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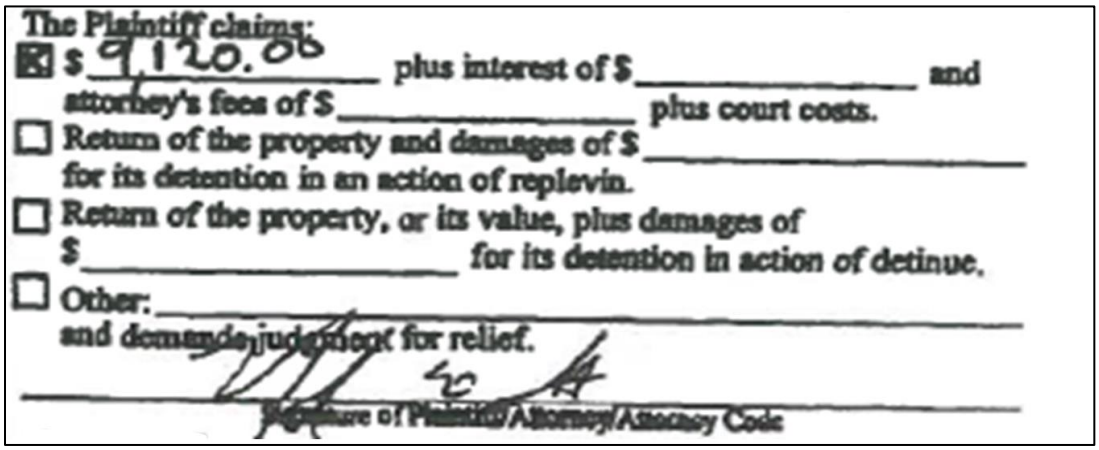
https://mdcourts.gov/data/opinions/coa/2018/15a17ag.pdf

ATTORNEY MISCONDUCT – DISCIPLINE – INDEFINITE SUSPENSION

Facts:

The Attorney Grievance Commission of Maryland ("AGC"), acting through Bar Counsel, charged Neil Warren Steinhorn ("Steinhorn") with violating Maryland Lawyers' Rules of Professional Conduct ("MLRPC") 3.3(a)(1) (Candor Toward the Tribunal) and 8.4(a), (c), and (d) (Misconduct). The allegations stemmed from Steinhorn's misrepresentations to the District Court of Maryland sitting in Baltimore County about the total amount of debt owed to his client by its debtors. In the complaint forms filed to collect this debt, Steinhorn grouped his attorney's fees with the damages sought, listing one figure, even though the form requires that the items be listed separately (see image below).


The Plaintiff claims:
☒ $ 9,120.00 plus interest of $ _____ and attorney's fees of $ _____ plus court costs.
☐ Return of the property and damages of $ _____ for its detention in an action of replevin.
☐ Return of the property, or its value, plus damages of $ _____ for its detention in action of detinue.
☐ Other: _____
and demands judgment for relief.
_____
Signature of Plaintiff/Attorney/Attorney Code

At a hearing on his conduct before the Honorable Keith R. Truffer of the Circuit Court for Baltimore County ("hearing judge"), Steinhorn testified that he knew the figures should have been separated, but claimed that he made a mistake and never intended to deceive the court. The

hearing judge found Steinhorn's testimony credible and concluded that Steinhorn committed no MLRPC violations. The AGC excepted to the hearing judge's legal conclusions.

Held:

The Court of Appeals sustained the AGC's exceptions and held that Steinhorn's conduct violated MLRPC 3.3(a)(1) and 8.4(a), (c), and (d) and, consequently, suspended him indefinitely from practicing law in Maryland.

Steinhorn violated MLRPC 3.3(a)(1) because he knowingly submitted false information to the District Court—that the debt owed was $9,120, when, in fact, it was only $6,912 ($2,208 was for attorney's fees). The Court likewise held that by submitting this false information to the District Court, Steinhorn also violated MLRPC 8.4(c), which prohibits a lawyer from engaging in, among other things, dishonest and misleading conduct. Steinhorn violated MLRPC 8.4(d), prohibiting conduct that is "prejudicial to the administration of justice," because he concealed his intent to collect attorney's fees, which deprived the court of the ability to evaluate the reasonableness of those fees. Finally, because Steinhorn committed multiple MLRPC violations, he necessarily also violated MLRPC 8.4(a), which prohibits violating any of the MLRPC.

Although Steinhorn did not act with an intent to deceive and did not obtain a pecuniary benefit from his misconduct, the Court determined that an indefinite suspension was the proper sanction given the severity of Steinhorn's misconduct as well as his extensive experience practicing law and his prior disbarment. The Court emphasized Steinhorn's prior disbarment as a significant aggravating factor that differentiated this case from other disciplinary matters involving similar MLRPC violations. Steinhorn will be eligible to apply for reinstatement no sooner than six months after his suspension takes effect.

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Attorney Grievance Commission of Maryland v. Yolanda Massaabioseh Thompson, Misc. Docket AG No. 53, September Term 2017, filed December 14, 2018. Opinion by Hotten, J.

Watts, J., concurs.

https://mdcourts.gov/data/opinions/coa/2018/15a18.pdf

ATTORNEY DISCIPLINE – SANCTIONS – SUSPENSION

Facts:

On December 20, 2017, the Attorney Grievance Commission of Maryland, acting through Bar Counsel ("Petitioner"), filed a Petition for Disciplinary or Remedial Action against Yolanda Massaabioseh Thompson ("Respondent"). The misconduct stemmed from Respondent's representation of a former client, Ms. Norma Jean Bess. Specifically, Petitioner alleged that Respondent failed to represent Ms. Bess competently and diligently, failed to communicate with Ms. Bess regarding the status of her matter, failed to refund unearned fees in Ms. Bess's matter, failed to safeguard client funds, abandoned Ms. Bess's matter, practiced in a jurisdiction where she was not authorized to practice law, made a knowingly false statement of material fact, and failed to respond to lawful demands for information during Petitioner's investigation. Petitioner alleged violations of Maryland Attorneys' Rules of Professional Conduct ("MARPC") 19-301.1 (Competence), 19-301.3 (Diligence), 19-301.4 (Communication), 19-301.5(a) (Fees), 19-301.15(a), (b), (c), and (d) (Safekeeping Property), 19-301.16(d) (Declining or Terminating Representation), 19-305.5(b) (Unauthorized Practice of Law), 19-308.1(a) and (b) (Disciplinary Matters), and 19-308.4(a), (c), and (d) (Misconduct).

