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SUPREME COURT OF MARYLAND

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https://www.courts.state.md.us/data/opinions/coa/2025/27a23ag.pdf

ATTORNEY DISCIPLINE – SANCTIONS – INDEFINITE SUSPENSION

Facts:

The Attorney Grievance Commission of Maryland (the "Commission"), acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action against

Respondent, Marnitta L. King, in connection with her separate representations of Antoneo Young and Renika Watson. The Commission alleged that Ms. King violated Maryland Attorneys' Rules of Professional Conduct ("MARPC") 19-301.1 (Competence) (Rule 1.1), MARPC 19-301.3 (Diligence) (Rule 1.3), MARPC 19-301.4 (Communication) (Rule 1.4), MARPC 19-301.5(a) (Fees) (Rule 1.5), MARPC 19-301.7 (Conflict of Interest) (Rule 1.7), MARPC 19-301.15(a) & (c) (Safekeeping Property) (Rule 1.15(a) and (c)), MARPC 19-301.16(a) (Declining or Terminating Representation) (Rule 1.16(a)), MARPC 19-308.1(b) (Bar Admission and Disciplinary Matters) (Rule 8.1(b)), and MARPC 19-308.4(a) & (d) (Misconduct) (Rule 8.4(a) & (d)). The allegations resulted from Ms. King's: (1) failure to keep her clients reasonably informed about the status of their cases; (2) failure to perform meaningful legal services in furtherance of their cases; (3) improper collection of a flat fee; (4) failure to recognize a conflict of interest and contributing to that conflict by filing suit against a client; and (5) non-compliance with Bar Counsel's investigations.

The hearing judge found by clear and convincing evidence that Ms. King had violated those provisions. The hearing judge also found clear and convincing evidence of the existence of six aggravating factors: prior disciplinary history, a pattern of misconduct, multiple violations, bad faith obstruction of the discipline proceeding, substantial experience in the practice of law, and likelihood of repetition. The hearing judge also found by a preponderance of the evidence the existence of three mitigating factors: personal or emotional problems, physical disability, and good character or reputation. Ms. King filed exceptions to the hearing judge: (1) not finding three additional mitigating factors; (2) not affording sufficient importance to one of the mitigating factors he found; and (3) finding three of the six aggravating factors he found.

Held:

The Court imposed an indefinite suspension with the right to apply for reinstatement after six months conditioned on agreement to a probationary period of not less than one year that will include a practice monitor and other appropriate conditions.

The Supreme Court of Maryland accepted the hearing judge's findings of fact and concurred with the hearing judge's conclusions of law. The Court also accepted all the mitigating and aggravating factors the hearing judge found. The Court reviewed Ms. King's exceptions and sustained as to the hearing judge's failure to find the mitigating factor of absence of a dishonest or selfish motive. The Court otherwise overruled Ms. King's exceptions.

Ms. King violated MARPC 1.1 when she (1) failed to communicate with Mr. Young after their initial conversation, and when she failed to file any agreed upon documents on his behalf in exchange for a flat fee of $2,500; and (2) when she filed suit against Ms. Watson on behalf of another client, Ms. Keona Holmes, and for failing to provide any explanation for the delay that caused Ms. Watson's case to be dismissed for failure to be filed within the statute of limitations period. The same reasons constituted a violation of MARPC 1.3, alongside Ms. King's repeated failure and refusal to respond to Mr. Young and his mother.

Ms. King violated MARPC 1.4 when she failed to communicate with or respond to both Mr. Young and Ms. Watson, and when she failed to obtain Ms. Watson's informed waiver of a conflict of interest. She violated MARPC 1.5 and MARPC 1.15 when she failed to fulfill the services for which she was retained, and when she failed to maintain a flat fee in an attorney trust account until it was earned.

Ms. King's continued representation of both Ms. Watson and Ms. Holmes despite a conflict of interest violated MARPC 1.7 and 1.16(a). Further, she did not timely and fully respond to lawful demands for information from Bar Counsel constituting a violation of MARPC 8.1(b).

Collectively, these multiple violations amounted to professional misconduct violations of MARPC 8.4(a) and (d).

The Court concluded that an appropriate sanction for Ms. King's violations was an indefinite suspension with the right to apply for reinstatement six months after the beginning of the suspension, conditioned on agreement to a probationary period of not less than one year that will include a practice monitor and other appropriate conditions.

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Government Employees Insurance Company, et al. v. MAO-MSO Recovery II, LLC, Series PMPI, et al., Misc. Nos. 3 & 4, September Term 2024, filed July 11, 2025. Opinion by Biran, J.

https://www.mdcourts.gov/data/opinions/coa/2025/3a24m.pdf

MD. CODE ANN., BUS. OCC. & PROF. ("BO&P") § 10-604(b)(1) (1989, 2018 Repl. Vol.) – STATUTORY OFFENSE OF BARRATRY – ASSIGNMENT OF RIGHT TO SEEK AND RECEIVE UNPAID REIMBURSEMENT OF MEDICARE PAYMENTS

COMMON LAW – MAINTENANCE, CHAMPERTY, AND BARRATRY – ASSIGNMENT OF RIGHT TO SEEK AND RECEIVE UNPAID REIMBURSEMENT OF MEDICARE PAYMENTS

Facts:

Plaintiffs filed putative class action lawsuits in the United States District Court for the District of Maryland seeking relief under the Medicare Secondary Payer ("MSP") provisions, codified at 42 U.S.C. § 1395y, and related regulations. Under the MSP, Medicare is a secondary payer when a beneficiary has other insurance; the primary payer is obligated to cover medical expenses, and Medicare pays only the remainder, subject to limitations. If the primary payer does not promptly pay, however, Medicare may make a conditional payment but is entitled to reimbursement once the primary payer's responsibility is established. *See id*. § 1395y(b)(2)(B), (b)(4).

Under Part C of the Medicare program, private insurance companies and other entities contract with Medicare to provide private insurance plan options for Medicare beneficiaries, 42 U.S.C. §§ 1395w-21–1395w-29. Like Medicare, those companies, which are known as Medicare Advantage Organizations, are considered secondary payers and may, at their discretion, charge primary payers under circumstances in which Medicare would be permitted to do so. *See id*. § 1395w-22(a)(4).

Plaintiffs are limited liability companies that do not provide health insurance. Their business model involves recovering unpaid reimbursements on behalf of Medicare Advantage Organizations and other secondary payers. Plaintiffs effectuated "Claims Cost Recovery Agreements," under which their secondary-payer clients ("Assignors") assigned to Plaintiffs their rights to seek and receive reimbursement from the primary payers and granted to Plaintiffs control over any litigation conducted. Plaintiffs had no preexisting interest in the claims. Rather, all of their claims are derivative of the Assignors' alleged rights.

With some exceptions, these agreements include identical or substantially similar provisions establishing a contingent compensation arrangement under which the client receives a percentage of any recovery obtained from claims pursued by Plaintiffs, and Plaintiffs keep the remainder of the proceeds. Assignors were either not aware that they had claims or did not know how many

claims that they had at the time that they entered into the assignments. None of Plaintiffs' assignments have choice-of-law provisions that state that those contracts are governed by Maryland law; rather, the assignments in many instances state that they are governed by the law of states other than Maryland.

Before the federal district court, Plaintiffs claimed that their clients made conditional payments for medical services that should have been paid by Defendants in both cases (collectively, "Defendants") in the first instance.

On January 22, 2024, Defendants filed a Combined Dispositive Motion in which they argued, in relevant part, that Plaintiffs' assignments are void as against Maryland public policy based on *Accrued Financial Services, Inc. v. Prime Retail, Inc.*, 298 F.3d 291 (4th Cir. 2002), in which the court voided the assignments at issue based on a strong Maryland public policy relating to champerty or barratry, described as "Maryland's strong public policy against the stirring up [of] litigation or promoting litigation for the benefit of the promoter rather than for the benefit of the litigant or the public." *Id.* at 300. Plaintiffs countered that Accrued mischaracterized Maryland law and cited the dissent in *Accrued*, which opined that Maryland does not recognize such a public policy. *See id.* at 302–05 (Michael, J., dissenting).

On June 10, 2024, the district court denied Defendants' Motion as to all other dispositive issues but found no clear Maryland authority resolving the public policy question. Thus, the court declined to rule on that issue and instead certified three questions to the Supreme Court of Maryland. The Supreme Court of Maryland reformulated the certified question as follows:

> Whether the assignment of the right to seek and receive unpaid reimbursement of payments for expenses under 42 U.S.C. § 1395y(b)(3)(A) (2018) pursuant to a contingency compensation arrangement/agreement is void as against public policy of Maryland, and if so, whether such an arrangement/agreement is unenforceable regardless of any choice of law provision contained in such an agreement.

Held:

The assignments are not void as against Maryland public policy. Accordingly, the Court did not reach the second part of the reformulated certified question.

The Court held that Plaintiffs did not violate the barratry statute, Md. Code Ann., Business Occupations & Professions ("BO&P") § 10-604(b)(1). Plaintiffs did not solicit Medicare Advantage Organizations to sue Defendants; instead, they obtained assignments and brought suit in their own names. The statute does not prohibit such conduct. Thus, the assignments are not void against any policy furthered by that statute.

The Court further held that, to the extent Maryland common law prohibitions against maintenance, champerty, and barratry continue to reach conduct that is not covered under BO&P § 10-604(b)(1), Plaintiffs' assignments do not violate those doctrines. The Court reviewed the

common law history of those doctrines, observed how other states have treated the doctrines in modern times, and noted that it was unaware of any case in which a cause of action has been sustained, or a contract voided, based on Maryland common law related to maintenance or champerty. However, despite recognizing that these common law doctrines "are teetering on obsolescence," the Court did not abrogate the doctrines and cautioned that, in different circumstances, judicial intervention might be warranted where an agreement so far exceeds accepted practice that it raises public policy concerns.

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Maryland Indoor Play, LLC, et al. v. Snowden Investment LLC, No. 29, September Term 2024, filed July 1, 2025. Opinion by Gould, J.

https://www.mdcourts.gov/data/opinions/coa/2025/29a24.pdf

CONTRACTS – BREACH OF INVESTMENT RIGHT – MEASURE OF DAMAGES

CONTRACTS – BREACH OF INVESTMENT RIGHT – SPECIFIC PERFORMANCE

Facts:

Hyper Kidz, a children's indoor play facility, was developed by Maryland Indoor Play, LLC ("MIP"). Its original members were two limited liability companies that each owned a 50% interest in MIP. The two LLCs were Reed/Clark Enterprises, LLC, whose members were Bynia Reed and David Clark, and Srinergy2 Educare, L.L.C. ("Srinergy2"), whose members were Chinnababu and Sangeetha Gudapati.

On January 12, 2018, Snowden Investment LLC ("Snowden") loaned MIP $350,000. The loan was documented by a Loan and Security Agreement (the "Loan Agreement") and a Term Note (the "Note") and was secured by a personal guaranty (the "Guaranty") from Mr. Clark, Ms. Reed, Mr. Gudapati, and Ms. Gudapati (collectively, the "Guarantors").

The Loan Agreement provided Snowden with the right to invest in future related ventures.

In May 2018, Ms. Reed and Srinergy2 formed Boomerang Franchise LLC ("Boomerang") to franchise the Hyper Kidz business concept. Snowden was not given written notice as required under the Loan Agreement.

On October 28, 2018, Ms. Reed and Srinergy2 formed Ashburn Indoor Play LLC ("Ashburn") to open a Hyper Kidz location in Ashburn, Virginia. Membership interests in Ashburn were issued that same day to Ms. Reed and Srinergy2. Snowden was not given written notice as required under the Loan Agreement.

Snowden filed an eight-count complaint against MIP, Ms. Reed, Mr. Gudapati, and Ms. Gudapati (collectively, the "Founders"), and Mr. Clark in March 2021. Count One requested a declaratory judgment that sought to clarify Snowden's Investment Right, including whether it applied to Boomerang.

Count Two requested compensatory damages for any breach of Snowden's Investment Right as to Boomerang, Ashburn, and certain other locations, mostly in Maryland and Virginia. Ultimately, Snowden narrowed that count to Boomerang and Ashburn.

In June 2022, the circuit court granted Snowden's summary judgment motion on its declaratory judgment count (Count One). But in doing so, it did not declare the parties' rights under the Loan

Agreement. The court also granted summary judgment to Snowden, on liability only on its breach of contract count (Count Two) as to Boomerang and Ashburn, leaving damages to be determined at trial.

Before trial, the court granted the Founders' motion to preclude Snowden's damages expert, Robert Rosenthal, from testifying about damages as to Boomerang. Mr. Rosenthal was, however, permitted to opine on Snowden's damages as to Ashburn. Mr. Rosenthal valued Ashburn—the entire business—at $1,470,000. He opined that a one-third interest in that business "would be the value of the right of first refusal." And then he subtracted from that "the partner capital," which he determined to be $110,000. Thus, he opined, the "net value of the founder's investment opportunity or the right of first refusal divided by three it gets you the $453,333 number."

Mr. Rosenthal acknowledged that Snowden's interest would have given it no control over the business. Thus, he explained, discounts for lack of marketability and lack of control would be appropriately used if one is measuring "fair market value." But because he used fair value, discounts were not applied. He explained that fair value is used in Maryland in dissenting shareholder and squeeze-out situations, which are akin to the breach of the "right of first refusal" in this case. Mr. Rosenthal valued the one-third interest in Ashburn as of March 31, 2021. That date, he said, was when he "determined that [Snowden] was to be given the opportunity to exercise the right of first refusal."

After receiving post-trial briefing, the court issued a Memorandum Opinion and accompanying order resolving each claim. On Count One, the court ordered that "within ten (10) days of the entry of this Order, Defendants shall grant to Plaintiff its Right of First Refusal with respect to Boomerang Franchise LLC as set forth in . . . the parties' Agreement[.]"

On Count Two, the circuit court awarded Snowden $453,333.00 for the breach of contract regarding Ashburn, adopting Snowden's expert's fair value methodology. The court rejected the Founders' argument that Mr. Rosenthal used an incorrect measure of damages, finding that the use of fair value instead of fair market value was permissible under *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387 (2012). In doing so, the court characterized Snowden's claimed damages as consequential damages for "lost business profits and opportunities." The court rejected the Founders' contention that damages must be measured at the time of breach.

The Founders timely noted their appeal and raised multiple arguments before the Appellate Court of Maryland. *Md. Indoor Play, LLC v. Snowden Inv. LLC*, Nos. 683 & 2307, Sept. Term 2023, 2024 WL 3384983, at *4-18 (Md. App. Ct. July 12, 2024). The Appellate Court affirmed the decision of the circuit court.

The Supreme Court of Maryland granted the Founders' petition for a writ of certiorari. *Md. Indoor Play, LLC v. Snowden Inv. LLC*, 489 Md. 195 (2024).

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Held:

Vacated in part and reversed in part, with instructions to remand the case to the circuit court for further proceedings consistent with the Supreme Court of Maryland's opinion.

The Supreme Court of Maryland held that the proper measure of damages for a breach of an investor's right to purchase a membership interest in a limited liability company is general damages, measured on the date of the breach and calculated using the fair market value of the interest at the time of breach, minus the price the investor would have paid for the interest.

The Supreme Court of Maryland held that specific performance was not an appropriate remedy where the circuit court, lacking sufficient evidence on which to make its findings, failed to consider all relevant facts and circumstances in determining the appropriate terms under which an investor, years after the breach of its Investment Right, would have become a member on equal terms as the other members and also failed to find that the investor was ready, willing, and able to satisfy those terms.

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Hyperheal Hyperbarics, Inc., et al. v. Eric Shapiro, No. 42, September Term 2024, filed July 17, 2025. Opinion by Gould, J.

https://www.mdcourts.gov/data/opinions/coa/2025/42a24.pdf

CORPORATIONS AND ASSOCIATIONS – SECTION 2-418

Facts:

In 2012, Eric Shapiro founded Hyperheal Hyperbarics, Inc. ("Hyperheal"), a medical provider offering hyperbaric oxygen therapy ("HBOT") and wound care. He served as a director, controlled Hyperheal's day-to-day operations, and was employed as a certified HBOT technician. Relevant here, the Eighth Article of Hyperheal's Articles of Amendment and Restatement, filed November 12, 2015 (the "charter"), required Hyperheal to indemnify "all of its present and former directors and officers in connection with any proceeding . . . to the fullest extent permitted by and in accordance with the laws of the State of Maryland."

On April 26, 2018, Hyperheal sued Mr. Shapiro and others in the Circuit Court for Baltimore County (the "underlying case"), alleging that Mr. Shapiro had engaged in misconduct that ultimately required Hyperheal to repay government insurers hundreds of thousands of dollars. Hyperheal asserted two causes of action against Mr. Shapiro in its amended complaint: one for "intentional misrepresentation" and the other for common law indemnification.

In general, Hyperheal alleged that: (1) Mr. Shapiro was the founder, a director, and the majority owner of Hyperheal and that he controlled the company's day-to-day operations; (2) Mr. Shapiro was also employed as a certified HBOT technician but was not a licensed physician; (3) as an HBOT technician, Mr. Shapiro was "not permitted to write a patient care plan, prescribe HBOT treatments or supervise HBOT sessions[]" and was "permitted only to administer HBOT treatments under the supervision of a licensed physician[]"; and (4) Mr. Shapiro knew that he was not authorized to prescribe HBOT treatments.

Following a six-day jury trial in November 2021, the jury returned a verdict in Mr. Shapiro's favor on all counts. Hyperheal did not appeal that adverse judgment.

On December 10, 2021, Mr. Shapiro, through counsel, sent Hyperheal a demand letter for payment of $501,021.70 in legal costs that he had incurred in defending the underlying case. Mr. Shapiro based his demand on the charter's Eighth Article and subsection 2-418(d) of the Corporations and Associations Article ("CA") of the Maryland Annotated Code, both of which provide for the indemnification of directors. Hyperheal denied the request on December 23, 2021.

