

Amicus Curiarum

VOLUME 37
ISSUE 3

MARCH 2020

A Publication of the Office of the State Reporter

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COURT OF APPEALS

Attorney Grievance Commission of Maryland v. William Clark Planta, Misc. Docket AG No. 62, September Term 2018, filed February 28, 2020. Opinion by Battaglia, J.

<https://www.mdcourts.gov/data/opinions/coa/2020/62a18ag.pdf>

ATTORNEY DISCIPLINE – SANCTIONS – DISBARMENT

Facts:

The Attorney Grievance Commission of Maryland, acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action with the Court of Appeals alleging that William Clark Planta violated Maryland Attorneys’ Rules of Professional Conduct (“MARPC”) 1.1 (Competence), 1.2 (Scope of Representation), 1.4 (Communication), 1.5 (Fees), 1.15 (Safekeeping Property), 1.16 (Declining or Terminating Representation), 3.2 (Expediting Litigation), 3.3(a)(1) (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Attorney), 8.1 (Bar Admission and Disciplinary Matters), 8.4(a) (Violating MARPC), 8.4(c) (Dishonesty, Fraud, Deceit or Misrepresentation) and 8.4(d) (Conduct that is Prejudicial to the Administration of Justice).

Bar Counsel contemporaneously served Planta with the Petition for Disciplinary or Remedial Action and interrogatories, requests for documents and admission of facts as well as genuineness of documents, to which Planta failed to respond. Judge Jill Cummins of the Circuit Court for Montgomery County, who had been assigned to preside over the disciplinary proceeding, entered a default judgment and order of sanctions against Planta, which resulted in the Petition’s averments being admitted and precluded Planta from presenting any witnesses or documents at any hearing on the disciplinary matter.

After reviewing the record, Judge Cummins found that, in a number of instances, Planta failed to deposit unearned fees in an attorney-trust account and failed to return fees to clients that were unearned upon request. Judge Cummins also found that, on a number of occasions, Planta failed to respond to discovery requests in cases which resulted in the imposition of sanctions against his clients. He also completely failed to communicate with his clients. In one case, an appeal period had run resulting in the client losing the opportunity to appeal an adverse decision based upon Planta’s inaction and failure to respond to the client’s requests for information. He also

continuously failed to timely appear or appear at all at judicial proceedings. On one occasion, he lied to the judge about the reason as to why he was late.

Planta also failed to appear at the hearing before the Court of Appeals.

Held: Disbarred.

The Court of Appeals disbarred Planta following oral argument on December 5, 2019. The Court later filed an opinion in which it accepted the factual findings of the circuit court and agreed with the hearing judge's recommended conclusions of law that Planta had violated the MARPC as charged.

The Court concluded that Planta violated Rule 8.4(c) based upon his misrepresentation to the court and his misappropriation of client funds, conduct which was also prejudicial to the administration of justice, in violation of Rule 8.4(d). The Court further concluded that Planta's failure to communicate with his clients and his failure to return clients' unearned money also prejudiced the administration of justice. Accordingly, the Court determined that these Rule violations warranted disbarment.

Attorney Grievance Commission v. Charles Darrow Yates, Misc. Docket AG No. 53, September Term 2018, filed February 28, 2020. Opinion by McDonald, J.

Watts, J., dissents.

<https://mdcourts.gov/data/opinions/coa/2020/53a18ag.pdf>

ATTORNEY DISCIPLINE – WILLFUL FAILURE TO FILE TAX RETURNS AND PAY TAXES – SUSPENSION

Facts:

Respondent Charles Darrow Yates failed to file federal and State tax returns or pay federal and State income taxes for tax years 2011-2017.

Bar Counsel initiated an investigation of Mr. Yates as a result of his disclosure to Bar Counsel in an unrelated investigation into one his colleagues that he was behind in his tax filings. The investigation uncovered the extent of Mr. Yates’ failure to file returns or pay taxes during the seven-year period, with the exception that in 2015 he had made some payments to the Internal Revenue Service and entered into a monthly payment plan with the Comptroller of Maryland.