Respondent was admitted to the Bar of the District of Columbia on February 6, 2012 and the United States District Court for the District of Columbia on November 7, 2016. Respondent is not a member of the Bar of Maryland or a member of the United States District Court for the District of Maryland. Respondent maintained an office for the practice of law in Montgomery County, Maryland. Respondent maintained a mail drop address at 13842 Outlet Drive, #A161, Silver Spring, Maryland 20904 and resided at 3407 Hampton Hollow Drive, #G, Silver Spring, Maryland 20904. Respondent registered her home address with the District of Columbia Bar.

On August 10, 2016, Respondent caused an overdraft on her attorney trust account (ending 3432) at TD Bank located in Silver Spring, Maryland in the amount of $116.32. On October 3, 2016, Respondent caused another overdraft on her attorney trust account in the amount of $63.49. On three occasions, Petitioner wrote to Respondent and requested information and documentation regarding Respondent's trust account. Respondent failed to respond. On April 26, 2017, having received no response, Petitioner issued a subpoena directed to TD Bank for account records held in the name of the Law Office of Yolanda M. Thompson and Respondent for the period of May 1, 2016 through the date of the subpoena.

On May 5, 2017, Jason P. Bogue, investigator for the Attorney Grievance Commission, traveled to Respondent's home address, but Respondent was not home. Later that day, Respondent called Mr. Bogue and advised that she had closed her attorney trust account in October 2016. She also stated that she exclusively handled bankruptcy matters and therefore, did not have an attorney trust account. Respondent had not represented clients in bankruptcy matters, though she has represented clients in two immigration matters with the United States Citizenship and Immigration Services. Respondent also confirmed that she received Petitioner's previous correspondences requesting information and documentation regarding her trust account. Respondent indicated that she would respond to Petitioner in writing that day, but failed to do so. Despite further correspondence with Mr. Bogue, Respondent failed to comply with requests for information.

On May 26, 2017, Petitioner received documents from TD Bank in response to the subpoena. Charles E. Miller, IV, an investigator for the Attorney Grievance Commission, performed an analysis of the account records, which revealed that Respondent failed to safekeep client funds until the fees were earned or expenses incurred and Respondent deposited personal funds into her trust account.

Petitioner conducted additional investigation of the payment in the amount of $200 from client Norma Jean Bess to Respondent. Ms. Bess, a District of Columbia resident, retained Respondent to draft two letters in connection with a family matter for $100 per letter. Though Ms. Bess paid Respondent an advance fee of $200, Respondent only drafted one of the two letters. On June 15, 2016, Respondent deposited Ms. Bess's check into her attorney trust account and immediately withdrew $20 in cash. Respondent made numerous other cash withdrawals until Respondent's bank account reached a balance of $12.34 at the end of June 2016. Ms. Bess did not authorize Respondent to withdraw the advance fee of $200 prior to earning the fee in full. Ms. Bess called Respondent multiple times regarding the status of a refund for the second letter. Respondent failed to respond to the calls and failed to refund the amount owed to Ms. Bess. Respondent had advised Ms. Bess that she practiced from her home in Maryland.

Held:

The Court of Appeals found that Respondent violated MARPC 19-301.1 (Competence), 19-301.3 (Diligence), 19-301.4 (Communication), 19-301.5(a) (Fees), 19-301.15(a), (b), (c), and (d) (Safekeeping Property), 19-301.16(d) (Declining or Terminating Representation), 19-305.5(b) (Unauthorized Practice of Law), 19-308.1(a) and (b) (Disciplinary Matters), and 19-308.4(a), (c), and (d) (Misconduct).

The Court did not find that Petitioner established the following aggravating factors by clear and convincing evidence: a dishonest or selfish motive; submission of false evidence, false statements, or other deceptive practices during the attorney discipline proceeding; bad faith obstruction of the attorney discipline proceeding; refusal to acknowledge the misconduct's wrongful nature; indifference to rectifying the misconduct's consequences; and likelihood of

repetition of the misconduct. The Court sustained the existence of only one aggravating factor: multiple violations of the MARPC. The Court found that Respondent established the following mitigating factors by a preponderance of the evidence: absence of a prior disciplinary record; absence of a dishonest or selfish motive; and inexperience in the practice of law. Respondent admitted to mishandling client funds in violation of Rule 19-301.15 due to her inexperience. Respondent also admitted to opening and maintaining her attorney trust account and a post office box in Maryland rather than the District of Columbia, due to errors attributable to her lack of experience as an attorney.

The appropriate sanction for Respondent's conduct was a sixty day suspension with appropriate documentation providing that Respondent completes a course emphasizing responsible maintenance of an attorney trust account. This sanction not only accounts for mitigating factors, but also addresses the Court's concern regarding Respondent's mismanagement of client funds. Because the Court did not find a likelihood of repetition for Respondent's other violations by clear and convincing evidence, this was an appropriate sanction that was commensurate with the gravity of the misconduct, while also protecting the public and maintaining the public's confidence in the legal profession.

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William Price, et al. v. Ralph M. Murdy, et al., Misc. No. 1, September Term 2018, filed December 18, 2018. Opinion by Barbera, C.J.

https://mdcourts.gov/data/opinions/coa/2018/1a18m.pdf

STATUTE OF LIMITATIONS – CJP § 5-102 – STATUTORY SPECIALTIES – MARYLAND CONSUMER LOAN LAW – LICENSING REQUIREMENT

Facts:

The United States District Court for the District of Maryland certified a question to this Court regarding whether the licensing requirement of the Maryland Consumer Loan Law, Md. Code, § 12-302 of the Commercial Law Article ("CL"), is a statutory specialty under Md. Code, § 5-102(a)(6) of the Courts and Judicial Proceedings Article ("CJP"). If so, an action on CL § 12-302 is accorded a twelve-year limitations period; if not, the action is accorded a three-year limitations period under CJP § 5-101.