On January 6, 2022, Mr. Shapiro filed this action in the Circuit Court for Baltimore County. Consistent with his demand letter, Mr. Shapiro's complaint invoked both the Eighth Article of the charter and CA § 2-418(d), relying solely on his status as a director.

Both parties filed competing motions for summary judgment. On March 15, 2023, the circuit court granted Hyperheal's motion and denied Mr. Shapiro's, finding "no genuine dispute of material fact that the Plaintiff's status or conduct as a corporate officer or director was not the basis of the claims asserted against him in the [underlying case]."

On October 3, 2024, the Appellate Court of Maryland reversed, holding that Hyperheal sued Mr. Shapiro "by reason of his service in his capacity as an officer and director, at least in part," because Hyperheal's allegations and claims rested in part on allegations that Mr. Shapiro breached his fiduciary duties as a director and officer. *Shapiro v. Hyperheal Hyperbarics, Inc.*, 263 Md. App. 424, 505-06 (2024). The Appellate Court concluded that because Mr. Shapiro was successful in defending the underlying case, the circuit court improperly granted summary judgment dismissing his claim for indemnification under CA § 2-418(d)(1).

The Supreme Court of Maryland granted Hyperheal's petition for a writ of certiorari to determine whether the Appellate Court correctly applied CA § 2-418(d). *Hyperheal Hyperbarics, Inc. v. Shapiro*, 489 Md. 328 (2025).

Held: Affirmed.

The Supreme Court of Maryland determined that the indemnification required under CA § 2-418(d) applies when a director is sued "by reason of service" in his capacity as a director and prevails. And to determine what it means to serve in the "capacity" as a director, courts must look to CA § 2-418(a)(3), which defines "[d]irector" to include service in two distinct capacities: (1) as a director to the corporation; and (2) service to another entity, at the direction of the corporation, as a director, officer, partner, trustee, employee, or agent.

The Supreme Court of Maryland determined that the requisite nexus requirement under CA § 2-418(d)(1) is established if, regardless of their merits, any of the factual allegations, causes of action, and/or legal theories alleged or asserted by the plaintiff implicate the individual's role or status as a director.

The Supreme Court of Maryland concluded that Mr. Shapiro is entitled to indemnification under CA § 2-418(d).

Jamal Antoine Williams v. State of Maryland, No. 44, September Term 2024, filed July 30, 2025. Opinion by Biran, J.
Gould and Getty, JJ., dissent.

https://www.mdcourts.gov/data/opinions/coa/2025/44a24.pdf

CRIMINAL ORGANIZATIONS – MD. CODE ANN., CRIM. LAW ("CR") § 9-805 (2002, 2012, 2021 REPL. VOL.) – *MENS REA* ELEMENT

SUFFICIENCY OF THE EVIDENCE – CR § 9-805

Facts:

CR § 9-805(a) makes it a felony to "organize, supervise, promote, sponsor, finance, or manage a criminal organization." CR § 9-805(a) (2021 Repl. Vol.). In May 2022, the State charged Jamal Antoine Williams under CR § 9-805, alleging that he "promote[d] a criminal organization[.]" The criminal organization Mr. Williams was alleged to have promoted was the Rollin 30s Crips, which is a set of the transnational gang known as the Crips. Mr. Williams's alleged act of promotion was standing watch while a leader of the gang spray-painted the message "Roll Three N 30s Crip" on a wall at Veteran's Plaza in Silver Spring, Maryland. After Mr. Williams waived a jury trial and the parties stipulated to the relevant facts, a Montgomery County Circuit Court judge found Mr. Williams guilty of promoting a criminal organization, in violation of CR § 9-805. Mr. Williams appealed his conviction, and the Appellate Court of Maryland affirmed.

Held: Reversed.

The Court held that CR § 9-805 is a general intent crime that requires the State to prove that the defendant knew the organization he or she was organizing, supervising, promoting, sponsoring, financing, or managing was a "criminal organization" as defined in CR § 9-801(c). That, in turn, requires proof of the defendant's knowledge that: (1) the organization is an "enterprise," as further defined in CR § 9-805(d); (2) the members of the organization engage in a "pattern of organized crime activity," as further defined in the CR § 9-801(e); (3) the members have as one of their primary objectives or activities the commission of one or more "underlying crimes," as that term is further defined in CR § 9-801(g); and (4) the members have in common an overt or covert organizational or command structure.

In addition, the Court held that the General Assembly intended CR § 9-805 to reach only those who exercise a leadership role in a criminal organization or – if they are not members of a criminal organization – exercise discretionary authority in connection with the act covered by § 9-805(a).

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Here, there was no evidence that Mr. Williams had a leadership role in the Rollin 30s Crips or, if he was no longer a member of that criminal organization at the time of the charged offense, that he exercised discretionary authority in connection with the alleged act of promotion. Accordingly, the Court held that the evidence was insufficient to sustain Mr. Williams's conviction under CR § 9-805 for promoting a criminal organization.

Sergey S. Danshin v. State of Maryland, No. 39, September Term 2024, filed July 18, 2025. Opinion by Eaves, J.

https://www.mdcourts.gov/data/opinions/coa/2025/39a24.pdf

CRIMINAL LAW – JURY INSTRUCTIONS – "SOME EVIDENCE" STANDARD – DEFENSE OF OTHERS

Facts:

On the evening of June 22, 2022, Javier Gonzalez-Mena was shot and killed outside his hotel room at the Red Roof Inn in Montgomery County, Maryland. Sergey Danshin was charged with Mr. Gonzalez-Mena's murder. At trial, Mr. Danshin requested that the court instruct the jury on defense of others because he believed that there was some evidence to show that his alleged shooting of Mr. Gonzalez-Mena was done to prevent imminent bodily harm to a third party, Christina Jones.

The evidence presented at trial revealed that Mr. Gonzalez-Mena and Ms. Jones were in a relationship, which Mr. Danshin learned was violent. On June 19, Ms. Jones spent the night with Mr. Danshin because Ms. Jones shared with Mr. Danshin that Mr. Gonzalez-Mena beat her, took her phone, pinned her down to the seat of a car with his knee on her hair and twisted her breasts, tried to throw her in a dumpster, and threated to kill her if she left.

The next day, however, Ms. Jones left Mr. Danshin's apartment and reconciled with Mr. Gonzalez-Mena and stayed with him in his hotel room but did not tell anyone. After 48 hours of not hearing from Ms. Jones, she eventually contacted Mr. Danshin.

Later that day, Mr. Danshin asked two friends to help him retrieve a friend in danger—Ms. Jones. Masked and armed, Mr. Danshin and one of those friends proceeded to the room where Ms. Jones was staying with Mr. Gonzalez-Mena, attempting to check on Ms. Jones. Although there were many versions of the interactions between everyone involved, all of them lead to the same outcome: Mr. Gonzalez-Mena was shot and killed.

During Mr. Danshin's interview with the detectives, Mr. Danshin provided conflicting statements to the police. At times, Mr. Danshin admitted and implied that he shot Mr. Gonzalez-Mena. At times, Mr. Danshin denied shooting Mr. Gonzalez-Mena. Nevertheless, when asked about his motivation for shooting Mr. Gonzalez-Mena, Mr. Danshin reported that "it looked like [Mr. Gonzalez-Mena] was going to cut [Ms. Jones's] goddamn head off with the machete because he had chased me with that same machete," and that he "saw someone in imminent threat of not just bodily harm but imminent threat of lethal bodily harm and with complete knowledge that this person has hurt their victim previously on more than two occasions[.]"

The State ultimately charged Mr. Danshin with, among other crimes, the murder of Mr. Gonzalez-Mena. At various times throughout the circuit court proceedings, Mr. Danshin requested that the circuit court instruct the jury on defense of others. The court rejected that request each time, and the jury convicted Mr. Danshin of first-degree premeditated murder. The Appellate Court of Maryland affirmed Mr. Danshin's conviction.

Petitioner filed a petition for a writ of certiorari, which the Supreme Court of Maryland granted. *Danshin v. State*, 489 Md. 275 (2024).

Held: Reversed.

Pursuant to Maryland Rule 4-325(c), a circuit court must give a requested jury instruction when three criteria are met: "(1) the requested instruction is a correct statement of the law; (2) the requested instruction is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in the jury instruction actually given." *Rainey v. State*, 480 Md. 230, 255 (2022) (quoting *Ware v. State,* 348 Md. 19, 58 (1997)). Regarding the second requirement—for a jury instruction to be applicable under the facts of a particular case—the requesting party must only produce "some evidence" as to each element of a defense to support the requested instruction, which is considered a very low bar.

On appeal, the parties agreed that the circuit court provided a correct recitation of the elements for defense of others:

> (1) the defendant actually believed that the person defended was in immediate or imminent danger of bodily harm;
> (2) the defendant's belief was reasonable;
> (3) the defendant used no more force than was reasonably necessary to defend the person defended in light of the threatened or actual force; and
> (4) the defendant's purpose in using force was to aid the person defended.

Thus, the Supreme Court noted that it was tasked with determining only whether there was "some evidence" as to each element.

In this case, the Supreme Court concluded that there was some evidence to satisfy each element. First, Mr. Danshin allegedly shot Mr. Gonzalez-Mena because Mr. Danshin subjectively believed that Ms. Jones was in immediate or imminent danger of death or serious bodily injury, as it looked like Mr. Gonzalez-Mena was going to cut her head off with a machete. Second, Mr. Danshin's belief about the immediate or imminent harm that Ms. Jones faced was objectively reasonable because he had knowledge of Mr. Gonzalez-Mena's prior violent behavior toward Ms. Jones, which influenced how Mr. Danshin perceived the situation in the moment he allegedly shot Mr. Gonzalez-Mena. Third, Mr. Danshin used no more force than necessary to defend Ms. Jones because use of a machete, like gunfire, could result in a fatality. Fourth, Mr. Danshin's purpose in allegedly shooting Mr. Gonzalez-Mena was to defend Ms. Jones, again, because of the perceived lethal force against Ms. Jones, not to punish Mr. Gonzalez-Mena, and

because Mr. Danshin expressed to police his belief in protecting vulnerable people, particularly women and children.

Therefore, the Supreme Court of Maryland held that there was "some evidence" produced at trial that Mr. Danshin lawfully acted in defense of Ms. Jones when he allegedly shot and killed Mr. Gonzalez-Mena. The trial court erred in refusing to instruct the jury on defense of others, depriving the jury of the opportunity to consider whether they believed Mr. Danshin was acting in defense of Ms. Jones.

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Christopher Nguyen v. State of Maryland, No. 13, September Term 2024, filed July 30, 2025, Opinion by Booth, J.
Watts, J., Dissents.

https://www.courts.state.md.us/data/opinions/coa/2025/13a24.pdf

POLICE OFFICERS – COMMON LAW DUTIES OWED TO THE PUBLIC.

POLICE OFFICERS – DUTY BASED ON SPECIAL RELATIONSHIP.

Facts:

The Petitioner, Christopher Nguyen, a former officer of the Baltimore Police Department, was convicted of reckless endangerment in the Circuit Court for Baltimore City. The conviction arose in the context of then-Officer Nguyen's investigation into an assault between two individuals that had occurred outside of his presence. When Nguyen arrived on the scene, one of the individuals, later identified as Wayne Brown, was lying on the ground semi-conscious and covered in blood. The other individual, Kenneth Somers, was sitting in his truck talking on his cell phone. When questioned by Nguyen, Somers acknowledged that he assaulted Brown for allegedly stealing his car. In the minutes during which Nguyen was attempting to conduct his investigation, Somers walked up to Brown and kicked him in the head.

The State brought a criminal charge of reckless endangerment against Nguyen for failing to protect Brown from the assault by Somers. One element of the offense of reckless endangerment is proof of a legal duty to act under the circumstances presented. After a bench trial, the trial judge determined that Nguyen had a duty to protect Brown and found him guilty of reckless endangerment. The Appellate Court affirmed.

Nguyen filed a petition for writ of certiorari asking the Supreme Court of Maryland to determine whether he had a common law duty to protect Brown from Somers's assault, and, if so, whether the State established beyond a reasonable doubt that Nguyen's conduct constituted a gross departure from the standard of conduct that a reasonable similarly situated officer would have observed. The State filed a cross-petition for writ of certiorari asking the Court to hold that a special relationship existed between Nguyen and Brown due to Brown's status as a pre-trial detainee in custody. The Supreme Court granted certiorari.

Held: Reversed.

The Supreme Court held that the State did not prove that police officers have a legal duty to prevent a member of the public from committing a spontaneous and unforeseeable assault against another member of the public. To the extent Maryland common law imposes legal duties on police officers, the officers owe those duties to the public, rather than to individuals, absent a

special relationship. To meet the duty element of the crime of reckless endangerment, the Court explained that the State must prove that the officer had a duty to act to protect the victim in the circumstances presented.

Viewing the evidence in the light most favorable to the State, the Court concluded that the State failed to establish that Nguyen owed a legal duty to protect Brown, as a member of the public, from an assault by a third party that, by all accounts, was spontaneous and unforeseeable.

The Court similarly held that the State failed to prove the existence of a special relationship between Nguyen and Brown because Brown was never in police custody. In light of the Court's holding that the State failed to establish that Nguyen owed Brown a legal duty: (1) under the common law to protect him, as a member of the public, from a spontaneous assault by another member of the public; or (2) because of the existence of a special relationship, the Court did not reach Nguyen's argument that the State failed to establish beyond a reasonable doubt the remaining elements required for a reckless endangerment conviction.

Secretary, Department of Public Safety and Correctional Services v. Dallas Fenton, No. 46, September Term 2024, filed July 11, 2025. Opinion by Watts, J.

Biran, J., concurs.
https://mdcourts.gov/data/opinions/coa/2025/46a24.pdf

DIMINUTION OF CONFINEMENT CREDITS – MD. CODE ANN., CORR. SERVS. (1999, 2017 REPL. VOL., 2024 SUPP.) § 3-702(c) – "PREVIOUSLY CONVICTED"

Facts:

Under Md. Code Ann., Corr. Servs. (1999, 2017 Repl. Vol., 2024 Supp.) ("CS") § 3-702(c), an incarcerated individual who is serving a sentence for commission of a third- degree sexual offense in violation of Md. Code Ann., Crim. Law (2002, 2021 Repl. Vol.) ("CR") § 3-307 involving a victim who is a child under the age of 16 years is not entitled to diminution of confinement credits "if the incarcerated individual was previously convicted" of a violation of CR § 3-307 involving a victim who is a child under the age of 16 years.

The case arose from Dallas Fenton's, Respondent's, commission of several sexual offenses against a fourteen-year-old child. In the Circuit Court for Wicomico County, a jury convicted Mr. Fenton of eight counts of third-degree sexual offense in violation of CR § 3-307 (Counts 1 through 8). Mr. Fenton was also convicted of one count of sexual solicitation of a minor (Count 9) and one count of indecent exposure (Count 11). As to one of the third-degree sexual offenses (Count 1), the circuit court imposed a sentence of ten years' imprisonment, to begin on December 29, 2016. As to another of the third-degree sexual offenses (Count 8), which occurred on a different date than the offense in Count 1, the circuit court imposed a sentence of ten years' imprisonment, consecutive to the sentence imposed for Count 1. While Mr. Fenton was serving the first of the two ten-year sentences, the Division of Correction ("DOC") of the Department of Public Safety and Correctional Services ("DPSCS") notified him that he was not to receive any diminution of confinement credits for the ten-year sentence imposed for Count 8 because CS § 3-702(c) prohibits a person who was "previously convicted" of a third-degree sexual offense involving a victim who is a child under the age of 16 from receiving diminution credits where the person has already been previously convicted of the same offense.

After an unsuccessful request for a Warden's administrative remedy, Mr. Fenton filed a grievance with the Inmate Grievance Office ("IGO"), alleging that CS § 3-702(c)'s prohibition on diminution credits for an inmate who was previously convicted of third-degree sexual offense did not apply to him. The IGO dismissed the grievance, determining that, pursuant to CS § 3-702(c), Mr. Fenton was not entitled to diminution credits for the sentence on Count 8 because he had previously been convicted of Count 1 for the same offense. Mr. Fenton filed a petition for judicial review in the circuit court, which was granted in part and denied in part. The circuit court ruled that CS § 3-702(c) applies because, on the date that Mr. Fenton will begin serving his sentence on Count 8, he will have been "previously convicted" of a violation of CR § 3-307

involving a victim under the age of 16 in Count 1. The circuit court ruled that the prohibition under CS § 3-702(c) does not apply, however, to good conduct credits awarded under CS § 3-704 for the sentence in Count 8 but applies to the award of other diminution of confinement credits.

Mr. Fenton and the Secretary of DPSCS, Petitioner ("the Secretary"), each filed applications for leave to appeal, which the Appellate Court of Maryland granted. The Appellate Court held that Mr. Fenton was not prohibited from accruing diminution of confinement credits under CS § 3-702(c) and vacated the judgment of the circuit court and remanded the case to that court, directing it to remand the case to the Secretary with instructions to calculate Mr. Fenton's diminution of confinement credits in accordance with its opinion. *See Fenton v. Sec'y, Dep't of Pub. Safety and Corr. Servs.*, 263 Md. App. 613, 630, 326 A.3d 1, 11 (2024). The Secretary filed a petition for a writ of *certiorari*, which the Supreme Court of Maryland granted. S*ee Sec'y, Dep't of Pub. Safety and Corr. Servs. v. Fenton*, 489 Md. 330, 330 A.3d 658 (2025).

Held: Affirmed.

