, the Agreement required Respondent to destroy the records and demanded an immediate explanation for Respondent's continued retention of them. Respondent did not reply timely. At the evidentiary hearing in the disciplinary case, Respondent testified that he believed there remained unresolved issues in the divorce case because Mr. Snowden had not allowed Ms. Snowden to purchase his interest in the marital home. Each side filed a series of motions. Kruger made four written requests to Respondent seeking the return of Mr. Snowden's medical records. After receiving no response from Respondent, Kruger filed a motion for contempt and to enforce the Agreement.

On 13 November 2007, Respondent responded to Kruger's letters and returned Mr. Snowden's records. He indicated nonetheless that he did not believe that the referenced matter had reached finality and suggested that the medical records be placed in the Court registry due to a pending collateral case, *Chesters v Snowden*, in which he represented Ms. Snowden. Respondent also advised Kruger that the only other copies of the records were provided to a vocational expert, Kathleen Sampeck, and the other attorney he brought into the case and those copies were destroyed. Respondent testified in the disciplinary case that his motivation for finally returning the records was that Bar Counsel had contacted him. On 29 February 2008, the Circuit Court denied Mr. Snowden's contempt motion against Respondent because Respondent had returned the records to Kruger.

The hearing judge in the disciplinary case found that the parties resolved all outstanding issues in *Snowden v. Snowden* when they placed an agreement on the record and, therefore, the parties reached a final disposition of the issues to which the confidential records related when the Circuit Court entered the Judgment of Absolute Divorce. The hearing judge found further that the records were available to Respondent and Ms. Snowden

solely for review in connection with issues of alimony and spousal support and not for use in connection with any outstanding child support dispute. The hearing judge did not find credible Rand's claim that child support remained an open issue. The hearing judge relied on the fact that Respondent had never raised the issue of child support as justification for keeping the records in any of his tardy responses to Kruger's letters. Finally, the hearing judge found that there was clear and convincing evidence that Respondent's primary motive for retaining the confidential records was to have the records available for review and use in *Chesters v. Snowden*, the collateral matter.

Based on the findings of fact, the hearing judge concluded that Respondent did not violate MRPC 4.4(a) because he did not obtain or attempt to obtain the mental health treatment records illegally or attempt to violate the legal rights of Mr. Snowden. The hearing judge did not render a conclusion of law with regard to the alleged MRPC 8.4(a) violation. Presumably, because the hearing judge concluded that Respondent did not violate MRPC 4.4(a), she concluded impliedly that he did not violate MRPC 8.4(a).

The hearing judge resolved, however, that Respondent engaged in conduct prejudicial to the administration of justice in violation of MRPC 8.4(d) by retaining the mental health treatment records beyond the authorized time and events stated in the Agreement and by failing to respond to repeated reasonable requests from Kruger for their return.

Petitioner took no exceptions to the hearing judge's findings or conclusions and urged the Court to issue a reprimand to Respondent.

Respondent filed written exceptions to the hearing judge's findings of fact and conclusions of law. First, he took exception to the conclusion that his failure to respond to Kruger's many requests for the return of Mr. Snowden's medical records constituted conduct prejudicial to the administration of justice. He argued that an attorney in Maryland does not have an enforceable ethical duty to make timely answers to letters of opposing counsel. Second, he excepted to the conclusion that his retention of the records beyond the time specified in the Agreement was prejudicial to the administration of justice. Third, he excepted to the hearing judge's finding that his primary motive for retaining the records was to have the records available for use in the *Chesters* litigation. He argued that his true motive was irrelevant because he did not actually use

the records or violate the confidentiality of the records. Finally, Respondent took exception to the conclusion that he violated Maryland Rule 16-701.

Held: Petition for disciplinary action dismissed. The Court concluded that Respondent did not violate MRPC 4.4(a) because he obtained the medical records legally, although he may have retained the records in violation of the Agreement. The Court overruled summarily Respondent's exception with regard to Maryland Rule 16-701, which merely defines the term "sanctionable conduct" under the MRPC. As a definitional provision, it is not capable of being "violated." The Court sustained Respondent's exceptions with regard to MRPC 8.4(d) and concluded that he did not violate MRPC 8.4(d) because the record did not establish, by clear and convincing evidence, that his conduct was prejudicial to the administration of justice.

The Court noted that, although it has found in past cases a broad range of conduct to be prejudicial to the administration of justice, the conduct at issue must impact negatively the public's perception or efficacy of the courts or legal profession to violate MRPC 8.4(d). The Court concluded that Respondent's conduct did not rise to the level of the misconduct in the cases where violations of MRPC 8.4(d) were found. Petitioner did not adduce any evidence showing that Respondent's delay in responding to opposing counsel's letters or in returning the medical records late resulted in anything approaching prejudice to the administration of justice. A delay alone unlikely will be sufficient to show prejudice, absent any actual and substantial harm flowing from the delay.

Although the Court did not find a violation of the MRPC in the present case, it did not condone Respondent's conduct. The Court discussed the Maryland Judicial Commission on Professionalism's (the "Commission") Final Report and Recommendations in which the Commission recommended that the Court adopt Standards of Professionalism, several of which implicated directly Respondent's conduct. The Court found that Respondent's conduct resulted in elevated tension, frustration, and less effective communication in the divorce litigation. The Court found further that his conduct demonstrated discourtesy, incivility, and disrespect for fellow attorneys.

Tarray v. State, No. 149, September Term, 2008, filed September 14, 2009. Opinion by Greene, J.

<http://mdcourts.gov/opinions/coa/2009/149a08.pdf>

CRIMINAL LAW – CRIMES OF EXPLOITATION OF A VULNERABLE ADULT AND CONSPIRACY TO COMMIT THAT CRIME

Facts: John D. Wright ("Wright") suffered from a physically debilitating medical condition leaving him paralyzed from the waist down. In May 2005, in a search for a care giver to help him get cleaned, dressed, in and out of bed, and change a catheter, Wright interviewed and later hired Tarray for the position at a salary of \$350 per week. Within weeks after starting work, Tarray approached Wright and demanded a pay raise from \$350 to \$500 per week pleading that the difficulty of the work exceeded the agreed-upon salary.