William Price and Frank Chovan purchased automobiles financed by loans under $6,000 from Samuel Spicer. They allege in the U.S. District Court that Spicer violated CL § 12-302 by entering into loans without being licensed or exempt from licensing under the MCLL, among other violations. The loans were entered into more than three years but less than twelve years before the action was filed.

CJP § 5-102(a) allows that "[a]n action on one of the following specialties shall be filed within 12 years after the cause of action accrues"; the MCLL's licensing requirement would have to be "[a]ny other specialty" under CJP § 5-102(a)(6) to escape the three-year "blanket" limitations period found in CJP § 5-101.

Held:

In response to the certified question, this Court held:

The MCLL's licensing requirement is a specialty and actions on it are accorded a twelve-year limitations period. The Court applied the three-part test for a specialty under CJP § 5-102(a)(6) found in *Master Financial, Incorporated v. Crowder*, 409 Md. 51 (2009).

The first prong—that the duty is created solely by statute and does not otherwise exist at common law—was satisfied. The Court traced the history of the MCLL and licensing requirements for small loans in Maryland. Licensing dates to a 1912 statute and was imposed to protect borrowers in ways the common law did not.

The parties did not contest that the second prong—that the remedy pursued is authorized solely by the statute and does not otherwise exist under the common law—was satisfied, and the Court did not address it.

The Court held that the third prong—that damages for violating the statute, *i.e*., the MCLL's licensing requirement, are liquidated, fixed, or by applying clear statutory criteria, are readily ascertainable—was satisfied. The damages would comprise all payments made by Price and Chovan to Spicer. The need for fact-finding to determine that amount does not mean damages are not *readily* ascertainable.

Therefore, the licensing requirement of the MCLL is an "other specialty" within the meaning of CJP § 12-302 and actions on it are accorded a twelve-year limitations period.

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Wesley Cagle v. State of Maryland, No. 15, September Term 2018, filed December 13, 2018. Opinion by Hotten, J.

Adkins and Watts, JJ., join in judgment only.

https://mdcourts.gov/data/opinions/coa/2018/15a18.pdf

CRIMINAL PROCEDURE – EVIDENCE – CLOSING ARGUMENT

Facts:

Mr. Cagle was convicted of Assault in the First Degree and Use of a Firearm in Commission of a Felony or Crime of Violence. Mr. Cagle was sentenced to twelve years of incarceration on the Assault in the First Degree conviction and five years of incarceration on the Use of a Firearm in Commission of a Felony or Crime of Violence, to be served concurrently. At trial, Mr. Cagle sought to use a PowerPoint during his closing argument that contained video recorded excerpts of trial testimony, as well as a video recording of a pretrial statement made by the victim of the shooting that had been introduced into evidence during trial. After reviewing the PowerPoint and its contents, the trial judge permitted the inclusion of the pretrial statement video by the victim, but not the video excerpts from trial testimony. The trial judge noted that it was her practice to not permit the playing of such trial testimony during closing argument so as to not give the jury the impression that they would replay the entirety of the trial, nor indicate that one witness's testimony was more important than another's.

Mr. Cagle filed a timely appeal to the Court of Special Appeals, challenging the trial judge's prohibition of the use of video excerpts of trial testimony during closing argument. Mr. Cagle argued that the trial judge abused her discretion by applying a "hard-and-fast rule[,]" rather than considering the specific facts of the case. The Court of Special Appeals upheld the trial judge's ruling and concluded that there was no abuse of discretion. In so concluding, the Court of Special Appeals observed that Cagle still had the ability to reference trial testimony, use demonstrative aids, and present any recordings or documents that were already admitted into evidence.

Held: Affirmed.

The Court of Appeals held that a trial judge who considers the specific circumstances of the case and weighs the relevant factors at issue does not abuse their discretion by precluding a criminal defendant from playing video excerpts of trial testimony during closing arguments. The Court noted that while a party holds great leeway when presenting their closing remarks, a trial judge has broad discretion when determining the scope of closing argument. A proper exercise of this

discretion involves considering the particular circumstances of each case, and a failure to consider the relevant circumstances and factors presented may constitute an abuse of discretion.

The Court concluded that even though the trial judge stated that it had been her "practice for 17 years" not to permit the replaying of trial court video testimony during closing argument, the trial judge went on to consider the impact playing such videos would have on the case. The trial judge appropriately expressed concern that permitting the playing of video excerpts of trial testimony during closing argument would give the jury the impression that the entirety of the trial would be replayed and that it would improperly emphasize one witness's testimony over another. The Court concluded that there was no hard and fast rule that requires – or forbids – the use of a PowerPoint with video excerpts of trial testimony in closing argument and that the trial court's stated concerns regarding waste of time and juror confusion were well within the bounds of sound discretion and reason to justify its exclusion.

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Motor Vehicle Administration v. James R. Nelson, No. 26, September Term 2018, filed December 13, 2018. Opinion by Watts, J.

https://www.mdcourts.gov/data/opinions/coa/2018/26a18.pdf

MD. CODE ANN., TRANSP. (1977, 2012 REPL. VOL., 2018 SUPP.) § 16-205.1 – IMPLIED CONSENT, ADMINISTRATIVE PER SE LAW – MD. CODE ANN., CTS. & JUD. PROC. (1974, 2013 REPL. VOL.) § 10-305(a) – ALCOHOL CONCENTRATION TESTS

Facts:

James R. Nelson, Respondent, crashed a vehicle that he had been driving. Corporal Brandon Foor of the St. Mary's County Sheriff's Office approached the vehicle. Nelson—who was conscious, but unable to move—said that he was drunk. Corporal Foor smelled a strong odor of alcohol on Nelson's breath. Corporal Foor requested that Nelson take an alcohol concentration test, and Nelson refused. On behalf of the Motor Vehicle Administration ("the MVA"), Petitioner, Corporal Foor confiscated Nelson's commercial driver's license.