The Supreme Court of Maryland held that, under CS § 3-702(c), the receipt of diminution of confinement credits is precluded where an incarcerated individual is serving a sentence for a violation of CR § 3-307 involving a victim who is a child under the age of 16 only if the offense that is the basis of the sentence was committed after the incarcerated individual had been previously convicted of a violation of CR § 3-307 involving a victim who is a child under the age of 16. The Court concluded that the language of CS § 3-702(c) requiring that an incarcerated individual have been "previously convicted" is ambiguous in that the statute contains no definition of the phrase "previously convicted" or description of an event that the conviction must be precede, leaving the phrase capable of more than one interpretation.

The Supreme Court of Maryland determined that the legislative history of CS § 3-702(c) resolved the ambiguity, however, and led to its conclusion that diminution of confinement credits may be withheld only where the offense for which an incarcerated individual is serving a sentence is committed after the inmate has been convicted of an earlier violation of CR § 3-307 involving a victim under the age of 16. The legislative history of CS § 3-702(c) reveals that the General Assembly intended the statute to serve the purpose of deterrence of repeat offenders. To the extent that there was arguably any unresolved ambiguity with respect to the interpretation of CS § 3-702(c) after examining the plain language and legislative history of the statute (which there was not), the rule of lenity would apply.

The Supreme Court of Maryland held that CS § 3-702(c) applies only where the previous conviction precedes the commission of the offense for the sentence that an incarcerated individual is serving. Under the statutory construction set forth in its opinion, the Court concluded that Mr. Fenton will not have been "previously convicted" of a third-degree sexual offense involving a victim under the age of 16 at the time that he is serving the sentence for Count 8. As such, the Court affirmed the judgment of the Appellate Court, vacating the circuit

court's judgment and remanding the case to the circuit court with instructions to remand the case to the Secretary to calculate Mr. Fenton's diminution of confinement credits in a manner consistent with Mr. Fenton not being prohibited by CS § 3-702(c) from receiving diminution of confinement credits as to the sentence on Count 8.

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Travis Rashad Shepperson v. State of Maryland, No. 36, September Term 2024, filed July 24, 2025. Opinion by Killough, J.

https://www.mdcourts.gov/data/opinions/coa/2025/36a24.pdf

MD. CODE ANN., CRIM. PROC. § 8-201 – DNA APPEALS – ABUSE OF DISCRETION – NO DETECTABLE DNA RESULTS

Facts:

In 2009, Petitioner Travis Rashad Shepperson was tried for the robbery and sexual assault of a victim at a phone store in Prince George's County. At trial, the victim described the three distinct acts Shepperson forced her to engage in at gunpoint—forced fellatio, vaginal rape, and anal rape. The victim testified that during the vaginal rape, Shepperson forced her to suck on the barrel of his gun. One piece of evidence introduced by the State was a DNA result showing the presence of the victim's DNA on the barrel of the gun found in possession of Shepperson (hereinafter "Gun Barrel Sample"). The jury later convicted Shepperson of first- and second-degree sexual offenses related to the forced fellatio, use of a handgun in the commission of a crime of violence, robbery with a dangerous weapon, robbery, and theft. The trial judge merged the convictions for the second-degree sex offense and robbery into their respective greater offenses. Shepperson was sentenced to life for the first-degree sex offense, a consecutive 20-year sentence for the use of a handgun conviction, and a consecutive 20-year sentence for the robbery with a deadly weapon conviction.

In 2023, Shepperson sought DNA testing of a residual swab of the Gun Barrel Sample pursuant to Maryland Code Ann., Criminal Procedure Article ("CP") § 8-201(b)(1). The 2024 Bode Technology test results of the Gun Barrel Sample "were below the limit of detection and, therefore not processed further." Thereafter, Shepperson filed a motion for a new trial based on the new DNA results arguing: (1) that had the jury known independent DNA testing of the gun barrel revealed no detectable DNA, there was a substantial possibility that he would not have been convicted; and (2) that if the jury had been aware of the discrepancy between the 2024 Bode Technology test (indicating no DNA) and the State's theory—that Shepperson forced the victim to perform a sexual act using a gun—a substantial possibility existed that the trial outcome would have changed. Following a hearing, the postconviction court denied Shepperson's motion for a new trial, holding that there was not a substantial possibility that Shepperson would not have been convicted had the jury at the 2009 trial known that independent DNA testing of the Gun Barrel Sample was inconclusive, nor was it in the interest of justice to grant a new trial.

Held: Affirmed.

The Supreme Court of Maryland held that the postconviction court did not abuse its discretion in denying Shepperson's motion for a new trial. CP § 8-201(b)(1) provides that an eligible person convicted of a crime of violence may file a petition for postconviction DNA testing of evidence possessed by the State that is related to the judgment of conviction. A petitioner may file a motion for a new trial based on such DNA testing. Under CP § 8-201(i), the postconviction court shall dismiss a motion for a new trial if the DNA results are unfavorable. If the results of the DNA testing are favorable, the petitioner may move for a new trial. Under CP § 8-201(i), the postconviction court may grant a new trial if it finds that: (1) a substantial possibility exists that the petitioner would not have been convicted if the DNA testing results had been known or introduced at trial, or (2) a new trial is in the interest of justice. Neither condition was satisfied on the record before this Court.

DNA results are deemed favorable when they directly refute the State's theory of the case or materially undermine evidence admitted at trial. *See Thompson v. State*, 411 Md. 664, 689–90 (2009). Here, the 2024 Bode Technology test of a remaining portion of the Gun Barrel Sample neither refuted the State's theory of the case nor did it undermine the results of the 2008 BRT Laboratories test of a different portion of the Gun Barrel Sample that linked the gun to the victim. The State's theory of the case was that the gun was forced into the victim's mouth during the vaginal rape, related to a charge for which Shepperson was acquitted. At the postconviction hearing, the court heard testimony that there was no indication that the 2008 BRT Laboratories test was erroneous or cross-contaminated and that the passage of time between the first and second test of the Gun Barrel Sample resulted in there not being enough material to detect. At best, the 2024 Bode Technology test could have confirmed the original result, shown that the victim's DNA was not present, or as here yielded no detectable DNA. A "no detectable DNA" result, like an inconclusive one, is not "favorable" unless it casts doubt on the validity of the initial findings. *Cf. Diggs & Allen*, 213 Md. App. 28, 66–67 (2013) ("an inconclusive test is evidence of nothing"). The 2024 Bode Technology test results did not cast doubt on the jury's findings because the test related to a charge for which Shepperson was acquitted.

For similar reasons, Shepperson failed to satisfy the substantial possibility standard of CP 8-201(i) to warrant the granting of a new trial. This standard asks whether, in light of the entire record, there was a substantial possibility of acquittal. As discussed above, the 2008 BRT Laboratories test and the 2024 Bode Technology test of the Gun Barrel Sample related to the vaginal rape charge for which Shepperson was acquitted. Such a finding bore no connection to the conviction for forcing the victim to perform fellatio at gunpoint. In light of the full record—including the unchallenged 2008 BRT Laboratories test results, the DNA analyst's testimony, a DNA test from another portion of the gun linking it to the victim, witness testimony placing Shepperson near the scene of the crime, and the jury's acquittal on the rape charge linked to the gun barrel-in-mouth allegation, there was not a substantial possibility that Shepperson would not have been convicted.

Ordinarily, this Court defers to the postconviction court's judgment on whether the "interest[] of justice" warrants reopening the case unless its decision plainly lacks a logical connection to its

factual findings. *See Gray v. State*, 388 Md. 366, 383 (2005). The postconviction court's denial of Shepperson's motion for a new trial rests on the "no detectable" DNA result from the 2024 Bode Technology test of the Gun Barrel Sample. The 2024 Bode Technology test does not affect assessments of force, the victim's credibility, or any other material element. Nor did the 2024 Bode Technology test undermine the non-forensic evidence adduced at trial. Granting a new trial on this record would contravene CP § 8 201's requirement of genuinely material new evidence and inject unwarranted uncertainty into convictions supported by a coherent, complete record.

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James Russell Trimble v. State of Maryland, No. 28, September Term 2024, filed July 17, 2025. Opinion by Eaves, J.
Fader, C.J., Booth, and Killough, J.J., concur.

https://www.mdcourts.gov/data/opinions/coa/2025/28a24.pdf

MD. CODE ANN., CRIMINAL PROCEDURE § 8-110(d)(1) – CONSIDERATION OF AGE

MD. CODE ANN., CRIMINAL PROCEDURE § 8-110(d)(5) – NO SPECIAL CONSIDERATION

MD. CODE ANN., CRIMINAL PROCEDURE § 8-110(d) – REVIEW OF DENIAL OF SENTENCE REDUCTION – NO ABUSE OF DISCRETION

Facts:

James Russell Trimble was approximately 17 years and 8 months old in 1982 when he was convicted of first-degree murder, first degree rape, two counts of first-degree sexual offense, two counts of kidnapping, and one count of sexual assault. At trial, Mr. Trimble offered insanity as his only defense. The State called an expert witness, Dr. Michael K. Spodak, to testify that Mr. Trimble suffered from a history of substance abuse, but did not lack substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law under the then-prevailing insanity standard, and another State's witness concurred. The defense called a doctor as a witness who testified to the contrary but declined to state that conclusion to a reasonable degree of medical certainty or probability. Mr. Trimble was found guilty by jury. At the sentencing phase, Dr. Spodak testified regarding Mr. Trimble's prior diagnosis of antisocial personality disorder ("ASPD"), characterizing it as "severe," "deeply engrained," "life-long," and "unlikely, if possible at all, . . . [to] be altered by therapy." Dr. Spodak concluded that Mr. Trimble was a danger to society. Mr. Trimble was originally sentenced to death for his first-degree murder conviction; however, after a series of appeals, he was resentenced to a life sentence. *Trimble v. State*, 90 Md. App. 705, 709 (1992).

In February 2022, Mr. Trimble filed in the Circuit Court for Baltimore County a motion under § 8-110 of the Criminal Procedure Article ("CP") of the Annotated Code of Maryland, which authorizes individuals sentenced as minors prior to October 1, 2021, who have served at least 20 years' incarceration, to file a motion for a reduction of sentence. Section 8-110 lists 10 enumerated factors that a court must consider, along with any other factor the court deems relevant, to assist the court in determining whether the individual is not a danger to the public and whether a reduced sentence is in the interests of justice. Mr. Trimble discussed his various accomplishments and changes while incarcerated and submitted a May 2020 medical opinion and report by psychiatrist Ronald Means, which asserted that Mr. Trimble's ASPD diagnosis was "no longer applicable," and that, if released, "it is most probable that Mr. Trimble will have

success in the community." The court denied Mr. Trimble's motion, addressing all 10 statutory factors enumerated in CP § 8-110 in its decision.

On appeal, the Appellate Court of Maryland affirmed the circuit court's denial of Mr. Trimble's motion. *Trimble v. State*, 262 Md. App. 452, 457 (2024).

Mr. Trimble filed a petition for a writ of certiorari, which the Supreme Court of Maryland granted on October 25, 2024. *Trimble v. State*, 489 Md. 196 (2024).

Held: Affirmed.

The Supreme Court of Maryland affirmed the judgment of the Appellate Court. The Court began by reviewing the changing legal landscape concerning juvenile offenders sentenced as adults, and the General Assembly's response via enacting the Juvenile Restoration Act ("JUVRA"), which contains the statutory provision in question. The Court then held that the General Assembly has conferred broad discretion upon the circuit court to determine whether an individual is not a danger to the public and whether the interests of justice will be served by a reduced sentence—the ultimate inquiry under CP § 8-110(c). Additionally, the Court held that, under CP § 8-110(d), the circuit court is required to consider the ten enumerated factors contained therein, in addition to any other factor the court determines relevant. The statute does not, however, require that a court: (1) consider an individual's age at the time of the offense as a factor that automatically supports a sentence reduction in every case or (2) give greater weight to any enumerated factor over others.

Applying those conclusions to the case at bar, the Court held that the circuit court: properly considered all enumerated factors and did not err in declining to give greater weight to evidence of Mr. Trimble's "maturity, rehabilitation, and fitness to reenter society." Furthermore, the circuit court did not abuse its discretion when it gave greater weight to the medical opinions that were more contemporaneous to Mr. Trimble's original sentencing than to Dr. Means' updated evaluation. Therefore, the Court affirmed the judgment of the Appellate Court.

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Carlos D. Bivens v. Amondre Clark, No. 48, September Term 2024, filed July 11, 2025. Opinion by Booth, J.

https://www.mdcourts.gov/data/opinions/coa/2025/48a24.pdf

TIME SERVED CREDIT FOR VACATED SENTENCES ARISING FROM VACATED CONVICTIONS – MARYLAND CODE ANN., CRIMINAL PROCEDURE ARTICLE ("CP") § 6-218(d)

TIME SERVED CREDIT WHEN A DEFENDANT IS REPROSECUTED OR RETRIED – CP § 6-218(c)

Facts:

This appeal arises from the successful petition for writ of habeas corpus filed by Appellee, Amondre Clark, and his release from the custody of the Division of Corrections ("Division").

On January 7, 2016, Mr. Clark was sentenced in the Circuit Court for Montgomery County for firearms and burglary related charges, and received three consecutive sentences, which the Supreme Court of Maryland referred to as "sentence A," "sentence B," and "sentence C." Thereafter, Mr. Clark was sentenced to two additional consecutive sentences— "sentence D" and "sentence E"—arising from a violation of probation, and a conviction for possession of contraband while in a place of confinement, respectively.

On October 20, 2023, the Circuit Court for Montgomery County granted Mr. Clark's motion to correct an illegal sentence in the cases associated with Sentences A, B, and C, on the basis that the total amount of incarceration exceeded the total cap pursuant to a binding plea agreement. As a remedy, Mr. Clark elected to withdraw his guilty pleas. The court withdrew the guilty pleas and held Mr. Clark without bond pending new trials.

After Mr. Clark's convictions associated with sentences A, B, and C were vacated on October 20, 2023, the Division did not execute the next valid sentences under Mr. Clark's term of confinement and apply credit for time served under the vacated convictions. Instead, the Division tolled his next valid consecutive sentences and waited to see if the State's reprosecution would result in a new conviction.

When Mr. Clark pled guilty to one of the charges against him on April 17, 2024, the sentencing judge sentenced him to a new "time served" sentence. The record of the sentencing hearing reflects that the court and the parties expected Mr. Clark to be immediately released. However, the Division refused to release Mr. Clark. The Division did not treat the April 17, 2024 time served sentence as a new sentence, but instead considered it a "replacement sentence" for Sentence B—which had been vacated when Mr. Clark's convictions were invalidated. In other words, the Division treated Mr. Clark's *new sentence* arising from a *new conviction* as if it were

a modification to a sentence where the underlying conviction remained intact. The Division then tacked on the consecutive sentences that it had tolled pending reprosecution. As a result of the Division's restructuring of Mr. Clark's sentences, he received no credit for the time he served on the vacated convictions against the convictions that were never vacated.

Mr. Clark filed a petition seeking habeas relief in the Circuit Court for Baltimore City, asserting that the Division incorrectly interpreted the provisions of § 6-218 of the Criminal Procedure ("CP") Article of the Maryland Code (2018 Repl. Vol., 2024 Supp.). The habeas court agreed and ordered his immediate release. The Division appealed to the Appellate Court of Maryland. While this case was pending in the Appellate Court, the Supreme Court of Maryland granted Mr. Clark's petition for a writ of certiorari to answer the following question:

> Whether the habeas court correctly concluded that, upon the vacatur of an individual's convictions, the Division must: (1) immediately execute any remaining valid sentence in the individual's term of confinement and apply credit for time served under the vacated conviction pursuant to CP § 6-218(d); and (2) treat any new conviction imposed upon reprosecution as a new, separate judgment rather than a modification of sentence.

Held:

The Supreme Court agreed with the habeas court's legal conclusions.

The Supreme Court held that, when a criminal defendant's term of confinement consists of multiple sentences, and one or more convictions underlying those sentences is vacated, but at least one valid, active sentence remains, the defendant is entitled to receive credit for time served required by CP § 6-218(d) when the conviction is vacated and commencing on the date of the first invalidated sentence. The Court determined that this interpretation of CP § 6-218(d) is consistent not only with its plain and unambiguous language, but also with the statute's purpose of eliminating "dead time"—time spent in custody that will not be credited to any valid sentence. It also ensures a one-for-one method of awarding time-served credits. Moreover, the Court concluded that allowing the Division to hold off on applying subsection (d) until a reprosecution or retrial does not result in a new conviction would be inconsistent with important principles undergirding the criminal justice system, including the clean slate rule, the presumption of innocence, and fundamental fairness.

The Court further held that, where CP § 6-218(d) has already been applied, and a criminal defendant is reprosecuted or retried after his or her conviction is vacated, and the proceeding results in a new conviction, CP § 6-218(c) applies to the extent that there is leftover credit remaining after credit has been given under CP § 6-218(d) for time spent in custody on the invalidated judgment(s) at the time those judgments were stricken.

The Court determined that Mr. Clark's April 17, 2024 sentence was not a replacement or a superseding sentence for the former sentence B. Rather, the time served sentence was an entirely

new sentence on an entirely new conviction and therefore should have been viewed as "sentence F"—the last sentence in Mr. Clark's sequence. Under these circumstances, the Court held that the Division's decision to reorder sentence F by placing it *before* sentences D and E infringed on judicial power by restricting a sentencing court from relating the sentence on a new conviction resulting from a retrial to any outstanding and unserved sentence in that term.

In this case, the sentencing record did not reflect whether the sentencing judge, in exercising his sentencing discretion, accounted for remaining valid consecutive sentences when he announced the time served sentence arising from the new conviction. Given the many disconnects in the record, the Supreme Court vacated the judgment of the habeas court, and remanded the case to the habeas court with instructions to: (1) vacate the sentence entered on April 17, 2024; and (2) remand the petition to the Circuit Court for Montgomery County for the sentencing court to exercise its discretion with a full and complete understanding of the status of the valid sentences.