Also, Tarray requested that Wright replace a second care giver working in the house at the time with David Baker. By late fall of 2005, Tarray secured a third and final pay raise from Wright, increasing her earnings to \$1,000 per week.

Except for the initial payment, Wright paid Tarray by personal check with funds from his account with Bank of America. At first, he wrote each check. Subsequently, however, Wright's physical disability prevented him from performing activities any more arduous than signing his name on checks that Tarray would prepare. Over the course of her six months of employment, Tarray earned in excess of \$24,000, without any tax withholdings. Wright testified that Tarray informed him that she knew how to make the tax calculations and would make the deductions. But, Tarray never made the withholdings.

In the fall of 2005, Tarray requested that Wright purchase a late model Honda Ridgeline truck. Because of his physical disability, Wright could neither drive nor ride as a passenger in the truck. But Wright agreed to buy it for Tarray in the hope that she would continue working for him.

In addition, Tarray, without Wright's authorization, opened a second Bank of America business account in the name of John D. Wright and "Jade" over the phone by misleading account representatives into believing she was authorized to do so. Tarray also opened two other accounts with Maryland Bank National Association (MBNA) and Citigroup, again in the name of John D. Wright and "Jade." Furthermore, the Citigroup account named Tarray, again without Wright's authorization, as an authorized credit cardholder, and she used the account to make several cash

advances.

Tarray took another job, outside Wright's home, and as a result, Wright often saw Tarray only first thing in the morning and late at night before going to bed and the quality of Wright's care deteriorated. Consequently, Wright was hospitalized for urinary tract infections on three separate occasions over the six months of Tarray's employment.

By the end of 2005, Wright decided to terminate the employment of Baker and Tarray. Accordingly, Wright asked the couple to move out. Two days later, he was hospitalized for the third and final time. While hospitalized, Tarray asked Wright to sign two separate documents relating to his truck and house. In the first document, Wright agreed to let Baker and Tarray continue to reside in his home so long as he was in the hospital. In the other document, Wright agreed to transfer ownership in his truck to Tarray after he paid off the vehicle loan.

Section 8-801 - Exploitation of a vulnerable adults prohibited - provides, in part, that "a person may not knowingly and willfully obtain by *deception, intimidation, or undue influence* the property of an individual that the person knows or reasonably should know is a vulnerable adult with the intent to deprive the vulnerable adult of [his or her] . . . property" (emphasis added). Section 8-801 provides for one of three modalities to support the crime of exploitation of a vulnerable adult. The defendant may obtain property of another either by deception, intimidation, or undue influence. Theft as defined under Section 7-104 is a distinct crime and is not a separate element of Section 8-801.

Section 8-801 describes undue influence as "domination and influence amounting to *force and coercion* exercised by another person to such an extent that a vulnerable adult was prevented from exercising free judgment and choice" (emphasis added).

At trial, Wright testified that he agreed to provide transportation and housing for Tarray because he felt obligated to do so out of a sense of loyalty in view of the benefit received from Tarray for prior services rendered. Wright's testimony reveals that he parted with his property by exercise of his own judgment rather than "force and coercion." Therefore, the evidence was insufficient to support the conclusion that Tarray unduly influenced Wright, causing him to relinquish his property.

Deception occurs when a person knowingly either "create[s] or confirm[s] in another a false impression that the offender does not believe to be true [or] fail[s] to correct a false impression that

the offender previously has created or confirmed." The Court concluded that Tarray's *intent* to mislead is the criteria for enforcement rather than proof that the victim was misled.

Held: Based upon our review of the State's evidence, including all reasonable inferences drawn therefrom, in a light most favorable to the State, we conclude that a rational trier of fact could not have found Tarray guilty of theft or the element of undue influence beyond a reasonable doubt. Nevertheless, because Tarray waived any argument regarding the sufficiency of the evidence to support a finding of deception, using the same standard of review, we conclude that a rational trier of fact could have found, beyond a reasonable doubt, the element of deception. Thus, we hold that the evidence was legally sufficient to sustain the convictions for exploitation of a vulnerable adult and conspiracy to exploit a vulnerable adult.

Because we conclude that the evidence was sufficient to sustain the convictions, we shall affirm the judgment of the Circuit Court.

Jones v. State, No. 3, September Term 2008, filed September 22, 2009. Opinion by Murphy, J.

<http://mdcourts.gov/opinions/coa/2009/3a08.pdf>

CRIMINAL LAW - DETERMINING WHETHER A CHILD-WITNESS IS "COMPETENT" TO TESTIFY; ADMISSIBILITY OF RECORDED STATEMENTS PURSUANT TO § 11-304 OF THE CRIMINAL PROCEDURE ARTICLE

Facts: Joseph Michael Jones was convicted in the Circuit Court for Harford County of sexual child abuse, second degree sexual offense, and third degree sexual offense. During trial, the jury heard four accounts of the events surrounding the allegations. These accounts included testimony by the child's mother, an audio tape of the child during an interview with a social worker days after the alleged incident, testimony of the child himself, then six-years old, and testimony of the accused, who denied that any inappropriate contact ever took place. The two accounts presented by the child, as well as *voir dire* questioning designed to determine the child's capacity to tell the truth as well as his understanding of the consequences of not telling the truth contained inconsistencies. Mr. Jones argued that he was entitled to a new trial on the grounds that the Circuit Court erroneously overruled his objections to both the testimony of the victim and the victim's taped statement to the social worker. In an unreported opinion filed on December 21, 2007, the Court of Special Appeals rejected Petitioner's arguments, affirming the conviction. The Court of Appeals granted certiorari to address both the issues of whether the trial court erred in (1) permitting the six-year old to testify where the child demonstrated an inability to understand and appreciate the obligation to tell the truth, and (2) admitting the victim's taped statements to a social worker.