Nelson requested an administrative hearing, at which his counsel moved that an administrative law judge ("the ALJ") take no action against Nelson. The ALJ denied the motion to take no action, and determined that Nelson had violated Md. Code Ann., Transp. (1977, 2012 Repl. Vol., 2018 Supp.) ("TR") § 16-205.1. The ALJ ordered that Nelson's commercial driver's license be disqualified for 12 months, and that, instead of having his driver's license suspended for 270 days, Nelson would participate in the Ignition Interlock System Program.

Nelson petitioned for judicial review. The Circuit Court for Prince George's County reversed the ALJ's decision, reasoning that Corporal Foor was required to specifically request that Nelson take a blood test. The MVA filed a petition for a writ of certiorari, which the Court of Appeals granted.

Held: Reversed and remanded with instructions to affirm the ALJ's decision.

The Court of Appeals that, under TR § 16-205.1(b)(2)(ii)'s plain language, an officer is simply required to request that a driver who is detained on suspicion of driving or attempting to drive under the influence of or while impaired by alcohol take an alcohol concentration test; in other words, an officer is not required to specifically request that the driver take a blood test or a breath test. TR § 16-205.1(b)(2)(ii) states that an "officer shall . . . [r]equest that the person permit a test to be taken[.]" (Emphasis added). In turn, TR § 16-205.1(a)(1)(iii) defines the word "test" as a blood test, a breath test, or both. The Court explained that nothing in TR § 16-205.1 requires an officer to specify a type of alcohol concentration test when requesting such a test to be taken.

The Court also held that Md. Code Ann., Cts. & Jud. Proc. (1974, 2013 Repl. Vol.) ("CJ") § 10-305(a) did not impose such a requirement either. CJ § 10-305(a) lists the circumstances under which an officer must administer a blood test, as opposed to a breath test. For example, under CJ § 10-305(a)(1)(ii), where "[i]njuries to [a driver] require removal of the [driver] to a medical facility[,]" and the driver consents to an alcohol concentration test, it must be a blood test. The Court explained that no provision in CJ § 10-305(a) directs an officer to specifically request that a driver take a blood test.

The Court observed that a 1983 amendment to CJ § 10-305(a)'s predecessor demonstrated that there is no longer a need for an officer to specifically request that a driver take a blood test or a breath test. When CJ § 10-305(a)'s predecessor allowed drivers to choose between a blood test and a breath test, an officer was required to question a driver along the following lines: "Are you willing to take a breath test or a blood test? If so, which one?" The Court explained that, now that drivers no longer have the discretion to choose the type of test, it would be pointless for an officer to specify the type of test, as that is not up to the driver; to the contrary, it is determined by CJ § 10-305(a).

The Court noted that its conclusion furthered TR § 16-205.1's purpose, which is to reduce the incidences of drunk driving and to protect public safety by encouraging drivers to take alcohol concentration tests. The Court stated that, if it were to hold that an officer must specify the type of alcohol concentration test to be taken, then, where an officer requested that a drunk driver take an alcohol concentration test without identifying the type of alcohol concentration test, the drunk driver could freely refuse and avoid a suspension of his or her driver's license. The Court determined that holding that, for an advisement to be valid, an officer must specify the type of alcohol concentration test is not consistent with TR § 16-205.1's purpose of encouraging drivers to take alcohol concentration tests.

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I.B. v. Frederick County Department of Social Services, No. 1497, September Term 2016, filed November 29, 2018. Opinion by Sharer, J.

https://www.courts.state.md.us/data/opinions/cosa/2018/1497s16.pdf

ADMINISTRATIVE LAW – SUMMARY DECISION – FACTUAL SUPPORT – PRESERVATION

ADMINISTRATIVE LAW – SUMMARY DECISION – HEARING REQUIREMENT – STATUTORY ESTOPPEL

FAMILY LAW – INDICATED CHILD NEGLECT – IMPLIED ELEMENT OF SCIENTER

Facts:

Appellant took his children to church, unintentionally leaving his infant daughter in her car seat in the back of the car, on a hot day with the front windows slightly open. Appellant acknowledged that, while attending to the other children, he had forgotten that his daughter was in the car. The incident was reported to the Frederick County Department of Social Services (DSS), which initiated an investigation, ultimately making a finding of indicated child neglect.

Pursuant to Maryland Code (1984, 2012 Repl. Vol., 2015 Supp.), Family Law Article (FL) § 5-706.1(b)(1), appellant requested a contested case hearing in the Office of Administrative Hearings (OAH) to challenge the finding of indicated child neglect. Subsequently, and pursuant to a plea agreement, the State nol prossed the child neglect charge and appellant pleaded guilty to confinement of a minor, a misdemeanor, for which he was assessed a fine and afforded probation before judgment. Thereafter, DSS moved for summary decision to dismiss appellant's request for contested case hearing based on a lack of genuine dispute of material fact and on the finding of guilt in the criminal proceeding, pursuant to FL § 5-706.1(b)(3)(ii).

Appellant opposed the summary decision on the ground that the criminal charge was not similar to the family law neglect offense and that the criminal court did not find him guilty of neglect. The ALJ issued a summary decision granting DSS's motion, relying on the fact that appellant (1) failed to dispute any evidence that the finding of indicated neglect was based on the same incident as the guilty plea charge, and (2) the provisions of FL § 5-706.1(b)(3)(ii).

Appellant sought judicial review in the Circuit Court for Frederick County, which, following a hearing, affirmed the ALJ's decision to grant summary dismissal. On appeal from that affirmance to the Court of Special Appeals, appellant challenged the sufficiency of the factual record relied on by the ALJ, while also asking the Court to determine whether a hearing is required when a requisite element for a finding of abuse or neglect is contested and whether there is the same implied element of scienter or intent for instances of child neglect as there is for instances of child abuse.

Held: Affirmed.

The Court of Special Appeals held that an issue alleging a dispute of material fact that was not presented to the ALJ for its initial consideration of a motion for summary decision of a contested case hearing administrative appeal may not later be asserted for the first time on judicial review of the ALJ's decision.