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In the Matter of the Marriage of Houser, No. 34, September Term 2024, filed June 27, 2025. Opinion by Eaves, J.

https://www.mdcourts.gov/data/opinions/coa/2025/34a24.pdf

CHILD SUPPORT AND ARREARS – NON-WAIVABLE ISSUE

U.S. CONST. AMEND. XIV – SUBSTANTIVE DUE PROCESS – PARENTAL RIGHTS

MD. CODE ANN., FAMILY LAW § 12-204(d) – ABOVE-GUIDELINES CASE – NO ABUSE OF DISCRETION

Facts:

Erica Hall and Nicholas Houser married in 2012 and have one minor child ("C.H.") together. In 2020, Ms. Hall and Mr. Houser each sought an absolute divorce in the Circuit Court for Anne Arundel County. On the morning of the trial, the parties presented the court with three separate agreements purporting to resolve all issues among them—separation of property, custody, and child support. Relevant to this case, the Child Support Agreement provided that the parties agreed that the circuit court should award no child support and that the calculated arrears should be waived. The Child Support Agreement also discussed the recurring expenses for C.H. for which each parent would be responsible. The parties claimed that they executed the three agreements because they did not want the court to use the child support guidelines.

Ms. Hall and Mr. Houser asked the court to make child support "zero." When the trial court asked the parties the reasons for their request, however, they did not explain how a waiver of child support would be in C.H.'s best interest. The court was not willing to order no child support without finding how it would be in C.H.'s best interest, so the parties asked the court to proceed by incorporating the child custody agreement only. The trial court explained that if it were to resolve custody, it would be required to address child support as well.

After providing ample opportunity for the parties to show how deviating from the child support guidelines would be in C.H.'s best interest, yet hearing no compelling arguments to justify it, the trial court concluded that the Child Support Agreement was unlawful and was in the parents' best interest rather than in C.H.'s best interest. Therefore, the trial court ordered Mr. Houser to pay child support in the amount of $2,105 per month and arrears in the amount of $41,708 to Ms. Hall. The Appellate Court of Maryland subsequently affirmed the circuit court.

Petitioners filed a petition for a writ of certiorari, which the Supreme Court of Maryland granted. *In re Marriage of Houser*, 489 Md. 244 (2024).

Held: Affirmed.

The parties agreed with each other on appeal and presented three main arguments before the Supreme Court: (1) the circuit court had no authority to rule on child support because that issue was not in dispute and because the parties dismissed the claim regarding that issue; (2) ordering child support over the parties' express objection violated their constitutional rights as parents; and (3) the circuit court abused its discretion by awarding child support and arrears over the parties' objection.

First, the Supreme Court of Maryland held that, in a divorce and custody proceeding, parents may not waive—even in a bilateral agreement—the issue of child support and arrears. Under § 5-203(b)(1) of the Family Law Article ("FL") of the Maryland Annotated Code (2019 Repl. Vol.), child support is a legal obligation on the part of the parents, who are responsible for the child's "support, care, nurture, welfare, and education." Moreover, it is well established in Maryland that the right to receive that support is held by the minor, not the parents. Thus, the child's right to support cannot be bargained away or waived by the parents. Thus, the Court explained that, under FL §§ 1-201(c)(3) and 8-103(a), when custody is presented as an issue to the circuit court, the issue of child support is, as a consequence, also properly before the court—regardless of whether the parties raised it.

Second, the Supreme Court held that a lawful order of child support does not violate a parent's fundamental right. The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects a parent's fundamental right to determine the care, custody, control, and management of their children. This right, nevertheless, does not include the ability of parents to waive or forgo the issue of child support because child support is a parental obligation, not a parental right. Because parents have no liberty interest in avoiding their financial obligations to their children, the parties' argument that a finding of parental unfitness is a prerequisite to ordering child support failed. Parental fitness, the Supreme Court noted, only plays a role when traditional parental rights are at stake, i.e., a child's upbringing or termination of a parental relationship. The circuit court did not interfere with Ms. Hall and Mr. Houser's parental rights, i.e., it did not (1) place C.H. in the care, custody, control, and management of someone else, (2) interfere with C.H.'s religious or educational upbringing, or (3) require the parties to spend the ordered child support in any particular fashion. Therefore, the parties' constitutional rights were not violated.

Third, the Supreme Court held that the trial court did not abuse its discretion in rejecting the parents' agreement to pay/receive no child support. FL § 12-202(a)(1) provides that use of the child support guidelines is mandatory. In an above-guidelines case, there is a rebuttable presumption that the maximum award under the schedule is the minimum which should be awarded. In determining how much child support to award in an above-guidelines case, the trial judge is required to examine the needs of the child in light of the parents' resources and determine the amount of support necessary to ensure that the child's standard of living does not suffer because of the parents' separation. In this above-guidelines case, the trial court repeatedly requested justification for the parties' request to deviate from the presumptively correct maximum under the guidelines, but the parties proffered only insufficient reasons to justify their

request that the court order no child support. Thus, the Supreme Court held that the trial court did not abuse its discretion.

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Jennifer Adelakun v. Adeniyi Adelakun, No. 35, September Term 2024, filed July 1, 2025. Opinion by Watts, J.

https://mdcourts.gov/data/opinions/coa/2025/35a24.pdf

PENDENTE LITE ALIMONY AND CHILD SUPPORT – INTERLOCUTORY ORDER – APPEALABILITY – MD. CODE ANN., CTS. & JUD. PROC. (1974, 2020 Repl. Vol.) § 12-303(3)(v) – ORDER FOR PAYMENT OF MONEY

Facts:

Jennifer Adelakun, Petitioner ("Mother"), and Adeniyi Adelakun, Respondent ("Father"), were married on August 4, 2016. They have three young children.

Mother filed in the Circuit Court for Howard County a complaint for absolute divorce from Father in which she requested, among other things, primary physical custody and sole legal custody of the couple's three minor children, as well as pendente lite child support, permanent child support, *pendente lite* alimony, rehabilitative alimony, and permanent alimony, all retroactive to the date of filing. Father filed a counter-complaint for limited divorce in which he requested primary physical custody and sole legal custody of the children, as well as child support based on the Maryland Child Support Guidelines or an amount above the guidelines if applicable.

A family magistrate in the Circuit Court for Howard County held a *pendente lite* hearing and issued a report and recommendations, finding, among other things, that both parents are capable of earning significant income and can cover their own expenses during the *pendente lite* period, and that neither had demonstrated a credible financial need for *pendente lite* alimony or child support. The circuit court entered an order adopting the magistrate's recommendations and denied Mother's request for pendente lite alimony and child support.

Citing Md. Code Ann., Cts. & Jud. Proc. (1974, 2020 Repl. Vol.) ("CJ") § 12-303, Mother noted an appeal of the circuit court's order. In a reported opinion, the Appellate Court of Maryland dismissed the appeal, holding that an interlocutory order denying *pendente lite* child support and alimony is not appealable as an order for the payment of money pursuant to CJ § 12-303(3)(v). *See Adelakun v. Adelakun*, 263 Md. App. 356, 378-79, 384, 323 A.3d 499, 512-13, 515 (2024).

Mother filed in the Supreme Court of Maryland a petition for a writ of *certiorari*, raising the issue of whether an order denying pendente lite child support and alimony is appealable under CJ § 12-303(3)(v). The Supreme Court granted the petition. *See Adelakun v. Adelakun*, 489 Md. 244, 327 A.3d 111 (2024).

On April 8, 2025, after having held oral argument on April 4, 2025, the Supreme Court issued a per curiam order affirming the Appellate Court's judgment. *See Adelakun v. Adelakun*, 490 Md.

201, 203, 333 A.3d 1203, 1204 (2025). The Supreme Court concluded that the Appellate Court "correctly held that an interlocutory order denying pendente lite alimony and child support is not appealable as an order for the payment of money pursuant to CJ § 12-303(3)(v)[.]" Id. at 203, 333 A.3d at 1204.

Held:

The Supreme Court of Maryland held that, by its plain language, CJ § 12-303(3)(v) authorizes an appeal of an interlocutory order "[f]or . . . the payment of money." In other words, the plain language states that an order for the payment of money is appealable. In contrast, an order that is not for the payment of money, i.e., a denial of an order for the payment of money, is not mentioned as appealable under CJ § 12-303(3)(v).

The Supreme Court of Maryland determined that, when CJ § 12-303(3)(v) is read as a whole, it is evident that the word "for" can only be interpreted to mean an order directing the actual payment of money, not the denial of a request for the payment of money. CJ § 12-303(3)(v) authorizes an appeal of an interlocutory order "[f]or the sale, conveyance, or delivery of real or personal property or the payment of money, or the refusal to rescind or discharge such an order, unless the delivery or payment is directed to be made to a receiver appointed by the court[.]" The provision authorizes an interlocutory appeal of an order for the sale, conveyance, or delivery of real personal property or the payment of money. The provision by its plain language does not authorize the appeal of an interlocutory order denying the sale, conveyance, or delivery of real or personal property. It is not possible to read CJ § 12-303(3)(v) as providing for an appeal of an interlocutory order denying the sale of real or personal property, i.e., an order that does not direct the sale of real or personal property. When read in the context of other language in CJ § 12-303(3)(v), it is clear that an order for the payment of money means an order that directs the payment of money as the provision also refers to an order that directs other actions, such as the sale, conveyance, or delivery of real or personal property. While dictionary definitions of the word "for" may indicate that the word can have a variety of meanings, when read in the context of the phrase "[f]or the sale, conveyance, or delivery of real or personal property or the payment of money" in CJ § 12-303(3)(v), it is plain the word "for" refers to an order directing the payment of money and not an order denying the payment of money.

The Supreme Court of Maryland concluded that, when read in the context of CJ § 12-303(3)(v), and the entirety of CJ § 12-303(3), the phrase "[f]or. . . the payment of money" is unambiguous and the plain meaning of CJ § 12-303(3)(v) is clear with respect to orders for the payment of money. Under CJ § 12-303(3)(v), orders that direct or require the payment of money are immediately appealable; orders denying requests for payment of money are not. In the absence of any indication that doing so would be consistent with the intent of the General Assembly, the Supreme Court declined to develop or ascribe a different meaning to the phrase "[f]or . . . the payment of money" in the context of pendente lite payments to authorize the immediate appeal of an interlocutory order denying the payment of money.

The Supreme Court of Maryland stated that, although the plain language of CJ § 12-303(3)(v) is unambiguous and the analysis could end at that point, its holding was supported by the circumstance that the legislative history of the provision contains no evidence of an intent by the General Assembly to treat the meaning of the language "[f]or . . . the payment of money" differently in the context of pendente lite orders in family law cases or to permit immediate appeals of interlocutory orders denying the payment of money.

The Supreme Court of Maryland concluded that Maryland case law supported its determination that an interlocutory order is appealable as an order for the payment of money under CJ § 12-303(3)(v) only if the order actually directs a party to pay money to the other party. Neither the Supreme Court nor the Appellate Court has previously concluded that an order denying the payment of money is immediately appealable or interpreted the language of CJ § 12-303(3)(v) to encompass such an order. The Supreme Court declined to do so in this case.

The Supreme Court of Maryland stated that, just as a circuit court's order denying a request for pendente lite alimony and child support is not appealable under CJ § 12-303(3)(v), an order granting a request for pendente lite alimony or child support in an amount less than that requested is not appealable by the party who requested the pendente lite alimony or child support. Where a party requests pendente lite alimony or child support and the circuit court grants payment of a lesser amount, i.e., not the full amount sought, the part of the circuit court's order denying payment of the full amount requested is not appealable under CJ § 12-303(3)(v). Permitting an appeal of an order that does not grant the full amount requested would in essence permit the appeal of the denial of the difference between the amount awarded and the amount requested. Part of the rationale for permitting a party to appeal an order that directs the party to pay money is that, where a party fails to comply with an order for the payment of money, the circuit court can impose penalties for noncompliance, which may include a finding of contempt and imprisonment. A party who receives an order partially denying a request for pendente lite child support and alimony would be similarly situated to a person whose request for pendente lite alimony and child support is denied in its entirety, such as Mother in this case, who is attempting to appeal the denial. Given the plain language of CJ § 12-303(3)(v) and the rationale for permitting interlocutory appeals of orders for the payment of money, the Supreme Court concluded that there is no logical reason to permit an appeal of an order partially denying payment.

Todd A. Pattison v. Deborah Pattison, No. 33, September Term 2024, filed July 23, 2025. Opinion by Gould, J.
Eaves and Killough, JJ., dissent.

https://www.mdcourts.gov/data/opinions/coa/2025/33a24.pdf

DIVORCE – PROPERTY SETTLEMENT AGREEMENTS

DIVORCE – PROPERTY SETTLEMENT – OFFER

DIVORCE – PROPERTY SETTLEMENT – OFFER – CONDITIONS FOR ACCEPTANCE

DIVORCE – CONTRACTS – WITHDRAWAL OF AN OFFER

DIVORCE – CONTRACTS – ACCEPTANCE

Facts:

On May 24, 2019, Petitioner Todd Pattison ("Husband") initiated divorce proceedings by filing a complaint for an absolute divorce against Respondent Deborah Pattison ("Wife").

On Friday, September 25, 2020, Wife's counsel sent a hand-delivered settlement package to Husband's counsel containing a Voluntary Separation and Property Settlement Agreement (the "Agreement"), bearing Wife's signature. Among other terms, the Agreement provided that Husband would pay Wife a monetary award of $760,000.00 to be paid in six installments over two and one-half years. To secure this obligation, the Agreement required Husband to execute a promissory note (the "Note"), attached as Exhibit A to the Agreement. The Agreement also stated that Husband's business and living trust "shall guarantee payment of this monetary award obligation." Accordingly, an unconditional guaranty (the "Guaranty") was included in the settlement package.

The cover letter with the proposed Agreement stated in part: "This Agreement is delivered to you in settlement of the parties' outstanding disputes *on condition* that the Agreement and Note be executed by [Husband] today. I will assume that we will have the final Guaranty signed by [Husband] by close of business on Monday." Husband received the settlement package by email that same day, but signed the documents the following Monday, September 28, 2020.

On September 29, 2020, Husband filed an amended complaint seeking an absolute divorce based on mutual consent. Among other things, Husband alleged that he and Wife entered into the Agreement. He requested that the court incorporate but not merge the Agreement into a judgment of absolute divorce. Wife timely answered the amended complaint on October 12, 2020, alleging that Husband failed to timely accept her settlement offer and that, therefore, the Agreement was a nullity.

Husband moved to enforce the settlement agreement on October 16, 2020. The circuit court granted Husband's motion. The court rejected Wife's argument that her offer was conditioned on Husband signing the Agreement on September 25, 2020. Further, the court found that even if Wife had imposed a hard deadline, she waived it. The court found that the evidence indicated a willingness to accept the Agreement from Husband on Monday. Thus, the court concluded "that mutual consent of the parties to form a contract, namely the [Agreement], ha[d] occurred."

Wife noted an appeal. The Appellate Court of Maryland dismissed her appeal because no final judgment had been entered. *Pattison v. Pattison*, 254 Md. App. 294 (2022). On remand, the court granted Husband an absolute divorce by mutual consent and incorporated but did not merge the Agreement into the divorce decree.

Wife appealed again, and in a reported opinion, the Appellate Court reversed. P*attison v. Pattison,* 262 Md. App. 504 (2024). The court found that no contract was formed because Husband failed to execute the Agreement by the end of the day on September 25, 2020, as required by Wife's explicitly stated condition. The court also found no evidence supporting the circuit court's conclusion that Wife had waived this condition.

The Supreme Court of Maryland granted Husband's petition for a writ of certiorari. *Pattison v. Pattison*, 489 Md. 243 (2024).

Held: Affirmed.

The Supreme Court of Maryland held that no binding contract was formed. The Supreme Court of Maryland recognized that in divorce proceedings, a court analyzing whether a property settlement agreement exists utilizes the same principles that it uses for other contracts. Mutual assent is a prerequisite for a finding that such an agreement exists.

The Supreme Court of Maryland determined that an offer must be interpreted based upon a reasonable person standard. The Supreme Court of Maryland found that a reasonable person would understand that Wife's offer was conditioned on Husband signing the Agreement and Note on September 25 and that there was no flexibility in the deadline.

The Supreme Court of Maryland held that a condition attendant to an offer does not need to be communicated within the four corners of the agreement, thus making the deadline communicated in Wife's counsel's cover letter a valid condition.

The Supreme Court of Maryland determined that an offer can generally be withdrawn by the offeror and that withdrawal can be communicated in writing. If the offeree attempts to accept the offer after it has been withdrawn or has expired, the offer becomes a counteroffer, putting the power of acceptance in the hands of the original offeror. Therefore, Husband's execution and return of the Agreement after the deadline constituted a counteroffer to Wife.

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The Supreme Court of Maryland held that unless the parties so specify or indicate by prior performance, silence does not constitute acceptance of an offer. Additionally, the Supreme Court of Maryland held that there is no duty to respond to a counteroffer. Therefore, the Supreme Court of Maryland determined that Wife did not waive her condition, nor did she accept Husband's counteroffer.

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Janice Hollabaugh, et al. v. MRO Corporation, No. 27, September Term 2024, filed July 10, 2025. Opinion by Fader, C.J.

https://www.courts.state.md.us/data/opinions/coa/2025/27a24.pdf

CONFIDENTIALITY OF MEDICAL RECORDS ACT – STATUTORY STANDING – MOTION TO DISMISS

CONFIDENTIALITY OF MEDICAL RECORDS ACT – STATUTORY INTERPRETATION – FEE FOR RETRIEVAL AND PREPARATION

Facts:

In February 2020, petitioner and cross-respondent Janice Hollabaugh authorized her attorney to request her medical records from a health care provider for use in pursuing personal injury claims. The provider contracted with respondent and cross-petitioner MRO Corporation to fulfill Ms. Hollabaugh's request. MRO later sent Ms. Hollabaugh's attorney a "Cancellation Invoice" for a $22.88 "Search/Retrieval" fee. No medical records were ever produced, and Ms. Hollabaugh alleges that neither she nor her attorney cancelled the request. Ms. Hollabaugh's counsel paid the fee, and Ms. Hollabaugh alleges that she reimbursed him in full.