Held: The Court of Appeals affirmed the judgment of the Court of Special Appeals. Regarding the issue of child competency, the Court relying on Perry v. State, 381 Md. 138 (2004) held that the Circuit Court was not clearly erroneous in finding that the child witness (1) "passed" both the "truth v. lie" and "ability to observe and relate" portions of the test, and (2) was "very strong" in "his appreciation of his obligation to speak the truth." Regarding the admission of the tape-recorded interview, the Court held that Circuit Court was not clearly erroneous in finding that the tape "satisfies the requirement for the particularized guarantees of trustworthiness." The Court distinguished Myers v. State, 403 Md. 463 (2008), which held that the trial court abused its discretion in denying the defendant the opportunity to cross-examine the child witness after a video tape had been admitted pursuant to § 11-304 of the Criminal Procedure Article. In Myers,

defense counsel expressly requested that the child witness be recalled for additional cross-examination after the tape was received into evidence. In the case at bar, however, defense counsel did not request the child be recalled after tape was played, and the Court held that Petitioner was not entitled to a new trial on the ground that that Circuit Court *sua sponte* recall the child for additional cross-examination.

MAMSI Life and Health Insurance v. Kuei-I Wu, Misc. No. 8, September Term, 2008, filed October 20, 2009, opinion by Greene, J.

<http://mdcourts.gov/opinions/coa/2009/8a08m.pdf>

INSURANCE – SECTION 19-507 OF THE INSURANCE ARTICLE – REGULATION OF HEALTH INSURERS.

Facts: When plaintiff, Wu, was injured in an automobile accident, her insurer, MAMSI paid the participating healthcare providers for services rendered to Wu only after her PIP benefits were exhausted. Wu filed a complaint in the United States District Court for the District of Maryland alleging breach of contract and that MAMSI's policy was in direct violation of Maryland Code, §19-507 of the Insurance Article.

Wu contended that her contract with MAMSI contained a Coordination of Benefits provision that explicitly excluded any no-fault automobile insurance payments, such as PIP, from being considered in the application of the Coordination of Benefits procedures. Wu argued that PIP benefits must be paid when incurred, regardless of whether an insured has a collateral source of benefits. MAMSI argued that section 19-507 of the Insurance Article of the Maryland Code regulates automobile insurers and not health insurers.

The United States District Court decided that whether § 19-507(b) restricts or prohibits a health insurer or HMO from providing by contract that its health benefits are secondary to PIP benefits was an "issue of first impression in Maryland law" and that the issue should be resolved by the Maryland Court of Appeals.

Considering the title of the overall comprehensive enactment and text of § 19-507, specifically its repeated cross-references to § 19-505, its use of the defined term "named insured" when enumerating the restrictions on coordination of benefits in § 19-507(b)(2), as well as its location within the Insurance Article, the Court concluded that the Legislature intended the restrictions contained within subsection (b) of the statute to apply only to motor vehicle insurers, the named insured, and persons entitled to PIP benefits.

The statute mandates that a motor vehicle insurance policy containing PIP benefits is the primary source of coverage for a person injured in an automobile accident. The coordination of benefits language allows the PIP carrier to pay its benefits secondary to another line of insurance if the insured so desires, thus potentially availing the insured a discount on one or both

lines of insurance. In the absence of such an agreement between the named insured of an automobile policy and the PIP carrier to make another insurance primary, the PIP coverage remains primary to the collateral insurance as required by the language of § 19-507(a).

Held: We hold that § 19-507 of the Insurance Article does not prohibit a health insurer or HMO from providing in its group or individual contracts of insurance or membership contracts that its contractual health benefits may be secondary to PIP benefits under an automobile insurance policy.

In Re: Gloria H., No. 15, September Term 2008, filed September 14, 2009. Opinion by Murphy, J.

<http://www.courts.state.md.us/opinions/coa/2009/15a08.pdf>

JUVENILE LAW - EDUCATION - COMPULSORY SCHOOL ATTENDANCE LAW - SUFFICIENCY OF THE EVIDENCE THAT A PARENT HAS FAILED TO SEE THAT HER CHILD ATTENDS SCHOOL - LIABILITY OF A PARENT WHOSE CHILD "ATTENDS SCHOOL," BUT "CUTS" CLASSES - EVIDENCE - INFERENCES - DISBELIEF OF TESTIMONY

Facts: Appellant Gloria H. was charged in an Adult Truancy Petition that asserted that she failed to see that her child, Monica, attended school under § 7-301 of the Education Article, a criminal misdemeanor. The State presented testimony of an employee of the Public School System that Monica had been absent 74 of the 180 days in the 2005-2006 school year, and that the school tried contacting Gloria about attendance issues at least five times between October 2005 and the end of the academic year. The Circuit Court for Prince George's County, sitting as a Juvenile Court, concluded that Monica was not attending school, Gloria knew she was not attending, and that Gloria was not encouraging her to go. In finding that the State had proven its case, the Court placed Gloria on unsupervised probation. Gloria appealed to the Court of Special Appeals on the ground that the finding was not supported by the evidence, and that "appellant did everything she could to see that Monica attended school." The Court of Appeals issued a writ of certiorari on its own initiative.

Held: The Court of Appeals vacated and remanded. In first holding that the evidence was sufficient as a matter of law to establish a violation of the compulsory public school attendance law, the Court noted that the "Circuit Court was entitled to (1) accept - or reject - *all, part, or none* of the testimony of any witness, including testimony that was not contradicted by any other witness, and (2) draw reasonable inferences from the facts that it found to be true." Given the Circuit Court's ability to reject Gloria's evidence, the Court considered only "whether evidence that a high school student was not in his or her home-room when attendance was taken is sufficient to support the inference that the student did not attend school on that day." However, it was then necessary to determine whether the verdict was based upon a clearly erroneous factual finding and/or a mistaken conclusion of law. In making this determination, the Court found that the Circuit Court drew an impermissible inference because "[t]he record clearly shows that the Circuit Court's verdict was based in substantial part upon its finding that, because Appellant's 'incomprehensible' testimony lacked credibility, the opposite of her exculpatory

testimony must be true," entitling Gloria to a new trial. Finally, applying the rule of lenity in a statutory interpretation analysis of whether the legislature intended to impose criminal liability on a parent whose child goes to school but does not attend class, the Court held that "the statute at issue does not impose criminal liability on a parent whose child "enters the school building." Citing case law from Maryland as well as other jurisdictions, the Court noted that "a child who 'attends school' is 'committed to the control of state and local authorities,'" creating a question of fact as to whether the child was "cutting class" rather than "skipping school."

COURT OF SPECIAL APPEALS

E. Scott Frison, Jr. v. Jerry J. Mathis, No. 2967, September Term, 2007. Opinion filed on October 1, 2009, filed by Graeff, J.