In January 2019, the Attorney Grievance Commission filed a Petition for Disciplinary or Remedial Action against Mr. Yates alleging violations of the Maryland Attorneys’ Rules of Professional Conduct, 19-308.4(a)-(d) (“Rule 8.4(a)-(d)”) arising out of his willful failure to file returns or pay taxes. The hearing judge found that Mr. Yates violated Rule 8.4(a) & (d) but not Rule 8.4(b) & (c). The hearing judge, additionally, made findings of fact regarding relevant aggravating and mitigating factors. Mr. Yates did not file exceptions. The Commission, through Bar Counsel, excepted to the hearing judge’s legal conclusion that Mr. Yates did not violate Rule 8.4(b) & (c) and to his factual finding that Mr. Yates’ attention deficit and related disorders was a mitigating factor.

Held:

Mr. Yates’ willful failure to file federal and State tax returns or pay federal and State taxes for tax years 2011-2017 violated Rule 8.4(a), (b), (c), and (d). Awareness of an obligation to file taxes and a voluntary violation of that legal duty constitutes “willful” within the meaning of the federal and State criminal tax statutes, even without a showing of a fraudulent motive or dishonest intent, and, accordingly, a violation of 8.4(b) (criminal act that reflects adversely on the attorney’s honesty). Furthermore, failure to file over an extended period of time is clear and convincing evidence of dishonesty, even in the absence of affirmative misrepresentations to the relevant tax authorities in violation of 8.4(c) (conduct involving dishonesty).

Although the Court sustained Bar Counsel's exception that Mr. Yates' medical diagnosis should not be a mitigating factor, the Court determined that in consideration of his various other mitigating factors, which included Mr. Yates' disclosure of his tax delinquency to Bar Counsel, his substantial good faith efforts to file tax returns and repay most of his tax debt inclusive of interest and penalties, the absence of a selfish pecuniary motive, his remorse, and otherwise good character and reputation, the appropriate sanction was a 60-day suspension with a condition for reinstatement that he must provide confirmation that he is current on required federal and state tax filings and on his payment plans for the remaining back taxes with the IRS and the Comptroller of Maryland.

COURT OF SPECIAL APPEALS

Thomas H. Stevenson v. Edgefield Holdings, LLC, No. 914, September Term 2018, filed February 28, 2020. Opinion by Wells, J.

<https://mdcourts.gov/data/opinions/cosa/2020/0914s18.pdf>

CIVIL LAW – POST-JUDGMENT – GARNISHMENT – JOINT ACCOUNTS & UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

Facts:

In 2009, a Florida court entered a judgment against appellant, Thomas Stevenson, a guarantor on a business loan held by Atlantic Coast Bank (“Atlantic Coast”). Atlantic Coast sued Stevenson after a default on the note. In 2017, Atlantic Coast’s successor in interest, appellee, Edgefield Holdings, L.L.C. (“Edgefield”), registered the Florida judgment in Maryland. Edgefield sought to satisfy the debt by garnishing Stevenson and his wife’s joint bank accounts, opened in 2013 and 2016.

Stevenson challenged the garnishment under Maryland Code, Courts and Judicial Proceedings Article § 11-603 (1974, 2013 Repl. Vol.). That section says that a joint account may not be garnished if one of the account holders is not a judgment debtor and the account was established “prior to the date of entry of the judgment giving rise to the garnishment.” Stevenson argued that his wife is not a judgment debtor and their jointly held bank accounts were established before November 22, 2017, the date that Edgefield registered the judgment in Maryland. Edgefield argued that the “date of entry of judgment” is the date that its predecessor in interest, Atlantic Coast, obtained the original judgment in Florida: October 6, 2009. The circuit court, citing the United States Constitution’s Full Faith and Credit clause, found for Edgefield and enforced the garnishment.