The Court also held that the ALJ did not err in granting summary decision without a hearing, dismissing appellant's administrative appeal following his guilty plea to a related criminal charge that arose out of the finding of indicated child neglect pursuant to FL § 5-706.1(b)(3)(ii). Under the statute, if "the individual requesting the hearing is found guilty of any criminal charge arising out of the alleged … neglect, the [OAH] shall dismiss the administrative appeal." FL § 5-706.1(b)(3)(ii). Because of the strict limitations imposed by the statute, when DSS moved for summary decision to dismiss the administrative appeal based on the finding of guilt of the related criminal charge, and presented uncontroverted evidence that the finding of guilt of the related criminal charge arose out of the same finding of indicated neglect, the ALJ was deprived of the discretion to rule other than to dismiss the appeal.

Finally, the Court held as a matter of first impression that the Family Law Article § 5-701 definition of "Neglect" is distinguishable from the statute's definition of "Abuse" and does not imply the same element of scienter or intent, distinguishing *Taylor v. Harford Cty. Dep't of Soc. Servs*., 384 Md. 213 (2004) and *McClanahan v. Washington Cty. Dep't of Soc. Servs*., 445 Md. 691 (2015).

David Mills, et al. v. Galyn Manor Homeowner's Association, Inc., No. 1460, September Term 2017, filed December 21, 2018. Opinion by Berger, J.

https://mdcourts.gov/data/opinions/cosa/2018/1460s17.pdf

DEBT COLLECTION – CONSUMER PROTECTION – VICARIOUS LIABILITY – STATUTE OF LIMITATIONS – CONVERSION – SUMMARY JUDGMENT

Facts:

David and Tammy Mills (the "Homeowners") own a home in Frederick, Maryland and are members of Galyn Manor Homeowner's Association, Inc. ("Galyn Manor"). After discovering that the Homeowners repeatedly parked a trailer in their driveway, Galyn Manor notified the Homeowners that this conduct was in violation of Galyn Manor's governing documents. The Homeowners continued to park the trailer in their driveway despite receiving several warnings that they would be fined. Consequently, Galyn Manor imposed $1,500 in fines against the Homeowners. Around this time, the Homeowners also fell behind on their assessment payments. Galyn Manor subsequently retained Andrews & Lawrence Professional Services, LLC ("Andrews") to provide legal services and to collect the debts.

For approximately the next eight years, Andrews attempted to collect the unpaid parking fines and the Homeowners' overdue assessments. In December 2012, the Homeowners were notified that they owed more than $15,000 in assessments, interest, costs, and attorney's fees. The Homeowners never formally disputed any of the amounts owed, despite receiving notice of their rights under the Maryland Contract Lien Act. As part of its collection efforts, Galyn Manor filed several actions and received judgments in the District Court for Frederick County. Galyn Manor garnished funds from the Homeowners' bank account to satisfy one of the judgments.

After nearly ten years of collection efforts, the Homeowners filed suit against Galyn Manor in the Circuit Court for Frederick County. The Homeowners attempted to hold Galyn Manor liable under a theory of *respondeat superior* for Andrews' collection efforts. The Homeowners alleged that Andrews' collection efforts violated the Maryland Consumer Protection Act ("MCPA") and the Maryland Consumer Debt Collection Act ("MCDCA"). The Homeowners also brought conversion and breach of contract claims against Galyn Manor. Thereafter, Galyn Manor filed a motion for summary judgment.

The circuit court granted Galyn Manor judgment as a matter of law on the MCPA claim, noting that the MCPA specifically exempts attorneys. As a result, the circuit court found that Galyn Manor could not be held vicariously liable. The circuit court also granted Galyn Manor judgment as a matter of law on the MCDCA claim, ruling that the Homeowners improperly used the statute as a vehicle to dispute the validity of the debt, whereas the statute only proscribes certain methods of collecting the debt. Finally, the court granted Galyn Manor judgment as a matter of law on the conversion and breach of contract claims that arose before April 1, 2013,

finding that those alleged breaches were barred by the statute of limitations. The Homeowners' alleged claims that arose after April 1, 2013 proceeded to trial. At the close of the Homeowners' case, the court awarded Galyn Manor judgment as a matter of law, concluding that the Homeowners did not present sufficient evidence to satisfy the elements of a breach of contract or conversion claim.

Held:

Judgment of the Circuit Court for Frederick County affirmed, in part, and reversed, in part, and remanded for further proceedings.

The Homeowners raised four issues on appeal. First, the Homeowners argued that the circuit court erred in granting Galyn Manor judgment as a matter of law on their MCPA claim. The Court of Special Appeals observed that the MCPA and the Federal Fair Debt Collection Practices Act ("FDCPA") both contain exemptions for attorneys. The Court then discussed that, from a policy perspective, federal courts often refuse to hold defendants liable under the FDCPA. The Court reasoned that only debt collectors are subject to liability under the FDCPA. Thus, when a defendant does not qualify as a debt collector, the decision to hire an attorney to collect a debt is not predicated on evading FDCPA liability. In this case, the Court determined that Galyn Manor is a "person" potentially subject to liability under the MCPA. *See* Md. Code (1975, 2013 Repl. Vol.), § 13-303, of the Commercial Law Article ("CL"). As such, the Court held that it would be improper for Galyn Manor to evade liability by hiring an attorney to commit violations on its behalf. The Court further held that the circuit court erred in allowing Galyn Manor to assert Andrews' personal exemption.

The Court further addressed the Homeowners' MCDCA argument. The Homeowners contended that Galyn Manor violated the MCDCA when Galyn Manor attempted to collect overdue assessments, levied fines, charged interest and late fees, and filed liens that were allegedly in violation of the Maryland Contract Lien Act. In its opposition, Galyn Manor relied on the United States District Court for the District of Maryland's opinion in *Fontell v. Hassett*, 870 F. Supp. 2d 395 (2013). The court in *Fontell* dismissed an MCDCA claim against a homeowners' association finding that the MCDCA "is meant to proscribe certain methods of debt collection and is not a mechanism for attacking the validity of the debt itself." 870 F. Supp. 2d at 405. The Court of Special Appeals held that *Fontell* was not dispositive of this case because the Homeowners were not challenging the amount they owed. The Court reasoned that the Homeowners challenged Galyn Manor's right to file liens because the statute of limitations under the Maryland Contract Lien Act had allegedly passed. Thus, the Court held that the Homeowners could pursue a MCDCA claim.