<http://mdcourts.gov/opinions/cosa/2009/2967s07.pdf>

ATTORNEY'S FEES - MARYLAND RULE 1-341.

Facts: Jerry J. Mathis retained E. Scott Frison to represent him in a lawsuit filed against him by Aaron Hargrove. The jury awarded judgment to Mr. Hargrove in the amount of \$142,000. Mr. Mathis refused to pay Mr. Frison for the legal fees incurred during the lawsuit, claiming that Mr. Frison had committed errors in the trial that resulted in an unfavorable disposition.

On October 13, 2005, Mr. Frison filed suit, *pro se*, in the Circuit Court for Prince George's County against Mr. Mathis, to recover the unpaid legal bill. A two-day jury trial commenced on January 3, 2007. At the conclusion of the trial, the jury entered a verdict against Mr. Mathis in the amount of \$35,818.13.

Mr. Frison subsequently filed a motion in the circuit court for costs and reasonable attorney's fees pursuant to Md. Rule 1-341. Mr. Frison requested attorney's fees for 253 hours of work, asserting that "[t]he time spent responding to bad faith filings by Mathis interfered with cases Frison could have taken and earned fees."

The circuit court did not address whether Mr. Mathis acted in bad faith; rather, it denied Mr. Frison's motion for attorney's fees based on the Court of Appeals' decision in *Weiner v. Swales*, 217 Md. 123 (1958). The court stated that, pursuant to *Weiner*, "if you're acting *pro se*, if you are a member of the Bar . . . you cannot get attorney's fees."

Held: Judgment affirmed. Maryland Rule 1-341 permits recovery of attorney's fees incurred. A lawyer who represents himself or herself has not incurred legal fees, *i.e.*, he or she has not paid or become liable to pay fees. Therefore, a *pro se* attorney litigant may not recover attorney's fees pursuant to Rule 1-341.

AccuBid Excavation, Inc. v. Kennedy Contractors, Inc., No. 992, September Term, 2008, decided on October 5, 2009. Opinion by Davis, J.

<http://mdcourts.gov/opinions/cosa/2009/92s08.pdf>

ATTORNEYS FEES - MERGER - Restatement (Second) of Judgments § 18, cmt. a (1982); *Jackson v. Wilson*, 76 Md. 567, 571 (1893); *United Book Press v. Md. Composition Co.*, 141 Md. App. 460, 474 (2001) (holding that "a claim merges into a judgment or decree obtained with respect to that claim.").

POST JUDGMENT INTEREST - MARYLAND RULE 2-604 (b) (providing that a money judgment shall "bear interest at the rate prescribed by law from the date of entry.").

MARYLAND RULE 2-601(b) (providing that the date of judgment is the date on which the clerk of the court prepares a written record of the judgment); *Carpenter Realty Corp. v. Imbesi*, 369 Md. 549, 558-59 (2001); *Med. Mut. Liab. Ins. Soc'y of Maryland v. Davis*, 365 Md. 477, 484 (2001) (holding that purpose is to compensate the successful suitor for the same loss of the use of the monies represented by a judgment in its favor, and the loss of income thereon, between the time of entry of the judgment *nisi* - when there is a judicial determination of the monies owed it - and the satisfaction of the judgment by payment.").

Facts: Judgment was entered in favor of appellee/contractor, Kennedy Construction, Inc., and owner/developer of grocery store against appellant/subcontractor, AccuBid Excavation, Inc., on June 27, 2000 in the amount of \$30,000, plus \$48,222 in attorney's fees, for a total amount of \$78,222, for appellant's failure to perform under the subcontract of the parties.

Appellant appealed from that judgment to the Court of Special Appeals which, in an unreported opinion, affirmed the trial court's award of attorney's fees and the \$30,000 damages awarded, with the exception of "interest carry" damages, in the amount of \$12,257.39. The mandate vacated the trial court's award, in part, and remanded "for damages, to be adjusted, specifically, the 'interest carry' damages." The trial court issued a revised judgment per the unreported opinion on June 4, 2004, but awarded appellee an additional \$14,700 in attorney's fees; the total judgment was thus \$74,132.46.

Appellant appealed the award of additional attorney's fees, asserting that (1) the circuit court lacked the authority to award additional fees following remand and (2) insufficiency of the

evidence to support the award. The Court of Special Appeals reversed the award of attorney's fees on the grounds of insufficient evidence and remanded to the trial court, but failed to address appellant's first argument. The remainder of the circuit court's order remained intact. On March 30, 2006, the circuit court issued an order reducing the judgment amount by \$14,700 for attorney's fees and further reducing it by an additional \$5,686.10 for costs, leaving a judgment, filed on April 3, 2006, in the amount of \$53,746.36.

Appellant filed a Plea of Tender seeking that appellee be required to accept interest on that judgment only from June 4, 2004, the date of the revised judgment. Appellee opposed the Plea of Tender, seeking post-judgment interest from the date of the original judgment in June 27, 2000 and requested additional post-judgment attorney's fees.

Subsequently, the circuit court issued an order establishing that post-judgment interest accrued from June 27, 2000, "the original date of judgment" and awarded appellee post-judgment attorney's fees in the amount of \$41,296.16, in addition to those already awarded.

Held: A request for attorney's fees based on a contract provision is part of the damages claim under the contract and, absent express contractual language stating otherwise, the claims set forth in a contract merge at the time of judgment. Once a contract has been merged into the judgment, post-merger attempts to collect attorney's fees authorized only by the merged contract cannot be sustained. Here, the March 30, 2006 order of the trial court, entered on April 3, 2006, ordered *total judgment* in the amount of \$53,746.36, reflecting the request for attorney's fees up through April 3, 2006 and merging the contract into the judgment. Thus, the circuit court erred in granting post-judgment attorney's fees because the fees claimed were part of the damages claim which merged into the April 3, 2006 final judgment.

As the previous appeals and mandates in this case did not alter the original judgment as to liability, appellant's general liability was conclusively determined as of the June 27, 2000 Order. The circuit court properly awarded post judgment interest from June 27, 2000 because appellant's liability remained constant throughout the appeals and trial proceedings.

Monarc Construction, Inc. v. Aris Corporation et al., No. 1584, September Term, 2008, decided on October 5, 2009. Opinion by Davis, J.