In August 2022, Ms. Hollabaugh filed a putative class action lawsuit against MRO in the Circuit Court for Baltimore County arguing that the fee for searching violated § 4-304(c) of the Health-General Article, the provision authorizing a $22.88 fee for "retrieval and preparation." MRO filed a motion to dismiss, arguing that § 4-304(c) authorized the fee MRO charged and that Ms. Hollabaugh lacked standing to pursue her claim. While the circuit court found that Ms. Hollabaugh had standing, the court ultimately concluded that § 4-304(c) authorized MRO's fee and dismissed Ms. Hollabaugh's complaint. The Appellate Court of Maryland affirmed on both issues, finding that Ms. Hollabaugh had standing to sue but that MRO's search fee was a "reasonable cost-based fee" consistent with the statute's stated purpose. The Supreme Court of Maryland granted certiorari to address both issues.

Held: Affirmed in part and reversed in part with instructions to remand for proceedings consistent with the opinion.

The Supreme Court of Maryland held that Ms. Hollabaugh's allegations created a reasonable inference of facts sufficient to support her standing at the motion to dismiss stage. Section 4-309(f) of the Confidentiality Act authorizes a cause of action by someone injured by a knowing violation of the Act for actual damages. Because neither § 4-309(f) nor any other provision of the statute identifies or limits those who may be able to bring such an action, the Court looked to common law standing principles for guidance. A plaintiff has standing under Maryland's

common law when her interest is affected in a way different from the public. Ms. Hollabaugh's complaint alleges that she authorized her attorney to request her medical records and that she reimbursed her attorney for MRO's search fee. Because a reasonable inference from that allegation is that Ms. Hollabaugh was required to reimburse her attorney, the Court agreed with the Appellate Court that the circuit court did not err in rejecting MRO's standing defense at the motion to dismiss stage.

The Court next held that Ms. Hollabaugh stated a claim against MRO for violation of § 4-304(c) of the Health-General Article because that provision does not allow a health care provider to charge a preparation fee for a medical records search when no records are retrieved and prepared for the requesting party. The Court first observed that § 4-304 and other related provisions of the Confidentiality Act all presuppose the existence of medical records. Second, the Court concluded that the "preparation fee" for medical record "retrieval" and "preparation" also presupposes the existence of something capable of being obtained and made ready for use. Third, the Court found that the use of "retrieval *and* preparation" most naturally implies a conjunctive meaning, authorizing a "preparation fee" only when a health care provider has retrieved *and* prepared the requested information. Finally, the Court identified that § 4-304(c)(3) specifically authorizes fees for many of the steps in the process of fulfilling a medical records request but notably omits any mention of search. The Court therefore disagreed with the Appellate Court that § 4-304(c) authorized MRO's fee here and reversed with instructions to remand to the circuit court for proceedings consistent with its opinion.

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In the Matter of the Petition of Featherfall Restoration, LLC, No. 17, September Term 2024, filed July 24, 2025. Opinion by Gould, J.

https://www.mdcourts.gov/data/opinions/coa/2025/17a24o.pdf

INSURANCE POLICIES – CHOSE IN ACTION – POST-LOSS ASSIGNMENTS – ANTI-ASSIGNMENT CLAUSE

Facts:

In early 2019, G.K. and K.K. (the "Policyholders") purchased a "High Value" homeowners insurance policy from Travelers Home and Marine Insurance Company ("Travelers") for their Potomac, Maryland residence. The policy contained an anti-assignment clause: "**5. Assignment.** Assignment of this policy will not be valid unless we give our written consent." In May 2020, the Policyholders notified Travelers of damage to their roof, which they alleged resulted from wind and a hailstorm. The Policyholders hired Featherfall Restoration, LLC ("Featherfall") to repair the roof. Finding no signs of wind or hail damage, Travelers denied the claim.

Featherfall emailed Travelers an "Assignment of Claim" form (the "Assignment") that had been executed by the Policyholders. Through this document, the Policyholders purported to "irrevocably transfer, assign, and set over onto Featherfall Restoration, LLC . . . any and all insurance rights, benefits, proceeds, and any causes of action under applicable insurance policies[.]" Relying on the Assignment, Featherfall attempted to discuss with Travelers its coverage determination. Travelers refused.

Travelers' refusal prompted Featherfall to file a complaint with the Maryland Insurance Administration (the "MIA"). Featherfall asked the MIA to compel Travelers to honor the Assignment and Featherfall's right to act in place of the Policyholders. Featherfall argued that Travelers violated various sections of the Insurance Article of the Annotated Code of Maryland by refusing to honor the Assignment. Travelers responded that the anti-assignment clause prohibited the Policyholders from entering into the Assignment.

On August 19, 2020, the MIA issued a determination letter concluding that Travelers did not violate the Insurance Article because the Assignment was prohibited under the policy's anti-assignment clause and Travelers' handling of the claim complied with Maryland law. Featherfall timely requested a hearing on the MIA's determination. Featherfall and Travelers both filed motions for summary decision, agreeing that the facts were undisputed and echoing their previous arguments.

MIA Commissioner Kathleen A. Birrane (the "Commissioner") heard oral argument on the cross-motions on May 7, 2021. Ten months later, she issued a memorandum opinion granting Travelers' motion, denying Featherfall's motion, denying Featherfall's request for a hearing, and dismissing the case. The Commissioner determined that the anti-assignment clause prohibited the

assignment of claims as well as assignment of the policy itself, which rendered the Assignment void. The Commissioner also determined that anti-assignment clauses are enforceable regardless of whether assignments occur pre-loss or post-loss. Thus, the Commissioner determined: (1) Featherfall was not a "claimant"; (2) Featherfall received no rights under the policy by virtue of the Assignment; and (3) Featherfall was not "aggrieved" by the MIA's decision. The Commissioner therefore determined that Featherfall was not entitled to a hearing under section 2-210 of the Insurance Article. The Commissioner alternatively found that even if the Assignment was valid, Travelers did not violate the Insurance Article when it refused to communicate with Featherfall about the claim.

Featherfall petitioned for judicial review of the Commissioner's decision in the Circuit Court for Baltimore City, coupling its administrative appeal with a request for declaratory and injunctive relief. The court affirmed the Commissioner's decision and denied Featherfall's request for declaratory judgment, explaining that the Declaratory Judgment Act prohibits declaratory relief when a relevant statute specifically provides a special form of remedy.

Featherfall timely appealed to the Appellate Court of Maryland, and in a reported opinion, the court affirmed the judgment of the circuit court upholding the Commissioner's determination that the Assignment was invalid. *In the Matter of the Petition of Featherfall Restoration LLC*, 261 Md. App. 105 (2024). The Appellate Court held that anti-assignment clauses are enforceable under Maryland law regardless of whether the assignment is made pre-loss or post-loss, explicitly rejecting any distinction between the two. The court also rejected Featherfall's contention that the Assignment concerned only a claim and not the policy itself. Finding no basis for Featherfall to claim aggrieved party status, the court agreed with the Commissioner that Featherfall lacked standing to pursue its claim.

The Supreme Court of Maryland granted Featherfall's petition for writ of certiorari. I*n the Matter of the Petition of Featherfall Restoration LLC*, 487 Md. 264 (2024).

Held:

Reversed with instructions to remand to the MIA for further proceedings consistent with the Supreme Court of Maryland's opinion.

The Supreme Court of Maryland held that a post-loss claim for money payments under a policy is a chose in action, and, therefore, an assignable property right separate from the policy itself. Therefore, an insurance policy's anti-assignment clause prohibiting assignments of "this policy" does not bar an assignment of a single post-loss claim under the policy.

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Summer Ledford v. Jenway Contracting, Inc., No. 3, September Term 2024, filed July 1, 2025. Opinion by Eaves, J.
Watts, Biran, and Killough, JJ., dissent.

https://www.mdcourts.gov/data/opinions/coa/2025/3a24.pdf

MD. CODE ANN., LABOR AND EMPLOYMENT § 9-509(a) – EMPLOYER'S LIABILITY – EXCLUSIVITY

Facts:

John Ledford was employed by Jenway Contracting, Inc. ("Jenway"). While in the course of his employment, Mr. Ledford fell from a retaining wall and suffered fatal injuries. At the time of his death, Mr. Ledford was survived by his adult, non-dependent daughter, Summer Ledford. Ms. Ledford was unable to receive death benefits under Maryland's Workers' Compensation Act ("the Act") because she was a non-dependent, and instead filed a claim against Jenway under Maryland's Wrongful Death Act ("the WDA"), codified at § 3-904 of the Courts and Judicial Proceedings Article ("CJP") of the Maryland Annotated Code (2020 Repl. Vol.).

Jenway moved to dismiss Ms. Ledford's complaint arguing that the Act's exclusivity provision, § 9-509 of the Labor and Employment Article ("L&E") (2016 Repl. Vol.), sets forth both an employer's exclusive liability and a covered employee's exclusive remedy, thereby immunizing Jenway from Ms. Ledford's wrongful death claim. Ms. Ledford argued that the Act expressly limited the scope of employer immunity to only two groups of people—injured workers and their dependents—and because she did not belong to either category, the Act did not pose an impediment to her wrongful death claim.

The Circuit Court for Baltimore County ruled for Jenway because, barring application of either of the Act's express exceptions, it believed that "the structure of the [Act] was intended to govern all claims for damages arising out of a work-related injury." The Appellate Court of Maryland subsequently affirmed the circuit court.

Ms. Ledford filed a petition for a writ of certiorari, which the Supreme Court of Maryland granted. *Ledford v. Jenway Contracting, Inc.*, 486 Md. 597 (2024).

Held: Affirmed.

The Supreme Court of Maryland affirmed the judgment of the Appellate Court. The Supreme Court of Maryland held that an employer that complies with the provisions of the Act enjoys immunity from suit, including against a wrongful death action brought by a non-dependent adult child for the death of a parent, and that the employer's liability is cabined to the Act.

The Court began by recognizing that the Act was created to efficiently and uniformly handle employment injury claims, ensuring that employees and their families could receive swift compensation without a burdensome gap in income; employers received the reciprocal benefit of avoiding costly negligence suits and being placed on notice about the extent of their liability.

The Supreme Court began with the plain language of the Act's exclusivity provision:

> (a) Except as otherwise provided in this title, the liability of an employer under this title is exclusive.
>
> (b) Except as otherwise provided in this title, the compensation provided under this title to a covered employee or the dependents of a covered employee is in place of any right of action against any person.

The Supreme Court explained that L&E § 9-509 makes clear that any exception to an employer's liability to an injured covered employee will be found within the Act itself. Thus, absent an explicit exception in the Act, no other statutory provision can expand or shrink either an employer's liability or an employee's rights. The prefatory language of L&E § 9-509(a) permits an exception to an employer's liability only to the extent that it explicitly is stated in the Act. Therefore, despite the Act's silence as to non-dependents in subsection (b), there is nothing within the Act that extends an employer's liability to an adult, non-dependent child's wrongful death claim. Likewise, the prefatory language of L&E § 9-509(b) limits any exceptions to those provided in the Act. The only exception recognized by the Act permitting a covered employee or a dependent of a covered employee to file suit for a work-related injury or death is when such injury or death is caused by a third party other than the covered employee's employer. *Id*. §§ 9-901–902.

Therefore, because the plain language of L&E § 9-509 is unambiguous in that a compliant employer's liability for a covered employee's work-related injury or death extends no further than what is provided for in the Act itself, and because the Act does not authorize adult non-dependent children of a covered employee to file a wrongful death action for a work-related death of a parent, the Court held that employers are not subject to such liability.

Turning to other provisions within the Act, the Supreme Court noted that the Act specifically addressed instances, like Ms. Ledford's, where a covered employee dies as a result of a work-related injury leaves behind no dependents. In that case, L&E §§ 9-684 and 9-689 require the employer to pay the expenses of the last sickness and funeral expenses of the covered employee. In interpreting the Act as a whole, the Supreme Court held that the General Assembly's specific consideration of individuals in Ms. Ledford's position was further evidence that the General Assembly did not intend for adult, non-dependent children to be able to file a wrongful death claim against their parent's employer.

Thus, Ms. Ledford was barred from bringing a wrongful death action against Jenway.

The Supreme Court also held that the immunity conferred upon compliant employers does not violate Article 19 of the Maryland Declaration of Rights. Article 19 protects individuals from

unreasonable restrictions on traditional remedies and access to the courts. The Act's exclusivity provision was enacted over a century ago—when adult, non-dependent children had no rights under the common law, the WDA, or any other law to sue a parent's employer for damages arising from a workplace death. By the time adult, non-dependent children obtained the right to file a wrongful death claim for the loss of a parent under the WDA, the Act's exclusivity provision had been in place for more than eight decades. Because non-dependent children in Maryland have never enjoyed the remedy Ms. Ledford sought, the Supreme Court of Maryland held that Ms. Ledford's desired remedy was not "traditional," thereby avoiding any conflict with Article 19.

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Estefany Martinez v. Amazon.com Services LLC, Misc. No. 17, September Term 2024, filed July 3, 2025. Opinion by Biran, J.
Watts and Eaves, JJ., dissent.

https://www.mdcourts.gov/data/opinions/coa/2025/17a24.pdf

LABOR AND EMPLOYMENT – MARYLAND WAGE AND HOUR LAW & MARYLAND WAGE PAYMENT AND COLLECTION LAW

Facts:

Estefany Martinez is a former Amazon.com Services LLC ("Amazon") employee who worked as a Fulfillment Associate between June 20, 2017, and November 12, 2021, at the Baltimore Fulfillment Center ("BWI2"). Up until April 2020, Ms. Martinez and most other hourly BWI2 employees were required to clock out at the end of the day before beginning the required post-shift security screening process.

Ms. Martinez filed suit against Amazon on December 2, 2021, on behalf of herself and a putative class in the Circuit Court for Baltimore City alleging unpaid compensation for time spent waiting to undergo the post-shift security screening process. Amazon removed the case to federal court. The district court stayed the case pending the outcomes of two cases in the Supreme Court of Maryland, which were decided in a single opinion issued in July 2022. *See Amaya v. DGS Construction, LLC*, 479 Md. 515 (2022). Thereafter, the stay was lifted, Amazon filed an answer, and the parties engaged in discovery. Ms. Martinez subsequently filed a Motion for Class Certification and Amazon filed a Motion for Summary Judgment. On November 18, 2024, the district court granted Ms. Martinez's Motion for Class Certification. In the same order, the district court certified to the Supreme Court of Maryland the following question of law:

> Does the doctrine of *de minimis non curat lex*, as described in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946) and *Sandifer v. U.S. Steel Corp*., 571 U.S. 220 (2014), apply to claims brought under the Maryland Wage Payment and Collection Law and the Maryland Wage and Hour Law?

Held:

Certified question of law answered in the affirmative. The de minimis doctrine applies to claims brought under the Maryland Wage and Hour Law ("MWHL"), Md. Code Ann., Lab. & Empl. ("LE") § 3-401 *et seq.* (1991, 2016 Repl. Vol.), and the Maryland Wage Payment and Collection Law ("MWPCL"), LE § 3-501 *et seq.*

The Court reviewed the pertinent law including the Fair Labor Standards Act of 1938 (the "FLSA"); *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946); The Portal-to-Portal Act;

pertinent federal regulations; the MWHL, MWPCL, and pertinent state regulations; *Sandifer v. U.S. Steel Corp*., 571 U.S. 220 (2014); and *Amaya v. DGS Construction*, LLC, 479 Md. 515 (2022). The Court reasoned that the plain language of the MWHL and the MWPCL does not resolve the legal question because, although the MWHL and the MWPCL do not expressly incorporate the de minimis doctrine, neither did the FLSA before the Supreme Court of the United States held in *Anderson* that the de minimis rule is applicable in "comput[ing]" the "workweek." 328 U.S. at 692. Additionally, the plain language of the MWHL and the MWPCL does not bar application of de minimis principles. The Court observed that the MWHL replicated many of the FLSA's features when it was enacted in 1965, and the General Assembly has since amended that law to reflect many provisions found in the FLSA. Because *Anderson* was decided before the General Assembly enacted the MWHL, the Supreme Court of Maryland held that when the General Assembly enacted the MWHL in 1965, it intended also to incorporate the de minimis rule that was understood to apply to the FLSA following *Anderson*.

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Benedict J. Frederick, III, et al. v. Baltimore City Board of Elections, et al., No. 35, September Term 2023, filed July 1, 2025. Opinion by Gould, J.
Fader, C.J., Booth and Harrell, JJ., concur.

https://www.mdcourts.gov/data/opinions/coa/2025/35a23.pdf

CHARTER AMENDMENTS – LOCAL GOVERNMENT HOME RULE – POWER TO SET PROPERTY TAX RATES

Facts:

Appellants challenged the decision of the Baltimore City Board of Elections (the "City Board") that rejected a proposed charter amendment petition that sought to impose a cap on the City of Baltimore's ("Baltimore City") real property tax rate that incrementally decreased over seven years (the "Property Tax Amendment"). The Election Director for the City Board (the "Election Director") had determined that the Property Tax Amendment was deficient under section 6-206(c)(5) of the Election Law Article of the Annotated Code of Maryland ("EL") because it sought "the enactment of a law that would be unconstitutional or a result that is otherwise prohibited by law." Specifically, the Election Director concluded that the proposed amendment would conflict with section 6-302(a) of the Tax-Property Article, which vests authority to set the property tax rate with the Mayor and City Council of Baltimore (collectively, the "City").