Next, the Court analyzed the Homeowners' statute of limitations argument. The Homeowners contended that the continuing harm doctrine tolled the statute of limitations on the Homeowners' breach of contract claim because Galyn Manor's efforts in collecting the parking fines constituted a continued harm. The Court disposed of this argument, holding that the

Homeowners only alleged one breach of contract and the allegation of a single breach is insufficient to toll the limitations period even if damages continue to accrue.

Finally, the Court addressed the Homeowners' claim that the circuit court erred in granting Galyn Manor's motion for judgment on the conversion claim. To satisfy one of the District Court judgments, Galyn Manor garnished funds from the Homeowners' bank account. The Homeowners argued that Galyn Manor misappropriated the garnished funds when it applied the funds to the general arrears on the amount owed by the Homeowners rather than the overdue assessments. In the Homeowners' view, this alleged misappropriation constituted an unlawful conversion. The Court observed that to succeed on a conversion claim, a plaintiff must demonstrate that she had a possessory right at the time of the alleged conversion. The Court noted that the alleged conversion occurred after Galyn Manor legally garnished the money. The Court, therefore, rejected the Homeowners' claim because the Homeowners did not have a right to possess the money when it was allegedly converted.

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Ryan Lawrence Steck v. State of Maryland, No. 705, September Term 2017, filed November 28, 2018. Opinion by Battaglia, J.

https://mdcourts.gov/data/opinions/cosa/2018/0705s17.pdf

FOURTH AMENDMENT – PROBABLE CAUSE – CONTROLLED SUBSTANCES – ODOR DETECTION – USE OF A DOG

Facts:

In the early morning of August 7, 2016, Ryan Steck, appellant, was a passenger in a vehicle driving in the vicinity of First Street and St. Louis Avenue in Ocean City. After witnessing the vehicle make a left turn at a stop sign and almost cause an accident with another vehicle, a police officer on bicycle patrol with the Ocean City Police Department broadcasted a description over a radio network, requesting that another officer initiate a stop of the vehicle. Another police officer subsequently stopped the vehicle nearby and the officer who witnessed the unsafe driving arrived at the scene of the stop. After speaking with the occupants, the police officer began to write a warning and requested a K-9 unit.

The K-9 team arrived within a few minutes. The occupants of the car were then asked to exit the vehicle and sat on a nearby curb. The dog handler, with his dog, Simon, subsequently conducted a scan of the vehicle. Simon, however, began to pull between the vehicle and the occupants of the curb. While Simon exhibited behavior consistent with the presence of narcotics, he, nonetheless, failed to provide his final, trained alert.

Simon's handler, however, testified at a suppression hearing, in which Steck sought to exclude evidence discovered in the vehicle, that Simon struggled to provide his final, trained alert because he believed, based on Simon's behavior, that there were two sources of drug odor: the vehicle and the occupants. As such, the handler testified that probable cause existed to search the vehicle. A search of the vehicle yielded a discovery of one thousand bags of what turned out to be heroin.

Steck moved to suppress the fruit of the vehicle's search, which he contended violated the Fourth Amendment because the stop was not based on a valid reasonable suspicion that a traffic violation had occurred, the stop was unnecessarily prolonged to conduct the canine scan, and the search was not supported by probable cause because Simon failed to provide his final, trained alert.

Held: Affirmed.

The Court held that the vehicle's failure to yield to on-coming traffic, nearly causing an accident, provided the police officer reasonable suspicion to stop the vehicle for a suspected traffic violation.

The Court also held that the traffic stop was not unnecessarily prolonged for the purpose of conducting the canine scan of the vehicle, as only an eight-minute lapse in time occurred between the time of the stop and the time of the K-9 unit's arrival, which was not an undue delay.

The Court further held that Simon's alert to the presence of drugs in the car was sufficient to establish probable cause to search the car, even though he did not provide his final, trained alert that drugs were present. Simon's handler testified credibly that even though Simon did not provide a final alert, his behavior was consistent with the presence of drugs, albeit in two places.

Curtis Groves v. State of Maryland, No. 2146, September Term 2017, filed December 21, 2018. Opinion by Moylan, J.

http://www.mdcourts.gov/opinions/cosa/2019/2146s17.pdf

THE PROTECTIVE SWEEP INCIDENT TO ARREST – THE DEFINITION – THE PURPOSE IS OFFICER PROTECTION – THE SCOPE LIMITATIONS – THE MEASURE OF JUSTIFICATION IS REASONABLE SUSPICION – REASONABLE SUSPICION IS OBJECTIVELY ASSESSED

Facts:

On January 25, 2017, the Capital Area Regional Fugitive Task Force ("the Task Force") sought to arrest the appellant, Curtis Groves, pursuant to a violation of parole warrant issued by New York State. Groves had violated his parole by committing a firearms violation. In executing the warrant, the Task Force knocked on the door of 43 Charles Street, a residence shared by Groves and his girlfriend, Sidrease Morgan. Not having received a response, the Task Force elicited the assistance of Morgan's mother, Ms. Brown, who resided in the townhouse adjoining 43 Charles Street. Ms. Brown placed a telephone call to Morgan, prompting the latter to answer the door. Morgan confirmed that Groves was in the house, though she was unsure whether he was upstairs or in the basement. Morgan also confirmed that (i) she had seen Groves in possession of a firearm about a week prior and (ii) Groves was affiliated with a gang, to wit, "the Bloods."

Deputy Ryan Lee led approximately ten Task Force members into the house. Lee called out to Groves. When Groves did not respond, Lee proceeded to the kitchen. When Groves did not respond to yet another call, Lee accessed a stairway leading to the basement. He continued to call out for Groves. After about two minutes of Lee's doing so, Groves revealed himself at the bottom of the basement steps and partially ascended the staircase before being taken into custody. After escorting Groves to the kitchen, Task Force members conducted a five-minute protective sweep of the second floor followed by a sweep of the basement. In the basement, they observed in plain view a black object resembling a gun, ammunition, and "a brick shaped item … wrapped in a layer of white paper and then in clear plastic" which the officers suspected contained narcotics.

The officers' observations were included in an application for a search warrant for 43 Charles Street. A search and seizure warrant for the residence was issued and executed that same day. That search produced both a handgun and heroin.