<http://mdcourts.gov/opinions/cosa/2009/1584s08.pdf>

ATTORNEYS FEES - MERGER - Restatement (Second) of Judgments § 18, cmt. a (1982); *Jackson v. Wilson*, 76 Md. 567, 571 (1893); *United Book Press v. Md. Composition Co.*, 141 Md. App. 460, 474 (2001) (holding that "a claim merges into a judgment obtained with respect to that claim."); *G-C P'ship v. Schaefer*, 358 Md. 485, 488 (2000) (holding that "a contractually-based claim for attorney's fees forms part of the damages claim.").

Facts: The parties, in an attempt to resolve disputes stemming from appellees' failure to perform construction work under a subcontract, dismissed their lawsuits and entered into a Settlement Agreement which provided that, "In the event that any party is required to enforce the terms or conditions of this Agreement in court, the prevailing party shall recover all costs and expenses incurred in or arising from such action, *including reasonable attorney's fees*. Appellant, alleging that appellees failed to perform their obligations under the Settlement Agreement, sued appellees for breach of the Settlement Agreement and obtained a default judgment in the amount of \$184,574.70 on June 28, 2006.

The default judgment made no distinction between compensatory damages and attorney's fees. Appellant recorded the judgment in Virginia in an attempt to levy on property owned by appellees in that state to satisfy the judgment obtained, but this judgment was modified on the grounds that (1) appellant had failed to provide notice in its complaint that it would seek attorney's fees and (2) that the June 28, 2006 judgment did not provide for attorney's fees. Thereafter, on February 21, 2008, appellees paid the judgments against them in the amount of \$211,739.11, an amount which reflected the principal due on the judgment plus accrued interest, court costs and commissioners' fees.

Appellant then filed suit to recover attorneys' fees and related costs incurred by appellant *after the date of the original June 28, 2006 Maryland judgment*. Concluding that, as a matter of law, the Settlement Agreement merged into the prior judgments, the trial court granted appellees' motion to dismiss appellant's action to recover attorney's fees incurred after the June 28, 2006 judgment.

Held: The circuit court did not err in its ruling that

attorneys fees incurred in appellant's efforts to enforce the judgment, in addition to fees provided by the subcontract between the parties, are not allowed by law. Because attorney's fees awardable pursuant to a contract are an inherent part of a breach of contract claim, the effect of the merger doctrine is that the judgment on the merits of the contract claim precludes any subsequent post-merger attempt to collect attorney's fees based solely upon the provisions of the merged contract.

The June 28, 2006 order was issued based on the breach of the 2005 Settlement Agreement between the parties and the order established a judgment by default against appellees for \$184,574.70 in damages. Appellant asserted previously that the judgment encompassed attorney's fees incurred through the date of that judgment and cannot now seek additional, contract-based attorney's fees incurred subsequent to the June 28, 2006 order by characterizing those fees as "damages" recoverable pursuant to the contract because such "damages" did not survive merger into the June 28, 2006 order.

Barbara Abrishamian v. Earl Barbely, No. 1370, September Term, 2008, filed October 5, 2009. Opinion by Matricciani, J.

<http://mdcourts.gov/opinions/cosa/2009/1370s08.pdf>

COURTS AND JUDICIAL PROCEEDINGS - RECUSAL - APPEARANCE OF IMPROPRIETY - FINANCIAL INTERESTS - COLLATERAL SOURCE RULE - INADEQUATE VERDICTS - COMPROMISE VERDICT

Facts: Appellant collided with appellee's vehicle while walking. Appellant claimed that appellee's negligence caused her to incur substantial medical bills, as well as significant pain and suffering. Appellant moved to recuse the judge because the judge's brother had drafted a will for appellee and provided legal services for a person sharing appellee's last name, who was known to appellee but unknown to the judge. The court denied appellant's recusal motion and proceeded with trial. During appellant's case-in-chief, appellee cross-examined appellant's medical expert regarding the timeliness of appellant's treatment. The witness cited appellant's inability to pay, prompting counsel to ask whether the witness had been in possession of appellant's insurance card. Appellant immediately objected and, before the witness could answer, the court sustained the objection and struck the question. The trial court denied appellant's motion for mistrial. At the conclusion of trial, the trial court instructed the jury to disregard stricken evidence and collateral sources of compensation. The jury returned a verdict in favor of appellant that awarded exactly half of appellant's submitted past medical expenses but did not provide for future medical expenses or non-economic damages. Appellant moved for a new trial under Maryland Rule 2-533, citing inadequacy of the verdict. The trial court denied the new trial motion in an order, without a written opinion or statement of reasons. Appellant filed a timely notice of appeal.

Held: The Court of Special Appeals affirmed the trial court's judgment. The Court could not infer from the record that the judge knew of any interest his brother may have in the instant case or its parties and so was not compelled to recuse himself under the mandatory provisions of Canons of Judicial Conduct 3D(1). Any questions on the record as to the judge's impartiality did not rise to the level of past cases and so did not require recusal under the "catch-all" provision of Canon 3D(1). The trial court did not abuse its discretion by refusing to investigate potential grounds for recusal arising from family members not in his household. Because the trier of fact may accredit or disregard any evidence introduced, the jury was free to disregard any and all testimony supporting appellant's non-economic damages claim and award none even though it awarded economic damages. Where a

question regarding plaintiff's insurance coverage was objected to, struck, unanswered, and the subject of a curative instruction, a jury award of exactly half of plaintiff's unrebutted medical expenses is not a clear indication that plaintiff's insurance coverage was a primary factor in the jury's deliberations. The award may have been a compromise and not the product of prejudice; the trial court did not, therefore, abuse its discretion in denying a new trial. There is no requirement in Maryland that a trial court state on the record its reasons for interfering or not interfering with a jury verdict where the Court can reasonably infer from the record that the trial court properly exercised its discretion in denying a new trial.

* * *

David Joseph LaPin v. State of Maryland, No. 2292, September Term, 2007. Opinion filed on October 1, 2009 by Graeff, J.

<http://mdcourts.gov/opinions/cosa/2009/2292s07.pdf>

CRIMINAL LAW - MD CODE, § 3-301(f) OF THE CRIMINAL LAW ARTICLE - JURY INSTRUCTIONS - MARYLAND RULE 4-325.