Appellants filed a timely complaint against the City Board in the Circuit Court for Baltimore City, seeking judicial review under EL § 6-209(b). The City and the State Board of Elections subsequently intervened as defendants. The City Board moved to dismiss the complaint or for summary judgment, arguing that the Election Director's determination was legally correct. Appellants filed a cross-motion for summary judgment, and the City also moved to dismiss the complaint or for summary judgment.

The circuit court denied Appellants' motion and granted the motions of the City Board and the City, ruling that the Election Director's determination on the legality of the Property Tax Amendment was correct. The court found that the Property Tax Amendment was "not proper Charter material because it is in violation of Tax-Property ("TP") § 6-302(a) and allows the citizens of Baltimore to establish the tax rate, leaving nothing for the City Council to legislate because they would be required to lower the tax rate every year[,]" thereby "not leav[ing] any discretion in the hands of the City Council."

Appellants noted a direct appeal to the Supreme Court of Maryland, pursuant to sections 6-209(a)(3)(ii) and 6-210(e)(3)(i)(2) of the Election Law Article.

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Held: Affirmed.

The Supreme Court of Maryland held oral argument on August 28, 2024, and, the next day, entered an order affirming the circuit court. The Supreme Court of Maryland determined that the proposed charter amendment impermissibly set the property tax rate in a manner inconsistent with TP § 6-302(a) and, therefore, could not be presented on the November 2024 general election ballot. *Frederick v. Balt. City Bd. of Elections*, 488 Md. 534, 535-36 (2024).

The Supreme Court of Maryland held that TP § 6-302, which grants the City the power to set rates for taxing real and personal property, must be construed with the limitation provided in section 49 of Article II of the Baltimore City Charter, that its voters may not initiate any legislation relating to the classification or taxation of property.

The Supreme Court of Maryland held that the proposed amendment to the Baltimore City Charter was impermissible because it violated TP § 6-302(a) as applied to Baltimore City, by allowing its citizens to establish the tax rate.

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In re: Foster Farm, No. 25, September Term 2024, filed July 30, 2025. Opinion by Watts, J.
McDonald, J., concurs.
Eaves and Killough, JJ., dissent.

https://mdcourts.gov/data/opinions/coa/2025/25a24.pdf

RIGHT TO FARM LAWS – NUISANCE – MD. CODE ANN., CTS. & JUD. PROC. 1974, 2020 REPL. VOL.) § 5-403 – TALBOT COUNTY CODE § 128 – GENERALLY ACCEPTED AGRICULTURAL PRACTICE – SUBSTANTIAL EVIDENCE

Facts:

Maryland and Talbot County have Right to Farm ("RTF") laws, codified at Md. Code Ann., Cts. & Jud. Proc. (1974, 2020 Repl. Vol.) ("CJ") § 5-403 and Chapter 128 of the Talbot County Code ("TCC"), respectively. Both RTF laws have similar purposes and protect agricultural operations and limit nuisance claims against farms. Maryland's RTF statute was originally enacted in 1981 as Md. Code Ann., Cts. & Jud. Proc. (1974, 1980 Repl. Vol., 1980 Supp.) § 5-308 for, among other things, "the purpose of providing that agricultural operations that have been in operation for 1 year or more may not be or become a public or private nuisance" and "to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance[.]" 1981 Md. Laws 2836-37 (Vol. III, Ch. 763, H.B. 938). Talbot County's RTF ordinance was enacted with the purpose of, among other things, "protect[ing] the right to farm or engage in agricultural interests within Talbot County" and "assist[ing] in the resolution of disputes between agricultural land owners and/or farmers and their neighbors by the establishment of the Talbot County Agricultural Resolution Board [("the Board")] to resolve disputes concerning alleged agricultural nuisances." TCC § 128-1(A).

The case concerned the Board's application of TCC § 128 in resolving nuisance complaints concerning odors and pests allegedly resulting from the use and stockpiling of materials at a farm. On March 24, 2020, Arthur L. Foster, Sr. ("Mr. Foster"), purchased a 423.95-acre farm located at 4084 Smiths Mill Road in Trappe, Maryland in Talbot County ("the Foster Farm"), which he owned and operated until his death on December 31, 2022. Before Mr. Foster's death, his son, Arthur L. Foster, Jr. ("Arthur") was primarily responsible for conducting farm operations, as Mr. Foster was in his 90s. Respondents, Arthur and Terri Phillips (Mr. Foster's daughter), participated in the proceedings in this case, as the co-executors and personal representatives of Mr. Foster's estate. Petitioners, Cheryl Lewis, John Foster, Holly Foster, Molly Routzhan, Michael Burch, Janice Burch, Matthew Holt, Edward Roberts, Karen Roberts, Fred Thompson, and Rosita Thompson, are residents of property near and adjacent to the Foster Farm.

In January 2021, Denali Water Solutions ("Denali") began supplying the Foster Farm with Class A biosolids from Ocean City and soil conditioners, described as including "a blend of Mountaire

Millsboro ('Mountaire'), Valley Proteins ('Valley') and Seawatch cake ('Seawatch')[,]" which are regulated by the Maryland Department of Agriculture ("MDA"). These materials were stored on the Foster Farm to be applied to the land on the Foster Farm and other farms that were said to be owned or operated by Respondents.

In September 2021, after Denali began supplying the Foster Farm with the materials, Petitioners filed complaints with the Talbot County Office of Planning and Zoning and the Talbot County Health Department alleging that materials at the Foster Farm were causing offensive odors. As a result of the complaints, Talbot County conducted an investigation. County officials visited the Foster Farm and confirmed the presence of "strong, foul, offensive odors[.]" The County discovered that Denali products were being stored and used on the Foster Farm and were likely the cause of the offensive odors. In November 2021, Petitioners filed complaints pursuant to TCC § 128 with the Board concerning the offensive odors emanating from the Foster Farm.

On February 28, 2022, the Board conducted an evidentiary hearing. After the hearing, while the matter was pending, Petitioners and others filed additional complaints alleging the existence of swarms of flying insects, identified as "midges," originating from the Foster Farm. The Board consolidated the complaints concerning midges with the original complaints and conducted an additional hearing for the purpose of deliberation in an open meeting.

On December 14, 2022, the Board issued an opinion titled "Findings and Decision." The Board found that "the application and stockpiling" of Class A biosolids and soil conditioners "during certain times in 2021[] on the Foster Farm" are "generally accepted agricultural practice[s.]" One of the Board members dissented as to whether use of the materials was a generally accepted practice. Among its findings, the Board determined that the Foster Farm is agricultural land under the County's RTF law, TCC § 128-2, which defines agricultural land as real property in Talbot County carried on the State's tax rolls as agricultural land and all other land that has been used as an agricultural operation continuously for one year. The Board explained that "[w]hile Mr. Foster has owned this farm parcel since 2020, he has owned and operated a larger agricultural operation, which includes this farm parcel, for a much longer period of time." In its opinion, the Board did not mention Maryland's RTF law, CJ § 5-403, or make any finding with respect to the statute's requirement of a one-year period for operation of an agricultural operation or its definition of agricultural operation.

Petitioners filed a petition for judicial review in the Circuit Court for Talbot County. On April 20, 2023, the circuit court conducted a hearing on the petition. On June 15, 2023, the circuit court issued a memorandum opinion and order reversing the Board's December 14, 2022 Findings and Decision and remanding the matter to the Board with instructions to find that the agricultural operations on the Foster Farm "were not in existence for one year or more when the complaints were filed," and that the operations do not benefit from protection under TCC § 128 or CJ § 5-403(c). The circuit court stated that "[CJ] § 5-403(c)'s requirement that the agricultural operation have been in existence for one year applies specifically to the land upon which the operation takes place because the use of the terms 'zoning' and 'nuisance'" in the statute "indicate that the section applies to site specific land use for agricultural operations." According to the circuit court, undisputed evidence showed that Respondents "had not been

conducting an agricultural operation on [the] Foster Farm for more than a year before Petitioners began to complain" and that the Board erred in attributing agricultural operations conducted on other property to agricultural operations on the Foster Farm.

Respondents appealed. On May 30, 2024, the Appellate Court of Maryland, in a reported opinion, reversed the judgment of the circuit court and remanded the case to the circuit court with instruction to affirm the Board's decision. *See Matter of Lewis*, 262 Md. App. 32, 59, 316 A.3d 570, 585-86 (2024). The Appellate Court determined that there was substantial evidence "that the agricultural operation, under CJ[] § 5-403(c), had been under way for one year or more when the first complaints were received." *Id.* at 57, 316 A.3d at 585. The Appellate Court concluded that "the expanded use of soil conditioners and Class A biosolids at the Foster Farm was a protected activity under CJ[] § 5-403(c) and TCC § 128." *Id*. at 54, 316 A.3d at 583. The Appellate Court determined that "[t]here was substantial evidence to support the Board's decision that the storage of the biosolids and soil conditioners on the Foster Farm amounted to a protected agricultural operation under TCC § 128[,]" and that there was substantial evidence that the practices at the Foster Farm did not violate the public health, safety, and welfare of its neighbors or State law. *Id*. at 55-57, 316 A.3d at 583-84. Petitioners filed a petition for writ of *certiorari* in this Court, which the Supreme Court of Maryland granted. *See Matter of Lewis*, 489 Md. 155, 322 A.3d 1257 (2024).

Held: Reversed.

The Supreme Court of Maryland reversed the Appellate Court's holding with respect to the interpretation and application of CJ § 5-403 and as to whether there was substantial evidence to support the Board's decision.

The Supreme Court of Maryland held that, because the Board did not decide issue with respect to the interpretation or application of Maryland's Right to Farm law, CJ § 5-403, the question of whether the one-year period for operation of an agricultural operation under CJ § 5-403 had elapsed was not before the circuit court and therefore was not before Appellate Court. The Board did not determine whether the one-year period for operation of an agricultural operation under CJ § 5-403 applied; rather, the Board decided the question of the applicability of Talbot County's Right to Farm law, Chapter 128 of Talbot County Code, and whether the stockpiling and application of biosolids and soil conditioners supplied by Denali to the Foster Farm constituted generally accepted agricultural practices under TCC § 128.

The Supreme Court of Maryland held that the Board's decision—that applying and stockpiling biosolids and soil conditioners on the Foster Farm were generally accepted agricultural practices under TCC § 128—was not supported by substantial evidence in the record. There was a lack of evidence in the record and findings by the Board to substantiate that the practices of stockpiling and using materials on the Foster Farm and supplying materials to other farms owned or operated by the Foster family, or potentially others, are generally accepted agricultural practices under TCC § 128. The Board made no findings with respect to public health, safety, and welfare

concerning such practices. The Board's findings with respect to whether stockpiling materials on the Foster Farm for use at that location and other farms constitutes generally accepted agricultural practices under TCC § 128 did not reflect that the Board fully considered the practices at issue and were not supported by substantial evidence in the record.

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Copinol Restaurant, Inc. v. 26 North Market LLC, No. 43, September Term 2024, filed July 11, 2025. Opinion by Booth, J.
Watts, J., joins in judgment only.

https://www.courts.state.md.us/data/opinions/coa/2025/43a24o.pdf

LANDLORD-TENANT LAW – TENANT HOLDING OVER, RP § 8-402

LANDLORD-TENANT LAW – LEASE TERMS THAT PURPORT TO GIVE LANDLORD THE AUTHORITY TO USE A STATUTORY REMEDY

Facts:

26 North Market LLC, Respondent ("North Market"), and Copinol Restaurant, Inc., Petitioner ("Copinol"), are parties to a commercial lease for a term that expires on March 31, 2032, unless terminated sooner pursuant to the terms of the lease. After Copinol failed to pay rent by the due date in the lease, North Market terminated the lease and provided written notice to vacate. Copinol failed to vacate the premises, and North Market filed a tenant holding over action under the tenant holding over statute, Md. Code Ann. (2023 Repl. Vol.) Real Prop. ("RP") § 8-402, in the District Court of Maryland sitting in Frederick County. Copinol asserted that North Market could not bring a tenant holding over action because the statute has no application when the tenant is in possession of property pursuant to a lease that has not expired. North Market disagreed and argued that under the terms of the commercial lease, it was entitled to bring such an action upon the tenant's breach of a lease for non-payment, and the landlord's election to terminate the lease. The District Court agreed with North Market and granted it a judgment of possession of the property. Copinol appealed. The Circuit Court for Frederick County initially ruled in Copinol's favor; however, after North Market filed a motion to alter or amend judgment, the circuit court affirmed the District Court's judgment awarding possession to North Market.

Copinol filed a petition for writ of certiorari, which the Supreme Court of Maryland granted. The Court was asked to determine: (1) whether the General Assembly intended the holding over statute to apply where the tenant is occupying property pursuant to a lease that has not expired by lapse of time; and (2) if not, whether a landlord can, by contract, avail itself of statutory remedies in a manner inconsistent with the plain language of the statute.

Held: Reversed and remanded.

The Supreme Court held that: (1) the lease had not expired; (2) the tenant holding over statute establishes a statutory mechanism that enables a landlord to regain possession of property by virtue of the landlord's reversionary interest, which is available after "the expiration of a lease"; and (3) that the parties do not have the authority to contractually modify the statutory meaning of

the phrase "expiration of a lease" in RP § 8-402, thereby enabling a landlord to avail itself of remedies available under the tenant holding over statute in a manner inconsistent with its plain language.

The Court discussed the trilogy of statutes that provides landlords with an expedited means of obtaining possession of their property in the District Court—RP § 8-401, RP § 8-402, and RP § 8-402.1. The Court noted that these statutes embody the General Assembly's policy judgments, which carefully balance the landlord's interests in regaining possession in a swift and efficient manner and the tenant's interests in ensuring that any forfeiture of the tenancy is fair and equitable.

To satisfy the requirements of RP § 8-402 and obtain a judgment of restitution, the landlord must prove four requisite elements—prior possession, a lease that has expired, proper notice to quit, and the tenant's refusal to vacate. Under the plain language of the statute, RP § 8-402 provides a statutory mechanism that enables a landlord to regain possession upon the expiration of a lease by virtue of his or her reversionary interest. The Court explained that interpreting the tenant holding over statute in a manner that authorizes a landlord, upon his or her unilateral determination that the tenant is in breach, to terminate a lease by simply giving "notice to quit" would allow the landlord to circumvent the statutory protections afforded to the tenant. Therefore, the Court concluded, where a tenant occupies property pursuant to a lease for a term, the tenant holding over statute applies only where the lease has "expired" by lapse of time.

The Court rejected North Market's argument that the lease provisions enabled the landlord to use the tenant holding over action to terminate the lease. The Court held that, even if the lease contained such language—specifically allowing the landlord to file a tenant holding over action in the event of a breach of a lease—such a lease provision would be unenforceable. The Court acknowledged that parties to a commercial lease generally have the freedom to negotiate its terms; however, the parties cannot contractually modify statutory terms to avail themselves of judicial processes or remedies in a manner inconsistent with the plain language of the statute providing such a right.

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Trustees of the Walters Art Gallery, Inc., et al. v. Walters Workers United, Council 67, AFSCME, AFL-CIO, et al., No. 45, September Term 2024, filed July 29, 2025. Opinion by Biran, J.
Booth, J., dissents.

https://www.mdcourts.gov/data/opinions/coa/2025/45a24.pdf

MARYLAND PUBLIC INFORMATION ACT, MD. CODE ANN., GEN. PROVIS. § 4-101(k)(1)(i) (2014, 2019 REPL. VOL., 2024 SUPP.) – "UNIT OR INSTRUMENTALITY" OF GOVERNMENT

Facts:

After he died in 1931, Henry Walters left the Walters Art Gallery, adjacent property, and all their contents to the Mayor and City Council of Baltimore "for the benefit of the public." The Mayor and City Council of Baltimore decided to appoint a board of trustees to manage the assets that the City received through this bequest. In 1933, the General Assembly incorporated the Trustees of the Walters Art Gallery (the "Board") as an "educational corporation," granting it "full and complete control" over the property left by Mr. Walters. Since its formation, the Board has operated the Walters Art Gallery (now known under the trade name, the Walters Art Museum) as an institution devoted to preserving and expanding its art collection for the benefit of the public.

In May 2022, Walters Workers United, Council 67, AFSCME, AFL-CIO and AFSCME International sued the Board under the Maryland Public Information Act (MPIA), seeking to compel information related to their efforts to unionize Walters employees. The Executive Director of the Walters denied the MPIA requests on the ground that the Walters Art Museum is not subject to the MPIA.

In an unreported opinion, a divided panel of the Appellate Court of Maryland affirmed the Circuit Court for Baltimore City's conclusion that the Board was subject to the MPIA. *Trs. of the Walters Art Gallery, Inc. v. Walters Workers United, Council 67, AFSCME, AFL-CIO*, No. 2070, Sept. Term, 2022, 2024 WL 4500973, at *2 (Md. App. Ct. Oct. 16, 2024). The majority concluded that the "attributes of [the Board's] relationship with Baltimore City predominate over those pointing to its private character for purposes of [the Board's] inclusion in the scope of the MPIA." *Id*. (citation modified).

On January 27, 2025, the Supreme Court of Maryland granted certiorari to decide whether the Board is a "unit or instrumentality of the State or of a political subdivision" within the meaning of the MPIA. *Trustees of the Walters Art Gallery, Inc., et al. v. Walters Workers United, Council 67, AFSCME, AFL-CIO, et al*., 489 Md. 330 (2025).

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Held: Reversed.

After considering all the attributes of the Board and its relationship with Baltimore City, the Court held that the Board is not a governmental "unit or instrumentality" of Baltimore City for purposes of coverage under the MPIA.

The Court reaffirmed its functional, multi-factor MPIA analysis that emphasizes the entity's purpose, structure, funding, and degree of governmental control. Here, the Court recognized that the Board was created to carry out a charitable mission, not to execute governmental policy. Moreover, the Board's operational independence, structural design, and fiduciary role distinguished it from the entities the Court had previously deemed subject to the MPIA as governmental units or instrumentalities. Accordingly, the Court concluded that the factors weighing against governmental instrumentality status predominate over the factors weighing in favor of such status.