Groves filed a motion to suppress the fruit of the search, contending that because there was inadequate evidence to warrant the "protective sweep," the search violated his Fourth Amendment rights. Had the observations made during that search been omitted from the warrant application, Groves argued, the application would not have established probable cause to justify

the warranted search of his home, and the contraband discovered during that later search was therefore fruit of the poisonous tree. Groves appeals the denial of that motion.

Held: Affirmed

The Court of Special Appeals held that the protective sweep did not violate the Fourth Amendment, as the circumstances surrounding Groves's arrest could objectively have created a reasonable suspicion that an armed and dangerous cohort of Groves's was lurking in the basement.

A protective sweep is "a quick and limited search of premises, incident to an arrest" for the exclusive purpose of ensuring that officer safety is not compromised by potentially dangerous persons lurking therein. *Maryland v. Buie*, 494 U.S. 325, 327 (1990). Commensurate with its purpose, a protective sweep's scope "extend[s] only to a cursory inspection of those spaces where a person may be found … [and] lasts no longer than is necessary to dispel the reasonable suspicion of danger[.] *Id*. at 326. As a purely protective search, the protective sweep is analogous to the *Terry* frisk, *see Terry v. Ohio*, 392 U.S. 1 (1968), and the search of a vehicle's passenger compartment during an investigative stop, *see Michigan v. Long*, 463 U.S. 1032 (1983), and accordingly shares the same threshold requirement. In order to conduct a valid protective sweep an officer generally must have "a reasonable belief … that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Buie*, 494 U.S. at 336–37. In determining whether reasonable suspicion existed in a particular case, courts employ an objective metric. The test, therefore, is whether "a reasonably prudent police officer, under those circumstances, is justified in forming a reasonable suspicion that the house is harboring a person posing danger to those on the arrest scene." *Buie v. State*, 320 Md. 696, 702 (1990).

In this case, Groves was a known gang member with a history of firearms violations. The basement in which he hid (and from which he refused to emerge) was dark. The police were unaware, moreover, whether the house contained additional occupants. Under these circumstances the police were justified in conducting a protective sweep of the basement following Groves's arrest. Accordingly, that protective sweep constituted a "prior valid intrusion" for the officers' plain view observations of the apparent firearm, ammunition, and narcotics, which, in turn, furnished probable cause for the issuance of the warrant.

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Daniel Mills v. State of Maryland, No. 950, September Term 2017, filed November 5, 2018. Opinion by Battaglia, J.

https://mdcourts.gov/data/opinions/cosa/2018/0950s17.pdf

CRIMINAL PROCEDURE – *BATSON V. KENTUCKY* – TRIAL COURT ERRED IN APPLYING A STATISTICAL TEST

Facts:

A jury convicted Daniel Mills, appellant, of possession of cocaine with intent to distribute as well as simple possession of that drug. Mills was thereafter sentenced to twelve years' imprisonment, with all but four years suspended, to be followed by three years' probation.

During jury selection, after the State made four peremptory strikes against African-American venirepersons, Mills raised a *Batson* challenge. The trial court, however, responded to his challenge by stating, that "[n]othing the State has done has changed the . . . basic appearance of the way the jury would have looked . . .. So I'm going to deny the motion, as a prima facie case has not been established yet."

After hearing defense counsel's argument on the challenge, the trial court further explained its denial, reasoning, that if 75 percent of the people who came in for voir dire were African-American women, "I would expect that 75 percent of the people who were stricken would be black females. . . .[t]hat's why I do a statistical analysis on how I'm expecting the jury to look and see whether or not actions taken by the parties is taking that out of balance."

On appeal, Mills primarily raised the issue as to whether the trial court erred in holding that the defendant failed to make a prima facie showing under *Batson v. Kentucky*, 476 U.S. 79 (1986), based solely on the court's finding that the racial makeup of the seated jury resembled the racial makeup of the jury pool.

Held: Remanded without affirmance or reversal.

The Court held that the circuit court erred in applying a statistical test to conclude that the defendant had failed to establish a prima facie case of discriminatory intent, as required by *Batson v. Kentucky*. Had the trial court applied the correct test, on the facts of this case, it would have been compelled to conclude that the defendant had satisfied his initial burden. In so holding, the Court reiterated that the Supreme Court has expressly rejected a statistical test at the first step of the *Batson* analysis.

As to an appropriate remedy, the Court held that, unless it is impossible to reconstruct the circumstances surrounding the peremptory challenges, due perhaps to the passage of time or the

unavailability of the trial judge, the proper remedy where the trial court does not satisfy *Batson*'s requirement is a new *Batson* hearing in which the trial court must satisfy the three-step process mandated by that case and its progeny.

In the instant case, the Court reasoned, it would not be impossible to reconstruct the circumstances surrounding the aborted *Batson* hearing, given the existence of the juror lists and the relatively brief time that has elapsed since trial. Moreover, the circuit court's error denied the State an opportunity at trial to explain its reasons for exercising the contested peremptory challenges. Accordingly, the remedy is a limited remand so that the circuit court may conduct a new *Batson* hearing.

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Nathans Associates v. The Mayor and City Council of Ocean City, No. 1240, September Term 2017, filed December 21, 2018. Opinion by Berger, J.

https://mdcourts.gov/data/opinions/cosa/2018/1240s17.pdf

ADVERSE POSSESSION – PUBLIC EASEMENT – LOCATION OF PLAT IN RELATION TO ON-THE-GROUND LOCATION – EVIDENTIARY SUFFICIENCY – RECUSAL

Facts:

In May of 2016, the Mayor and City Council of Ocean City ("Ocean City"), by letter, demanded that Nathans Associates ("Nathans") vacate a property located at 601 S. Atlantic Avenue in Ocean City, Maryland (the "Property"). The Property has been continuously occupied and controlled by Nathan Rapoport and his family for the last one hundred six years, and Nathans is a partnership comprised of Nathan Rapaport's granddaughter and great-grandchildren. In response, Nathans filed a complaint to quiet title and for declaratory judgment. The first count of the complaint sought to quiet title to the Property based upon a claim for adverse possession and was filed against the Sinepuxent Beach Company of Baltimore City, Inc., and any and all unknown persons having any legal or equitable right or claim of ownership to the Property. The second count sought a declaratory judgment that Ocean City had no rights or interest in the Property. The only response to Nathans' complaint was filed by Ocean City.