Facts: On January 30, 2007, the victim, age 14, and her 16-year-old brother, Christopher, visited their grandfather at his home. Appellant, David Joseph LaPin, the victim's 46-year-old uncle, was also present in the home, as was the victim's 20-year-old sister, Jessica, and another uncle, Daniel Watson.

The victim testified that, while she was in the kitchen with appellant and her sister Jessica, appellant "repeatedly touched [her] chest." She told appellant to stop, but he did not stop. The victim was upset and scared, so she hit appellant on his chest, telling him again to stop and stating: "'How do you like it?'" Appellant responded: "'Oooh, baby.'"

The victim left the kitchen and went to the computer room to use the computer. Appellant was there, using the computer and "looking at porn" Appellant was viewing "a girl in a leather suit that was half naked, and he said, 'I'm going to whip you with a whip and put you in this suit.'" That comment made the victim uncomfortable, so she left the computer room and went outside.

Appellant came outside, and he "unexpectedly . . . grabbed my private area." He touched her "vagina area" on the outside of her clothing. The victim testified that she did not want appellant to touch her there or on her breast. The victim told her sister what happened. Jessica instructed her to "[g]o tell Danny." Danny directed the victim to "stay away from [appellant]." The police were called, and appellant was subsequently charged with committing, among other crimes, sexual abuse of a minor, second degree assault, and fourth degree sexual offense.

At trial, appellant testified in his own defense, and he acknowledged that he touched the victim's breast and that he "may have" touched the victim between her legs on the outside of her clothing. He denied, however, that he touched the victim for purposes of sexual gratification, sexual arousal, or to physically harm her.

At the close of all the evidence, appellant moved for judgment of acquittal, arguing that the motion should be granted with

respect to the charges of sexual abuse of a minor and fourth degree sex offense because "[t]here hasn't been a sufficient showing that the touching or grabbing . . . was for the purpose of sexual arousal or gratification." Appellant further argued that there was "not a sufficient showing that [appellant] intended any physical harm to" the victim. The circuit court denied appellant's motion.

Prior to the court instructing the jury, defense counsel requested that the court include in its instructions a definition of the term "abuse" with respect to the charge of fourth degree sexual offense. A fourth degree sexual offense involves "sexual contact," which requires a touching "for sexual arousal or gratification, or for the abuse of either party." Maryland Code (2002), § 3-301(f)(1) of the Criminal Law Article ("C.L.").

Defense counsel, citing *Dillsworth v. State*, 66 Md. App. 263 (1986), *aff'd on other grounds*, 308 Md. 354 (1987), requested that the court define "abuse" as a "physical attack intended to inflict sexual injury." The State objected to this instruction on the ground that it was misleading in that it suggested that physical injury was required.

The court declined to use appellant's proposed definition of "abuse," explaining that "the [*Dillsworth*] case is so closely tied to the specific facts of that case" and, "while I agree that [appellant's proposed definition of abuse] can be a means of defining abuse, it doesn't have to be." The jury subsequently convicted appellant, of sexual abuse of a minor, second degree assault, and fourth degree sexual offense.

Held: Judgment affirmed. C.L. § 3-308 defines a sexual offense in the fourth degree as, among other things, "sexual contact with another without the consent of the other." Section 3-301(f) defines "[s]exual contact" as "an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party." (Emphasis added). In light of the plain language of the statute and the legislative history, a touching for the purpose of "abuse" refers to a wrongful touching, a touching of another person's intimate area for a purpose that is harmful, injurious or offensive.

Appellant's proposed jury instruction, that "abuse" means a physical attack with the intent to inflict sexual injury, was not a correct statement of law. His proposed definition of "abuse" was too narrow. Accordingly, the circuit court properly declined to give the requested instruction.

Appellant's statements, in conjunction with appellant's repeated touching of the victim, were sufficient to establish, beyond a reasonable doubt, that appellant touched the victim for the purpose of sexual arousal or gratification, or for abuse. There was sufficient evidence to support appellant's convictions.

Douglas Malarkey v. State of Maryland, No. 3067, September Term, 2007. Opinion by Hollander, J. filed on October 2, 2009.

<http://mdcourts.gov/opinions/cosa/2009/3067s07.pdf>

CRIMINAL LAW - MOTION FOR JUDGMENT OF ACQUITTAL - RESERVATION OF RULING - STATE V. SIRBAUGH, 27 MD. APP. 290 (1975) - RULE 4-324; DOUBLE JEOPARDY - MISTRIAL - MOTION TO DISMISS APPEAL.

Facts: Douglas Malarkey, appellant, a Takoma Park police officer, was charged with second-degree assault of an arrestee, John Courtney, in violation of Maryland Code (2002, 2008 Supp.), § 3-203 of the Criminal Law Article ("C.L."). During a trial in the Circuit Court for Prince George's County, appellant repeatedly moved for judgment of acquittal, claiming legal insufficiency. Each time, the circuit court reserved ruling and ultimately submitted the case to the jury. When the jury was unable to reach an unanimous verdict, the court declared a mistrial. Thereafter, appellant filed a post-trial "Motion for Judgment of Acquittal" and a "Supplemental Motion to Dismiss on the Basis of Violation of Principles of Double Jeopardy and Due Process," which the circuit court denied.

The trial court relied upon *State v. Sirbaugh*, 27 Md. App. 290 (1975), to conclude that its reservations amounted to a denial of appellant's motions for acquittal. On this basis, it rejected appellant's claims that the court did not resolve the challenge to the sufficiency of the evidence.

Prior to his re-trial, appellant noted an appeal. The State moved to dismiss the appeal, claiming it was premature because no final judgment has been entered.

Held: The Court of Special Appeals dismissed the appeal as premature. On appeal, appellant argued that the circuit court "abrogated its responsibility to decide" his motions when it reserved. He insisted that the "granting of the mistrial," and the trial court's subsequent conclusion that the mistrial deprived the Court of its authority to rule on appellant's motion, placed appellant in a no-win position. In his view, there is a "need to protect double jeopardy principles where there has been a gross violation of an accused's right to have the trial court rule on a motion challenging the legal sufficiency of the prosecution's evidence." Urging this Court to overrule *Sirbaugh*, appellant contended that it was constitutionally invalid as applied.