Canton Harbor Healthcare Center, Inc. v. Felicia Robinson, et al., No. 22, September Term 2024, filed July 29, 2025. Opinion by Biran, J.
Watts, J., concurs.
Booth, Eaves, and Killough, JJ., concur and dissent.

https://www.courts.state.md.us/data/opinions/coa/2025/22a24.pdf

HEALTH CARE MALPRACTICE CLAIMS ACT – CERTIFICATE OF A QUALIFIED EXPERT SUBMITTED BY A REGISTERED NURSE – PROXIMATE CAUSE – PRESSURE ULCERS

HEALTH CARE MALPRACTICE CLAIMS ACT – CERTIFICATE OF A QUALIFIED EXPERT SUBMITTED BY A REGISTRERED NURSE – PEER-TO-PEER REQUIREMENT

Facts:

After receiving treatment for a stroke, Everett Robinson was transferred to Canton Harbor Healthcare Center, Inc., d/b/a FutureCare-Canton Harbor ("Canton Harbor"), for inpatient follow-up care. Canton Harbor is a skilled nursing facility. During his stay at Canton Harbor, Mr. Robinson developed pressure ulcers, also known as decubitus ulcers. Mr. Robinson was transferred to other facilities, where his pressure ulcers allegedly worsened. Mr. Robinson subsequently passed away.

Mr. Robinson's widow, Felicia Robinson, along with Mr. Robinson's surviving children (collectively, the "Robinsons") filed a Complaint in the Circuit Court for Baltimore City against Canton Harbor. The Robinsons alleged that Canton Harbor's negligence allowed Mr. Robinson's pressure ulcers to develop, spread, and become infected, and that Canton Harbor's negligence caused Mr. Robinson's wrongful death.

Under the Health Care Malpractice Claims Act (the "HCMCA"), a person who has a claim against a health care provider for damage due to a medical injury must go through an arbitration process. As part of that process, unless the sole issue in a claim is lack of informed consent, a claimant must file a "certificate of a qualified expert … attesting to departure from standards of care, and that the departure from standards of care is the proximate cause of the alleged injury[.]" Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 3-2A-04(b)(1)(i)1 (1974, 2020 Repl. Vol.). In addition, the HCMCA effectively requires a peer-to-peer relationship between the defendant and the attesting expert:

> In addition to any other qualifications, a health care provider who attests in a certificate of a qualified expert … concerning a defendant's compliance with or departure from standards of care [s]hall have had clinical experience, provided consultation relating to clinical practice, or taught medicine in the defendant's specialty or a related field of health care, or in the field of health care in which the

> defendant provided care or treatment to the plaintiff, within 5 years of the date of the alleged act or omission giving rise to the cause of action[.]

Id. § 3-2A-02(c)(2)(ii)1A.

During the arbitration process that preceded the filing of their Complaint in the circuit court, the Robinsons filed a certificate of qualified expert signed by Anjanette Jones-Singh, a registered nurse (the "Certificate"). In the Certificate, Nurse Jones-Singh attested that Canton Harbor "breached the standard of care and the breach was the proximate cause of … the development of [Mr. Robinson's] pressure ulcers." A report written by Nurse Jones-Singh was attached to and incorporated into the Certificate. In her report, Nurse Jones-Singh provided more information concerning what she described as the applicable standard of care, how Canton Harbor's staff breached that standard of care, and how those breaches caused Mr. Robinson's pressure ulcers.

The circuit court granted Canton Harbor's motion to dismiss the Complaint on the ground that, as a registered nurse, Nurse Jones-Singh is not qualified to attest to the proximate cause of Mr. Robinson's pressure ulcers. The Robinsons appealed. The Appellate Court of Maryland held that, in negligence cases alleging breach of nursing standards for preventing and treating pressure ulcers, a registered nurse is not disqualified *per se* to attest that failure to adhere to such standards proximately caused the plaintiff's injuries. *Robinson v. Canton Harbor Healthcare Ctr.*, Inc., 261 Md. App. 560, 588 (2024). The Appellate Court vacated the order of dismissal and remanded the case to the circuit court.

Held: Affirmed.

A plurality of the Supreme Court of Maryland held that, where a patient was previously diagnosed as having developed a pressure ulcer at a skilled nursing facility, a registered nurse may be qualified to attest in a certificate that a breach of the applicable standards of nursing care at the facility proximately caused the pressure ulcer. A registered nurse who relies on a pre-existing diagnosis does not make a diagnosis concerning the injury itself in a certificate filed under the HCMCA. Rather, the nurse accepts the accuracy of the pre-existing diagnosis made by another health care provider(s). The Court reviewed pertinent regulations setting forth standards of care for registered nurses and determined that a registered nurse does not exceed the bounds of nursing practice when the nurse opines in a certificate that a departure from standards of nursing care is the proximate cause of a previously diagnosed pressure ulcer that developed while the patient resided at a skilled nursing facility.

In addition, the Court held that a registered nurse meets the HCMCA's peer-to-peer requirement to the extent the nurse attests to alleged breaches of standards of nursing care. A nurse does not meet the peer-to-peer requirement to the extent the nurse attests to the standard of care applicable to a physician and to a physician's alleged departure from that standard of care.

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Mayor and City Council of Baltimore v. Jamie Wallace, No. 12, September Term 2024, filed July 17, 2025. Opinion by Gould, J.
Biran, J., concurs.

https://www.mdcourts.gov/data/opinions/coa/2025/12a24.pdf

TORT LIABILITY – MARYLAND RECREATIONAL USE STATUTE

Facts:

On June 19, 2018, Jamie Wallace was biking home from work through the promenade part of the Inner Harbor Park when her bike's front tire became wedged in a gap between the bricks and granite bulkhead running along the water's edge, causing her to fall and sustain injuries. Ms. Wallace sued the Mayor and City Council of Baltimore (together, the "City") for negligence.

In addition to contesting liability, the City sought judgment as a matter of law under the Maryland Recreational Use Statute (the "Recreational Use Statute"), codified in sections 5-1101 through 5-1109 of the Natural Resources Article of the Maryland Annotated Code. That statute modifies the common law on premises liability by granting protections to landowners who make their property available to the public for, among other things, recreational purposes.

The City asserted this defense in a motion for summary judgment. The City maintained that: (1) it owed no duty of care to Ms. Wallace because the Inner Harbor promenade was designated by the Baltimore City Charter as open to the public for recreational purposes; and (2) Ms. Wallace was riding her bike, which is undisputedly a recreational activity.

The court denied the City's motion, noting that the Recreational Use Statute protects a landowner who makes property "available for educational or recreational purposes" from lawsuits "initiated by individuals using the property for those purposes." The statute did not apply, the court reasoned, because Ms. Wallace was commuting from work and was not using the land for recreational or educational purposes. The court also concluded that the City's interpretation of the statute would "yield an absurd result" because "the City would be absolutely immune from suit filed by anyone injured while bicycling or jogging on a city street."

After trial, judgment was entered on the jury's verdict in Ms. Wallace's favor for $100,000.00 in compensatory damages.

The City timely appealed to the Appellate Court of Maryland, which affirmed the judgment of the circuit court in a reported opinion. *Mayor and City Council of Baltimore v. Wallace*, 260 Md. App. 388 (2024). The Appellate Court concluded that despite being located within the Inner Harbor Park, the Inner Harbor promenade functions primarily as a public pedestrian walkway and shared bicycle path that serves as a connector between different parts of the city, rather than as a recreational facility. Applying *Haley v. Mayor and City Council of Baltimore*, 211 Md. 269

(1956), the Appellate Court determined that the maintenance of the promenade was a governmental function which, when negligently performed, could give rise to civil liability when a person is injured as a result. The Appellate Court concluded that the General Assembly did not intend to abrogate that common law duty when, in 2000, it extended the application of the Recreational Use Statute to land owned by local governments. Thus, the Appellate Court concluded, the Recreational Use Statute had no applicability in Ms. Wallace's case.

The Supreme Court of Maryland granted the City's petition for writ of certiorari. *Mayor and City Council of Baltimore v. Wallace*, 487 Md. 213 (2024).

Held: Affirmed.

The Supreme Court of Maryland held that the Recreational Use Statute did not shield Baltimore City from common law liability when the City made property available for transportation purposes as part of its public infrastructure, even though the means of transportation utilized in this case, biking, also constitutes a recreational activity.

The Supreme Court of Maryland held that while at one point the promenade part of the Inner Harbor Park may have been covered by the Recreational Use Statute, by incorporating the promenade into its transportation infrastructure, the City established an independent right of access separate and apart from any recreational invitation, and, in doing so, assumed the corresponding common law duties associated with that right.

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County Council of Prince George's County v. Robin Dale Land LLC, et al., No. 38, September Term 2024, filed July 3, 2025. Opinion by Booth, J.

https://www.mdcourts.gov/data/opinions/coa/2025/38a24.pdf

PLANNING AND ZONING – SUBSEQUENT CHANGE THE IN THE LAW – MOOTNESS

PLANNING AND ZONING – RIGHT TO NOTICE AND AN OPPORTUNITY TO BE HEARD PRIOR TO A REZONING

Facts:

This case came before the Supreme Court of Maryland after 16 years of litigation between the Prince George's County Council, sitting as the District Council, and aggrieved property owners that challenged certain zoning decisions arising from a 2009 comprehensive rezoning known as a "sectional map amendment." The litigation consisted of a series of petitions for judicial review spanning more than a decade that resulted in several orders by the Circuit Court for Prince George's County and/or the Appellate Court of Maryland that reversed the District Council's zoning resolutions and remanded the cases to the District Council for further review.

The present case arises from the third remand proceeding that occurred in 2019. At that proceeding, the District Council convened a work session and adopted sectional map amendments without providing the property owners with notice or an opportunity to be heard. The aggrieved property owners petitioned for judicial review. After the circuit court reversed and remanded for further proceedings, the Appellate Court affirmed.

The Supreme Court of Maryland granted certiorari to determine whether: (1) a countywide rezoning that occurred in 2021 constituted a substantive change in the law that rendered moot the property owner's assertions of error arising from the 2019 rezoning proceeding; and (2) if not, whether the District Council: (a) erred in failing to provide the property owners notice and an opportunity to be heard; and (b) failed to comply with the Appellate Court's prior remand order.

Held: Affirmed and remanded with instructions.

The Supreme Court held that the District Council's countywide rezoning was not a comprehensive rezoning or a substantive change in the law with retroactive application that vitiated the District Council's obligation to comply with judicial directives entered in cases in which it was a party. Rather, the countywide rezoning was a technical mapping exercise intended to assign zoning classifications on a countywide scale that best aligned with the zoning districts in the new zoning ordinance. This technical process did not render moot the property owners' assertions of error that they raised in connection with the District Council's 2019 work session in which their properties were downzoned.

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The Court also held that the record of the District Council's 2019 work session reflects that the District Council failed to comply with provisions of State and local law, which required notice and a public hearing. The property owners were entitled to notice and an opportunity to be heard under both State and county laws prior to their properties being downzoned. The District Council also failed to comply with the Appellate Court's prior remand order.

Accordingly, the Supreme Court affirmed the judgment of the Appellate Court and provided specific instructions to the District Council when addressing the merits of the property owners' contentions on remand.

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APPELLATE COURT OF MARYLAND

Theodore A. Johnson, Jr. v. State of Maryland, No. 736, September Term 2023, filed July 9, 2025. Opinion by Arthur, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0736s23.pdf

CRIMINAL LAW – LEGALLY ADEQUATE PROVOCATION

Facts:

Theodore Johnson fatally shot William Christian during a family argument. During the argument, Christian punched Ms. Jasmine Johnson—Johnson's fiancée and partner of 11 years—twice in the face. These punches broke Ms. Johnson's glasses, dazed her, caused her to black out momentarily, and knocked her glasses off her face. After the first punch, Johnson was mad and removed a gun from his pocket. After the second punch, Johnson became furious. Johnson testified that he fired the gun in the heat of the moment.

At trial, Johnson requested a jury instruction on voluntary manslaughter because, he argued, he had acted in hot-blooded response to legally adequate provocation. He asked the court to modify *Maryland Criminal Pattern Jury Instruction* 4:17.4(c) to include a substantial battery on a defendant's close relative as a form of adequate provocation. The court told the parties that it never alters the pattern jury instructions because it believes that doing so is reversible error. Per its policy, the court denied Johnson's request to modify the pattern instruction on voluntary manslaughter.

The court provided the pattern instruction verbatim, which limited adequate provocation to three inapt scenarios: a battery by the victim upon the defendant; a fight between the victim and the defendant; or an unlawful warrantless arrest of the defendant by the victim. The court allowed Johnson to argue in closing that Christian's battery upon Ms. Johnson was legally adequate provocation. The State argued that the evidence did not permit such a finding because battery on a close relative was not listed as adequate provocation in the instruction provided by the court.

The jury convicted Johnson of second-degree murder; use of a handgun in the commission of a crime of violence; possession of a firearm after a disqualifying conviction; and wearing, carrying, or transporting a handgun on his person. Johnson appealed, arguing that the court erred by not providing his requested jury instruction.

Held: Reversed and remanded in part.

The Appellate Court of Maryland concluded that the circuit court erred and abused its discretion by not providing Johnson's requested modification of the pattern jury instruction on voluntary manslaughter. Under Maryland Rule 4-325(c), the circuit court was required to provide the requested instruction because it was a correct statement of law, it was applicable under the facts of the case, and its content was not fairly covered by the other instructions actually given.

Before this case, Maryland's appellate courts had never been called upon to decide whether a substantial battery on a defendant's close relative can be legally adequate provocation. The Court concluded that it can, and thus that Johnson's requested jury instruction was a correct statement of law. This type of conduct is legally adequate to mitigate the offense of murder to manslaughter under a longstanding common-law rule, which is acknowledged in *Dorsey v. State*, 29 Md. App. 97 (1975), *Girouard v. State*, 321 Md. 532 (1991), and other Maryland appellate opinions; followed uniformly throughout the United States; and recognized in numerous treatises and academic texts.

The Court concluded that Johnson's requested jury instruction was applicable to the facts of the case because there was evidence of each required element: a killing in the heat of passion, before a reasonable opportunity for the passion to cool, in response to adequate provocation. The State contested the adequate provocation element, arguing that the battery by the victim was not "substantial." The Court explained that a weapon is not required for a battery to be substantial and that a blow with one's fist to a person's face may be sufficient. Considering the first and second punches as a series, the Court determined that there was some evidence of a substantial battery.

The Court also held that the circuit court abused its discretion by applying an inflexible policy never to deviate from the pattern jury instructions. The circuit court's refusal to provide a modified instruction was a failure to exercise discretion and, therefore, an abuse of discretion. The pattern instructions permit, and sometimes require, trial courts to modify existing instructions or to create new instructions. When the evidence generates an issue that the existing pattern instructions do not cover, the trial court must incorporate into an instruction applicable legal principles gleaned from case law to accommodate the circumstances of the case.

The Court reversed Johnson's convictions for second-degree murder and use of a handgun in the commission of a crime of violence. The Court remanded for a new trial on those two charges. The Court did not disturb the convictions for possession of a regulated firearm after having been convicted of a disqualifying crime and wearing, carrying, or transporting a handgun on the person because those convictions were not affected by the circuit court's errors.

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Daniel Beckwitt v. State of Maryland, No. 1473, September Term 2023, filed June 30, 2025. Opinion by Leahy, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1473s23.pdf

PETITION FOR WRIT OF HABEAS CORPUS – APPELLATE JURISDICTION – MARYLAND CODE (2001, 2018 REPL. VOL.), CRIMINAL PROCEDURE ARTICLE ("CP") § 7-107

PETITION FOR WRIT OF HABEAS CORPUS – JUSTICIABILITY – CHALLENGING PROBATION

PETITION FOR WRIT OF HABEAS CORPUS – JUSTICIABILITY – POSSIBILITY OF IMMEDIATE RELEASE

Facts:

Daniel Beckwitt filed a petition for writ of habeas corpus while on probation. Beckwitt did not challenge the legality of his conviction or sentence, but instead challenged the term of his confinement based on an allegedly erroneous calculation of his diminution credits by the Division of Correction. He claimed that he was entitled to retroactive "good conduct" credits during his term of active incarceration, and that the application of these good conduct credits would have led to his earlier release from incarceration—which, in turn, would lead to a speedier end to his probation in the future. If Beckwitt's claims were accurate, then he would have been entitled to release from probation on March 29, 2027—115 days earlier than anticipated. The circuit court denied Beckwitt's petition.

Held: Affirmed.

On appeal, the State argued that Beckwitt's habeas petition was not justiciable because he had been released on probation, and because he did not assert a possibility of immediate release.

The Appellate Court first held that it had jurisdiction over Beckwitt's appeal. Statutory provisions conferring general appellate jurisdiction, such as Maryland Code (1973, 2020 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP") § 12-301, do not apply to habeas corpus cases. *See* CP § 7-107(b)(1); *Sabisch v. Moyer*, 466 Md. 327, 351 (2019); *Simms v. Shearin*, 221 Md. App. 460, 469 (2015). Appeal of a habeas petition is authorized in any "proceeding in which a writ of habeas corpus is sought for a purpose other than to challenge the legality of a conviction of a crime or sentence of imprisonment for the conviction of the crime[.]" CP § 7-107(b)(2)(ii). Here, Beckwitt's appeal was authorized under CP § 7-107(b)(2)(ii) because he did not argue that his sentence was illegal, but instead challenged the term of his confinement based on an allegedly erroneous application of good conduct credits by the Division of Correction.