At trial, Ocean City conceded that Nathans and its predecessors had been in actual, open, notorious, exclusive, and continuous possession of the Property since 1912. Ocean City contested Nathans' adverse possession claim on the sole basis that the Property was located within a dedicated and accepted public easement prior to Mr. Rapoport's acquisition of title via adverse possession in 1932, and, therefore, title could not be obtained via adverse possession. The circuit court ruled in favor of Ocean City and ordered Nathans to vacate the Property. Nathans appealed, and the Court of Special Appeals entered an order staying the circuit court's order pending appeal.

Held: Reversed.

The Court of Special Appeals explained that Ocean City bore the burden of proving that the Property was within the Atlantic Avenue public easement in order to defeat Nathans' adverse possession claim. In order to prove that the Property was within the public easement, Ocean City was required to prove that the Property was located with the area of the parcel designated as Atlantic Avenue that was conveyed by an 1876 deed.

The parties did not dispute that a dedicated and accepted public easement was created on Atlantic Avenue when the parcel was conveyed in 1876 and the Town of Ocean City was

subsequently created in 1880. Rather, the parties disputed whether the evidence sufficiently established that the Property was within the public easement area. The Court of Special Appeals examined the evidence presented at trial, including the 1876 deed and accompanying plat that established the location of the easement and a current aerial photograph of the Property. The southernmost street appearing on the plat was a diagonal street labeled "Division Street," and the current aerial photograph shows the Property appearing at the end of a diagonal street labeled "South Division Street." The circuit court concluded that because the Property appears to be located north of the center of South Division Street today, it is within the original Town of Ocean City boundaries, and, therefore, within the public easement.

The Court of Special Appeals agreed with the circuit court that the aerial photograph appeared to establish that the Property is located north of the center of South Division Street as the street is located today, but determined that the evidence was insufficient to establish that the Property was located north of Division Street as indicated on the 1876 Plat. The Court emphasized that the only basis for the circuit court's conclusion as to the location of the Property in connection to the 1876 Deed was the Deed itself. The Court observed that Ocean City had proffered at trial that it would introduce evidence through expert testimony from Ocean City's city engineer that the Property was located within the original Town boundaries, but the circuit court concluded that the city engineer was not qualified to testify as to the on the ground location of the Property. The Court emphasized that Ocean City did not call, at any time, a licensed surveyor or any other expert witness who could have testified as to the original boundaries of Ocean City as established by the 1876 Deed or interpreted the plat in relationship to the Property's actual location on the ground and the streets in existence today.

The Court noted the unique challenges presented in a nearly 150-year old handwritten deed and hand drawn plat and emphasized that Ocean City did not present any evidence to assist in the interpretation of the plat vis-à-vis the actual location of various streets and buildings in modern-day Ocean City. The Court concluded, based upon the unique facts and circumstances of the case, that additional evidence was required to close this analytical gap and held that there was insufficient evidentiary support for the circuit court's conclusion that the Property was located within the boundaries of the dedicated and accepted public easement of Atlantic Avenue.

The Court of Special Appeals further addressed Nathans' motion to recuse the circuit court judge, holding that the circuit court did not abuse its discretion by denying the recusal motion when the recusal motion was premised only upon the trial judge's innocuous 1972 letter that referenced the Property but was irrelevant to the issues involved in the case at bar.

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ATTORNEY DISCIPLINE

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By an Order of the Court of Appeals dated December 12, 2018, the following attorney has been suspended by consent for sixty days, effective September 28, 2018:

SETH ADAM ROBBINS

*

By an Order of the Court of Appeals dated November 5, 2018, the following attorney has been suspended by consent for thirty days, effective December 5, 2018:

CHARLES BOILEAU BAILEY

*

This is to certify that the name of

DAVID EUGENE BOCCHINO

has been replaced upon the register of attorneys in this State as of December 12, 2018.

*

This is to certify that the name of

SUNG KOOK CHUN

has been replaced upon the register of attorneys in this State as of December 12, 2018.

*

By an Order of the Court of Appeals dated December 12, 2018, the following attorney has been indefinitely suspended by consent:

JOHN ALEXANDER GIANNETTI, JR.

*

*

By an Opinion and Order of the Court of Appeals dated December 14, 2018, the following attorney has been suspended for sixty days:

YOLANDA MASSAABIOSEH THOMPSON

*

This is to certify that the name of

SETH ADAM ROBBINS

has been replaced upon the register of attorneys in this State as of December 19, 2018.

*

By an Opinion and Order of the Court of Appeals dated December 20, 2018, the following attorney has been disbarred:

BENJAMIN JEREMY WOOLERY

*

By an Order of the Court of Appeals dated December 14, 2018, the following attorney has been disbarred by consent, effective December 31, 2018:

RONALD BRUCE BERGMAN

*

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JUDICIAL APPOINTMENTS

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On November 20, 2018, the Governor announced the appointment of **WYTONJA ("TONJA") LaCHERYL CURRY** to the Circuit Court for Prince George's County. Judge Curry was sworn in on December 21, 2018 and fills the vacancy created by the retirement of the Hon. Hassan A. El-Amin.

*

On November 20, 2018, the Governor announced the appointment of **PATRICK JOSEPH DEVINE** to the Circuit Court for Charles County. Judge Devine was sworn in on December 29, 2018 and fills the vacancy created by the retirement of the Hon. Helen I. Harrington.

*

RULES ORDERS AND REPORTS

A Rules Order pertaining to the One Hundred Ninety-Eighth Report of the Standing Committee on Rules of Practice and Procedure was filed on December 4, 2018.

http://mdcourts.gov/sites/default/files/rules/order/ro198.pdf

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A Rules Order pertaining to the One Hundred Ninety-Eighth Report of the Standing Committee on Rules of Practice and Procedure was filed on December 12, 2018.

http://mdcourts.gov/sites/default/files/rules/order/ro198a.pdf

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UNREPORTED OPINIONS

The full text of Court of Special Appeals unreported opinions can be found online:

https://mdcourts.gov/appellate/unreportedopinions

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