The State countered, *inter alia*, that Malarkey's position

was "fundamentally flawed; the trial court did effectively rule on the motion." It relied on *Sirbaugh* for the proposition that "the trial court's decision to reserve on the motion for judgment of acquittal and present the case to the jury was tantamount to a denial of the motion"

The Court reasoned that, by its terms, Md. Rule 4-324 does not authorize a court to reserve its ruling on a motion for judgment of acquittal, in contrast to the civil context. See Rule 2-532. It noted that the Court of Appeals and the General Assembly are obviously aware of F.R. Crim. P. 29, which permits reservation, yet neither has seen fit to conform Rule 4-324 to F.R. Crim. P. 29. The Court said: "It is not our province to do so."

Moreover, based on principles of *stare decisis*, the Court was of the view that "the trial court's decision to reserve ruling on the motions for judgment of acquittal amounted to a denial of those motions." Further, the Court stated: "We are unpersuaded that *Sirbaugh* was wrongly decided. In our view, the reservation of a ruling on a motion for judgment of acquittal was tantamount to a denial of the motions for acquittal when the court submitted the case to the jury." The Court concluded: "Here, when the jury was unable to reach a verdict, the court declared a mistrial. Under these facts, re-trial is not prohibited by the Double Jeopardy Clause. It follows that Malarkey's appeal is premature. Therefore, we shall grant the State's motion to dismiss the appeal."

Addison v. State, No. 97, September Term, 2008, filed October 2, 2009. Opinion by Wright, J.

<http://mdcourts.gov/opinions/cosa/2009/97s08.pdf>

CRIMINAL LAW - EVIDENCE - TESTIMONY - EXPERTS - *FRYE/REED* HEARING

EVIDENCE - PROCEDURAL CONSIDERATIONS - OBJECTIONS & OFFERS OF PROOF - OBJECTIONS

Facts: Two witnesses saw a man beating and stabbing a woman with an icepick. One of the witnesses approached the altercation, causing the assailant to flee. Neither witness, however, was able to identify the assailant. Shortly after the attack and while she was in the emergency room, the victim identified defendant as her attacker. Several days later, during a police interview, the victim again identified defendant as her attacker. But, two months later, the victim stopped cooperating with the police and prosecution. She wrote a letter to a judge, changing her previous story and stating, instead, that she was attacked by a drug dealer named "Manny," from whom she had tried to buy drugs in exchange for sexual favors.

A jury trial was held in the Circuit Court for Montgomery County. At trial, the victim's testimony mirrored the letter she wrote in an attempt to shift the blame from defendant. In addition, over defense counsel's general objection, the court admitted testimony from the State's expert on domestic violence, regarding Battered Spouse Syndrome. Following trial, defendant was convicted of first-degree assault and wearing and carrying a dangerous weapon. He timely appealed.

Held: Affirmed. A general objection to expert testimony is not sufficient to preserve a *Frye/Reed* analysis for appellate review. If a *Frye/Reed* hearing is not requested at trial, the issue is waived and is not subject to appellate review.

Jonathan Williams v. State of Maryland, No. 2749, September Term, 2007. Opinion by Hollander, J. on filed October 1, 2009.

<http://mdcourts.gov/opinions/cosa/2009/2749s07.pdf>

CRIMINAL LAW - PROBABLE CAUSE - HAND-TO-HAND DRUG TRANSACTION.

Facts: Following a trial in October 2007, a jury in the Circuit Court for Baltimore City convicted John Williams, appellant, of possession with the intent to distribute cocaine, in violation of Md. Code (2002, 2007 Supp.), § 5-602 (2) of the Criminal Law Article ("C.L.").

Before trial, the defendant moved to suppress the narcotics recovered from him on February 25, 2007. Baltimore City Police Detective Eric L. Green, who was on duty in the early morning of February 25, 2007, testified as an expert regarding the sale, identification, and distribution of illegal drugs.

On the night in question, Green monitored a closed circuit, split-screen television from a room at the Western District precinct, which produced images from two pole cameras mounted for such purpose. Green described the area as "an open-air drug market," noting that "drugs are often sold in that area." At approximately 12:30 a.m., via the pole camera located at the 2300 block of Druid Hill Avenue, Detective Green observed "a black male who was wearing a dark hat and a dark jacket at the time." Although it was dark outside, the street was "well lit with street lights," and there was nothing obstructing Detective Green's view. The male was later identified as appellant.

Detective Green testified that he initially observed the following:

. . . Mr. Williams was reaching around into his front area of his body. He had his back turned towards me. Mr. Williams then turned around, had a conversation with another unknown black man who was wearing a dark coat. At this time, the unknown black male that he had just conversated [sic] with placed both of his hands behind his back at which time Mr. Williams handed the unknown black male a small object. Mr. Williams then again reached into his front and retrieved another object from the unknown black male which I believe[d] to be U.S. currency at that time.

Demonstrating to the trial court, Detective Green continued:

Okay. If I'm - this is myself and this is my monitor. Mr. Williams had his back towards me like this. He then looked to his right where the unknown black male walked here. Had a brief conversation. The unknown black male then backed up with his hands like this. Mr. Williams then handed him an object, a small object at which time I believe [sic] to be CDS. Mr. Williams then returned his hand and retri[ev]ed an object from the unknown black male. It was kind of a grip. So, I believed it was U.S. currency that the unknown black male was handing Mr. Williams and then he went back into his front area.

Based on the interaction between appellant and the unknown male, Detective Green opined: "I believe I observed a CDS transaction." Further, Detective Green stated that, based on his experience and training, he believed that appellant was the dealer and the other man was the buyer, because "the purchaser left the area which buyers do once they retrieve the drugs." The trial court asked Green how he knew that appellant handed drugs to the unknown black male, and not something else. Detective Green responded:

From the Defendant concealing what he was passing along to the unknown person. Also, the unknown person, his actions, where he held his hands behind his back trying to conceal what he was doing

* * *

If it was candy, Your Honor, there wouldn't be a need to conceal what you're passing along. I observed thousands and thousands of street distribution methods, and the most common distribution method is for a dealer to try to conceal the actual drugs and also, when he passes it along, it's not - let's say if you're giving somebody change on the street. You're not going to try to conceal it. Drug distributions are usually with a closed hand. They drop the drugs, take the money. If you're passing something that's not contraband, it's usually not concealed. If I'm giving somebody change for \$5.00, I'm going to hand him a bill. I'll hand him other \$1.00 bills like this. It's not concealed. It's no need to conceal it if it's not contraband.