The Appellate Court also determined that Beckwitt's habeas petition was not foreclosed by his release from active incarceration. "A petition for a writ of habeas corpus is not foreclosed where a person is placed on probation with conditions that significantly restrict or restrain the person's lawful liberty within the State." *Sabisch*, 466 Md. at 378. Here, Beckwitt was required to, among other things, "[r]eport as directed and follow [his] supervising agent's lawful instructions . . . [w]ork and/or attend school regularly as directed and provide verification to [his] supervising agent . . . [g]et permission from [his] supervising agent before changing [his] home address, changing [his] job, and/or leaving . . . DC, Maryland, and Virginia[,]" and permit his supervising agent to visit his home. These standard conditions of probation significantly restrained Beckwitt's lawful liberty, and therefore his release from active incarceration did not foreclose his habeas petition.

Ultimately, the Appellate Court held that Beckwitt's petition was properly denied because he did not assert a possibility of immediate release. Under controlling precedent, a habeas petitioner must assert a possibility of immediate release. *See Lomax v. Warden, Md. Corr. Training Ctr.*, 356 Md. 569, 575 (1999); *Md. Corr. Inst. v. Lee*, 362 Md. 502, 517 (2001). Beckwitt was on probation at the time of filing and claimed that he was entitled to an earlier release from probation, but not an *immediate* release from probation.

To the extent that Beckwitt claimed his active incarceration was illegal for a given period while he was incarcerated, during which time he might have argued that he was entitled to immediate release, *that claim* needed to be raised during Beckwitt's term of incarceration and was foreclosed by his release on probation. Because Beckwitt did not assert a possibility of immediate release from probation when he filed his habeas petition, the Appellate Court held that his claim was not justiciable.

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In the Matter of the Boyce Living Trust, No. 1685, September Term 2022, filed July 9, 2025. Opinion by Zic, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1685s22.pdf

LIMITATION OF ACTIONS – STATUTE OF REPOSE

Facts:

This appeal arises from the modification of a revocable trust. In 2008, Joretta Boyce and her husband, Walter Boyce, executed a living trust. Walter named their daughter, Janet, as his successor trustee, and Joretta named their granddaughter, Lynette, as her successor trustee.

Walter passed away in March 2018. In August 2018, Joretta modified the living trust to name Janet's son, Joseph Addison, as the only successor trustee. Joretta passed away on April 27, 2021.

On May 6, 2022, Lynette, along with two other grandchildren of Joretta and Walter, filed a petition, in the Circuit Court for Prince George's County, contesting the August 2018 modification and requesting that the court assume jurisdiction. Multiple family members separately filed objections to the petition, arguing that it was untimely pursuant to § 14.5 605 of the Estates and Trusts ("ET") Article of the Maryland Code (1974, 2022 Repl. Vol.).

The circuit court dismissed the petition in its entirety, reasoning that ET § 14.5-605 is a statute of repose that bars challenges to revocable trusts filed more than one year after the death of the testator. In its dismissal, the court did not separately address the petition's request to assume jurisdiction. Janet and the two other grandchildren then filed this appeal.

Held: Affirmed in part, vacated and remanded in part.

First, the Appellate Court of Maryland held that the circuit court was correct in concluding that ET § 14.5-605 is a statute of repose as opposed to a statute of limitations. The Court determined that the text of ET § 14.5 605 is not ambiguous. Continuing its analysis guided by that in *Roman Catholic Archbishop of Washington v. Doe*, 489 Md. 514 (2025), the Court determined that the purpose, operation, trigger, and tolling factors, as each apply to ET § 14.5-605, demonstrated that the statute is one of repose.

Second, the Court concluded that the record was unclear about why the circuit court dismissed the petition's request to assume jurisdiction. Given that the request for assumption of jurisdiction was separate from the contest to the 2018 modification, the Court vacated in part and remanded to the circuit court for further consideration of this limited issue.

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In Re Z.F. & B.F., No. 1609, September Term 2024, filed July 1, 2025. Opinion by Leahy, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/1609s24.pdf

FAMILY LAW – CHILDREN IN NEED OF ASSISTANCE – REASONABLE EFFORTS

Facts:

Ms. F. ("Mother") challenges the decision of the Circuit Court for Baltimore County, sitting as a juvenile court, to grant custody and guardianship of her two minor children—Z.F. and B.F. (collectively, the "Children")—to their maternal grandparents (the "Grandparents") and close their cases under the Child in Need of Assistance Statute, Maryland Code (1973, 2020 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), Title 3, Subtitle 8.

In December 2022, the Department of Social Services for Baltimore County (the "Department") removed the Children from Mother's custody and placed them with the Grandparents after Mother showed signs of paranoia. Following adjudication and disposition hearings in February 2023, during which Mother's counsel stated that Mother was autistic, the Children were declared CINA, with reunification as the sole permanency plan.

After the Children were declared CINA, Mother completed court-ordered parenting and anger management classes, but she did not sign release of information forms for her mental health providers. Mother also did not respond to the Department's requests for her income or employment verification even though she claimed to be employed. In September 2023, Mother left her residence for months without notifying the Grandparents or the Department. As a result, a family magistrate recommended changing the permanency plan to reunification concurrent with custody and guardianship to a relative. Mother filed exceptions to the family magistrate's recommendation, claiming, among other things, that the Department failed to accommodate her autism under the Americans with Disabilities Act ("ADA"), but later withdrew that claim. The juvenile court denied Mother's exceptions, found the Department's reunification reasonable, and changed the permanency plan as recommended.

Mother did not present any documentation verifying her autism diagnosis until April 2024. Even when the Department obtained the diagnosis report, it lacked sufficient information to determine the appropriate accommodations and interventions for Mother. The Department recommended that Mother seek further evaluations from the Kennedy Krieger Institute and Sheppard Pratt, but Mother did not comply. Still, the Department referred Mother to multiple employment and housing resources for persons with disabilities, including the Department of Rehabilitation Services ("DORS") and Developmental Disability Administration ("DDA"). Although Mother eventually found a shelter and began receiving mental health services in July 2024, her visitation with the Children remained irregular, and she did not attend any of the Children's medical, educational, or therapeutic appointments. Grandmother also noted that the Children seemed "a

little stressed, and a little uneasy" during their visits with Mother. Meanwhile, the Children were receiving therapy, medications, and other services in the Grandparents' care.

In September 2024, after a multi-day hearing, the juvenile court ruled that: (1) the Department made reasonable efforts to achieve the permanency plan during the relevant review period; and (2) it was in the Children's best interests to award custody and guardianship to the Grandparents, grant supervised visitations to Mother, and terminate the CINA jurisdiction.

On appeal, Mother claimed that the juvenile court was clearly erroneous in finding that the Department made reasonable efforts to achieve the permanency plan during the review period because the Department failed to reasonably accommodate her autism diagnosis. Mother also claimed that the juvenile court abused its discretion in awarding custody and guardianship to the Grandparents and closing the Children's CINA cases.

Held: Affirmed.

The Appellate Court of Maryland held that the juvenile court was not clearly erroneous in finding that the Department of Social Services made reasonable efforts to achieve the permanency plan for the Children.

The Court noted that the definition of "reasonable efforts" found in the CINA statute states that the Department shall make efforts "reasonably likely to achieve the objectives set forth in [CJP] § 3-816.1(b)(1) and (2)." CJP § 3-801(x). Under CJP § 3-816.1(b)(1), the juvenile court is tasked with determining whether the Department has made reasonable efforts to "prevent placement of the child" in its custody. If the child is placed in the Department's custody, the juvenile court is required to make findings as to whether the Department made reasonable efforts to: "(i) [f]inalize the permanency plan in effect for the child; [and] (ii) [m]eet the needs of the child, including the child's health, education, safety, and preparation for independence[.]" CJP § 3-816.1(b)(2). The Department's efforts need not be "perfect to be reasonable, and it certainly need not expend futile efforts on plainly recalcitrant parents[.]" *In re Shirley B.*, 191 Md. App. 678, 712 (2010).

Next, the Court considered the application of Title II of the ADA, which prohibits disability-based discrimination by public entities. The Court noted that under the ADA, "[i]t is insufficient for individuals attempting to prove disability status . . . to merely submit evidence of a medical diagnosis of an impairment." T*oyota Motor Mfg., Kentucky, Inc. v. Williams*, 534 U.S. 184, 198 (2002). Rather, the party claiming an ADA violation bears the burden of "requesting, identifying, or proposing a reasonable accommodation." *Adkins v. Peninsula Reg'l Med. Ctr.*, 224 Md. App. 115, 148 (2015) (quotation omitted).

The Court found no reported Maryland opinions involving an ADA claim against the Department in a CINA case. The Court observed that in many other states, a department's obligation to make "reasonable accommodations" is generally consistent, if not synonymous, with the state-law requirement to provide "reasonable efforts." After surveying appliable

Maryland law, the Court concluded that the question of whether reunification services reasonably accommodated a parent's disability is already generally included within the question of whether the Department met the CINA statute's "reasonable efforts" requirement, and that the Department is required to make such accommodations only if the parents make their disabilities and necessary accommodations known.

Applying these principles to the instant appeal, the Court found that the Department's reunification efforts, which included referrals to various housing, employment, and mental health services, reasonably accommodated Mother's autism under the ADA. The Court noted that Mother failed to make any specific requests for accommodations or cooperate with the Department's recommendation for additional autism evaluations, and that many of the Department's efforts were frustrated or delayed by her failure to follow through. Because the record established that Mother failed to specify the extent of her disability or the accommodations that she required, and the Department made numerous efforts to assist her, the Court held that the juvenile court's finding of reasonable efforts was not clearly erroneous.

Additionally, the Appellate Court held that the juvenile court did not abuse its discretion in awarding custody and guardianship to the Grandparents and closing the Children's CINA cases without further proceedings. The Court noted that the court's extensive factual findings indicated a careful consideration of "[a]ll factors necessary to determine the best interests of the child[,]" as required by CJP § 3-819.2(f)(1)(ii). The Court observed that Mother engaged in only sporadic mental health services and was uncooperative with the Department for much of the 21 month period, whereas the Grandparents had consistently cared for the Children and addressed their needs. The Court also emphasized that it is in the Children's best interests "to spend as little time as possible" in the Department's custody before finding a "permanent home." *In re Jayden G.*, 433 Md. 50, 84 (2013) (citation omitted).

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In the Matter of D.M., No. 2029, September Term 2023, filed July 30, 2024. Opinion by Kehoe, S., J.

https://www.mdcourts.gov/data/opinions/cosa/2025/2029s23.pdf

FAMILY LAW – CHILD IN NEED OF ASSISTANCE – DISMISSAL

Facts:

This case involves a parent's appeal to the Office of Administrative Hearings ("OAH") of a finding of indicated neglect of a child by the local Department of Social Services. Both Md. Code Ann., Fam. Law § 5-706.1 and COMAR § 07.02.26.07 provide that administrative appeals involving allegations of neglect are stayed during the pendency of a Child in Need of Assistance ("CINA") proceeding involving the subject child. In this case, OAH dismissed D.M.'s appeal for failure to prosecute. This dismissal was entered before the CINA proceeding had concluded. D.M. did not learn of the dismissal until more than thirty days after it was entered and after having notified OAH that the CINA matter had concluded. She requested OAH to reconsider the dismissal. OAH denied this request because it could only vacate the order of dismissal in cases of fraud, mistake or irregularity. The circuit court affirmed the dismissal for failing to prosecute and noting that she had not shown fraud, mistake or irregularity.

Held: Reversed

The Appellate Court reversed the circuit court with instructions to reverse OAH's dismissal order, holding that OAH's dismissal for failure to prosecute during the pendency of the stay constituted an irregularity because OAH did what it ought not to have done.

This opinion holds that OAH's dismissal of the D.M.'s appeal for failing to prosecute was an irregularity under COMAR § 07.01.04.20C because the matter was subject to a statutory stay. Accordingly, D.M. is entitled to a hearing on her appeal.

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In the Matter of HRVC Limited Partnership, No. 543 September Term 2023, filed July 1, 2025. Opinion by Albright, J.

https://www.mdcourts.gov/data/opinions/cosa/2025/0543s23.pdf

ADMINISTRATIVE LAW AND PROCEDURE – ZONING AND PLANNING – STANDARD OF REVIEW – RES JUDICATA – RECUSAL

Facts:

The Howard County Zoning Board, appellee, denied a petition filed by Kimco, appellant, to redevelop the Hickory Ridge Village Center after zoning board hearings that spanned three years. Kimco's petition proposed several changes to the existing village center, including the replacement of several existing commercial buildings and a bank, the replacement of a parking lot, and the addition of a four-story mixed-use apartment building with 230 units. The primary basis for the Zoning Board's denial of the petition was the Zoning Board's conclusion that Kimco's proposed new apartment building would not satisfy the requirement that a village center's residential uses must "support and enhance, but not overwhelm, other uses in the village center." Howard County Zoning Regulation § 103.0.V.

At the beginning of the zoning board hearings, Kimco also sought the disqualification of one of the Zoning Board members, Deb Jung. Ms. Jung had participated in Planning Board meetings regarding Kimco's petition prior to being elected to the Howard County Council (and thus the Howard County Zoning Board). Kimco also asserted that Ms. Jung's questioning of Kimco's witnesses was biased and created an appearance of impropriety. The Zoning Board declined to disqualify Ms. Jung, and Kimco did not move for her recusal again throughout the remainder of the proceedings.

In an appeal to the Circuit Court for Howard County, Kimco argued that the Zoning Board's conclusion that the redevelopment petition failed to satisfy the requirement that village center residential uses "support and enhance, but not overwhelm, other uses in the village center" was legally erroneous, not supported by substantial evidence, as well as arbitrary and capricious. Additionally, Kimco argued that the Zoning Board abused its discretion by failing to disqualify Ms. Jung. Before the circuit court, Kimco also sought to supplement the administrative record with alleged ex parte communications from Ms. Jung during the Zoning Board hearings that Kimco obtained through requests made under the Maryland Public Information Act. The circuit court affirmed the Zoning Board's decision.

Kimco then appealed to this Court on the same grounds. As a preliminary matter in this appeal, Joel Hurewitz, an interested party below and another appellee in this case, asked the Court to determine that a final decision on Kimco's council must be made legislatively, by the County Council, rather than quasi-judicially by the Zoning Board.

Held: Affirmed.

The Court began by declining to address Mr. Hurewitz's preliminary argument. The relief Mr. Hurewitz requested was for the Court to remand the case to the Zoning Board with directions for it to assume its alternate role as the County Council to act legislatively on the Zoning Board's decision. However, because it was not clear from the record that Mr. Hurewitz had standing to request affirmative relief, because he had not filed a cross-petition for judicial review in the circuit court, and because he did not note a cross-appeal, the Court did not address his claim for relief.

The Court then determined that the Zoning Board's decision was neither legally erroneous, nor unsupported by substantial evidence, nor arbitrary and capricious. First, the Court concluded that the Zoning Board did not apply an incorrect legal standard. Although Kimco argued on appeal that "support and enhance, but not overwhelm" in the zoning regulations should be interpreted in conformity with the provided definition for an "accessory use," the Court noted that the Zoning Board applied the standard dictionary definition of "overwhelm" that Kimco itself proposed. Under that definition, whether a residential use is overwhelming does not hinge on whether the residential use qualifies as an "accessory use."

Second, the Court concluded that substantial evidence supported the Zoning Board's decision. Throughout the zoning board hearings, evidence and testimony established that Kimco's proposed apartment building would be the tallest structure in the village center, would obscure other structures and retail uses in the village center, would occupy twice the footprint of the retail, that the setbacks from surrounding roads were inappropriate, and that the proposed new use would exceed the square footage of other uses in the village center by approximately 150,000 square feet.

Third, the Court concluded that the Zoning Board's decision was not arbitrary or capricious. Kimco argued that the redevelopment petition was similar to two other redevelopments that had been approved by the Zoning Board at the Wilde Lake and Long Reach village centers, and that res judicata should apply. However, the Court noted that res judicata does not apply to administrative agencies as it does to courts, and that res judicata is particularly inapposite in zoning cases because zoning matters depend on the unique facts and circumstances of each particular property.

Finally, the Court concluded that the Zoning Board did not abuse its discretion by denying Kimco's motion to recuse Ms. Jung. The Court determined that the bulk of Kimco's contentions of improper bias and an appearance of impropriety were not preserved because Kimco failed to raise any grounds for Ms. Jung's disqualification before the Zoning Board after its motion for recusal was denied in the initial zoning board hearings. Further, although Kimco attempted to supplement the administrative record with Ms. Jung's alleged ex parte communications before the circuit court, Kimco failed to properly do so because it only provided the supplemental documents instead of testimony, as required by the Howard County Code of Ordinances §

16.207(b). As for Kimco's arguments for Ms. Jung's disqualification that were raised before the Zoning Board and preserved, the Court concluded that the Zoning Board did not abuse its discretion by denying Kimco's motion to recuse Ms. Jung because Kimco did not show that Ms. Jung had personal knowledge about the redevelopment petition that was acquired outside of the evidence presented to the Zoning Board. Moreover, Ms. Jung's questioning of Kimco's witnesses did not create an appearance of impropriety in substance or demeanor.

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ATTORNEY DISCIPLINE

REINSTATEMENTS

By Order of the Supreme Court of Maryland

EDWARD C. CROSSLAND

has been replaced on the register of attorneys permitted to practice law in this State as of July 25, 2025.

*

By Order of the Supreme Court of Maryland

PHILIP ALLEN DAVIS

has been replaced on the register of attorneys permitted to practice law in this State as of July 25, 2025.

*

DISBARMENTS/SUSPENSIONS

By an Order of the Supreme Court of Maryland dated July 25, 2025, the following attorney has been suspended:

DUNCAN KENNER BRENT

*

By an Order of the Supreme Court of Maryland dated July 31, 2025, the following attorney has been disbarred by consent:

JAMES E. McCOLLUM

*

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