

IN THE COURT OF APPEALS OF MARYLAND

NO. 76

SEPTEMBER TERM, 1997

BRENDA L. SMALLWOOD

v.

HILTON P. BRADFORD

Bell, C. J.
Eldridge
Rodowsky
Chasanow
Raker
Wilner
Cathell

JJ.

Concurring and Dissenting Opinion by Raker, J.,
in which Chasanow, J., joins.

Filed: November 20, 1998

Raker, J., concurring in part and dissenting in part:

The appeal presented three questions.¹ The Court correctly decided that the decedent did not have a cause of action against the Appellee for the loss of enjoyment of his life. The Court also correctly decided that the trial court did not err in excluding evidence of the pecuniary status of the decedent's estate on the ground of relevance. I therefore join Parts II and III of the Court's opinion.

I dissent, however, from Part I of the Court's opinion, in which the Court ruled that the trial court erred in not submitting the issue of pre-impact fright damages to the jury. In my view, pre-impact fright is not recoverable under Maryland law and the trial judge properly granted Appellant's motion to dismiss on this basis. The rationale supporting the view that pre-impact fright should not be recoverable was well stated by Judge Bloom for the Court of Special Appeals in *Montgomery Cablevision v. Beynon*, 116 Md.App. 363, 372-89, 696 A.2d 491, 495-503 (1997), *rev'd* Md. , A.2d. (1998), (Court of Appeals No. 86, Sept. Term 1997). I agreed with his well reasoned opinion in that case, *see Beynon v. Montgomery Cablevision*, Md. , A.2d. (1998), (Court of Appeals No. 86, Sept. Term 1997, slip opinion at 1, Chasanow and Raker, JJ., dissenting), and believe it is equally

¹The questions presented are as follow:

“1. Whether a person instantly killed by tortious conduct has a survival action against the tortfeasor for pre-impact fright, and mental and/or emotional pain, anguish, suffering and/or distress.

2. Whether a person who is instantly killed has a survival action against the tortfeasor for loss of enjoyment of life.

3. Whether the pecuniary status of the decedent or his estate is relevant evidence of pre-impact emotional pain and suffering or loss of enjoyment of life in an instantaneous death, survival action.”

applicable in this case. Accordingly, I would affirm the judgment of the Circuit Court for Worcester County dismissing Appellant's claim for pre-impact fright.

Judge Chasanow has authorized me to state that he joins in the views expressed herein.