The arrest team "stopped [appellant] at the intersection of Whitelock and Druid Hill. They removed his jacket." According to Green, the police "recovered a zip lock baggy from [appellant's]

left sleeve containing 35 smaller blue zip lock baggies with a white rock substance, suspected crack cocaine. He was placed under arrest."

Relying on § 2-202(b) of the Criminal Procedure Article of the Md. Code ("C.P."), the trial court found that the police had probable cause to arrest appellant based on Detective Green's observation of appellant engaging in what he (Detective Green) believed to be the sale of illegal narcotics.

Held: Affirmed. On appeal, appellant disputed the court's finding of probable cause for the arrest, because Detective Green could not identify the objects that were passed between Williams and the unknown man. Williams argued that "an exchange of an unidentified object for money in a high-drug area simply does not constitute probable cause to arrest."

The Court reiterated that experience and special knowledge of police officers may be considered in determining probable cause. Therefore, the Court said: "Detective Green's training and experience in street level distribution of illegal drugs were relevant to the court's determination of whether Green had probable cause to believe that the hand-to-hand transaction he observed was evidence of the commission of a crime." In addition, the Court recognized that "the geographical location of an incident is relevant to the determination of probable cause," and the incident at issue occurred in a high crime area. Notably, the Court was persuaded by the many other jurisdictions that have concluded, under the totality of the circumstances, "that probable cause may be found even if a trained, experienced police officer is not able to see whether the object transferred by one person to another was contraband." The Court said: "Detective Green did not need absolute certainty in regard to the objects that were exchanged here in order to obtain probable cause."

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Giant of Maryland, LLC v. Taylor, No. 223, 2007 Term, filed September 30, 2009. Opinion by Eyler, Deborah S., J.

<http://mdcourts.gov/opinions/cosa/2009/223s07.pdf>

LABOR AND EMPLOYMENT - EMPLOYMENT DISCRIMINATION BASED ON GENDER - MARYLAND CODE ARTICLE 49B - FEDERAL PREEMPTION UNDER SECTION 301 OF LABOR MANAGEMENT RELATIONS ACT OF 1947 - SUFFICIENCY OF EVIDENCE OF GENDER DISCRIMINATION AND OF RETALIATION.

Facts: Employee truck driver was charged with disciplinary violations for failing to abide by rule set forth in collective bargaining agreement ("CBA") requiring 90 minutes advance call-in for lateness or absence. Thereafter, employee's gynecologist stated by letter that due to a medical condition employee could experience sudden and severe heavy menstrual "hemorrhages." Employer directed employee to submit to an independent medical examination ("IME") by a gynecologist to determine whether it was safe for employee to drive. A section of the CBA covered IMEs. Employee refused to undergo IME and filed discrimination claim based on gender, alleging that employer was treating her differently than similarly situated male employees in requiring her to undergo an IME. A few weeks later, in a meeting between employee and three representatives of employer, employee effectively was terminated (a constructive termination). She filed a second claim, alleging that her firing was in retaliation for her having lodged the discrimination charge. Under article 49B and the Prince George's County anti-discrimination law, employee brought suit in circuit court. Employer's attempt to remove the case to federal court based upon statutory preemption failed. Case was tried to a jury and resulted in a verdict in favor of the employee.

Held: Judgment reversed on three grounds. First, the claims were preempted by federal law. The employee's theory of recovery, that the pertinent CBA language did not afford the employer any right to direct her to undergo an IME, meant that the question to be answered was the meaning, not the application, of that language of the CBA. When interpretation, not application, of collective bargaining agreement language is required, federal law controls. Second, even if there were not preemption, the evidence adduced at trial was legally insufficient to support either claim. As to the gender discrimination claim, the employee did not present legally sufficient "comparator" evidence, *i.e.*, proof that the employer had treated similarly situated employees differently based upon their being male. None of the comparator employees were similarly situated to the plaintiff employee. Third, with respect to the retaliation claim, the employee did not present legally sufficient evidence that the decision-makers involved in her constructive

termination knew that she had made a retaliation charge against the employer.

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ATTORNEY DISCIPLINE

By an Order of the Court of Appeals of Maryland dated September 14, 2009, the following attorney has been disbarred by consent from the further practice of law in this State:

MICHAEL BRIAN GILLAND

*

By an Order of the Court of Appeals of Maryland dated October 2, 2009, the following attorney has been suspended for a period of one (1) year and one (1) day from the further practice of law in this State:

KIMBERLY ANN NEEB

*

By an Order of the Court of Appeals of Maryland dated October 2, 2009, the following attorney has been disbarred, effective immediately. from the further practice of law in this State:

PETER JOHNSON CINQUEGRANI

*

By an Order of the Court of Appeals of Maryland dated September 2, 2009, the following attorney has been disbarred by consent, effective October 2, 2009 from the further practice of law in this State:

ERIKA ASHANTI TYNES

*

By an Opinion and Order of the Court of Appeals of Maryland dated October 6, 2009, the following attorney has been disbarred from the further practice of law in ths State:

BRIAN GRAYSON WEST

*

By an Order of the Court of Appeals of Maryland dated October 7, 2009, the following attorney has been placed on inactive status effective immediately, from the further practice of law in this State:

RICHARD LLOYD THOMPSON, II

*

By a Per Curiam Order of the Court of Appeals of Maryland dated October 7, 2009, the following attorney has been disbarred, effective immediately, from the further practice of law in this State:

GARRETT LAMONT LEE

*

By an Order of the Court of Appeals of Maryland dated October 19, 2009, the following attorney has been disbarred by consent from the further practice of law in this State:

CECILIA HOOVER-HANKERSON

*

RULES REPORT

The **162nd Rules Report** was filed on September 10, 2009:

<http://www.mdcourts.gov/rules/reports/162ndreport.pdf>

Letter Report: Rule 9-206 was filed on October 5, 2009:

http://www.mdcourts.gov/rules/reports/letter_rule9206-09.pdf