Held: Reversed.

Stevenson appealed to the Court of Special Appeals to determine the proper date of entry of a foreign judgment to be used when a court is asked to garnish a jointly held bank account. Under

Maryland Code, (1974, 2013 Repl. Vol.), Courts and Judicial Proceedings § 11-603(a)(1), where only one spouse is a judgment debtor, when executing a judgment on property held jointly by spouses in a bank, trust company, credit union, savings bank, or savings and loan association is not subject to garnishment. The General Assembly provided one exception. Courts and Judicial Proceedings §11-603(a)(2) states that when executing a judgment, property jointly held in these accounts by such spouses may be garnished *unless* the joint account was established “prior to the date of entry of judgment giving rise to the garnishment.”

In determining whether this exception applies to a foreign judgment recognized in Maryland under the Uniform Enforcement of Foreign Judgments Act, Courts and Judicial Proceedings §11-801 through 11-807, we hold that the date of entry of judgment giving rise to the garnishment is the date that a Maryland court recognizes the foreign judgment. Only then may the judgment be enforced by garnishment.

Gary Antoine v. State of Maryland, et al., No. 2880, September Term 2018, filed January 30, 2020. Opinion by Fader, C.J.

<https://mdcourts.gov/data/opinions/cosa/2020/2880s18.pdf>

CRIMINAL LAW – APPEALS – VICTIMS’ RIGHTS

CRIMINAL PROCEDURE – SENTENCING – VICTIM IMPACT EVIDENCE

CRIMINAL PROCEDURE – VICTIMS’ RIGHTS – REMEDIES

CONSTITUTIONAL LAW – FIFTH AMENDMENT – VICTIMS’ RIGHTS

Facts:

Dorian Bostic physically attacked Gary Antoine and was charged in the Circuit Court for Baltimore City. Prior to Mr. Bostic’s scheduled trial date, Mr. Antoine informed the assigned prosecutor that he wished to testify. The prosecutor told Mr. Antoine not to appear in court on that date because the prosecutor expected the trial to be continued. On the scheduled trial date, Mr. Bostic appeared in court and negotiated a plea bargain under which he received a disposition of probation before judgment. Although the stand-in prosecutor told the trial court that Mr. Antoine had been told not to attend and was on call, the court approved Mr. Bostic’s plea agreement without hearing victim impact testimony or receiving victim impact evidence from Mr. Antoine.

Shortly thereafter, Mr. Antoine moved to set aside Mr. Bostic’s plea and disposition due to the violation of Mr. Antoine’s rights as a crime victim. The court expressed disbelief that it could vacate Mr. Bostic’s plea agreement saying, “I don’t believe I have the authority to vacate this and then impose a stronger, a more stringent sentence.” The court offered Mr. Antoine the opportunity to speak before it formally imposed the agreed disposition, but Mr. Antoine declined.

Mr. Antoine appealed pursuant to § 11-103(b) of the Criminal Procedure Article (Repl. 2018; Supp. 2019), which allows “a victim of a crime for which the defendant . . . is charged” to “file an . . . appeal to the Court of Special Appeals from a final order that denies or fails to consider a right secured to the victim” by a number of specified provisions. Specifically, Mr. Antoine asserted that had been denied his right to submit a victim impact statement for the court to consider, under § 11-402(b) and (d), and “to address the court under oath before the imposition of sentence or other disposition,” under § 11-403(b).

Held: Vacated and remanded.

The Court began by reviewing the history of crime victims' rights in Maryland. Provided by statute since 1982, and by Article 47 of the Declaration of Rights since 1994, victims' rights nevertheless had been impeded by a lack of effective redress for their violation. In a series of decisions, the Court of Appeals highlighted victims' lack of effective appellate rights and their inability to have criminal judgments reopened or vacated. The General Assembly responded in 2013 by revising § 11-103 in several respects. The revised statute extended appellate rights to victims of all crimes (rather than only violent crimes), allowed victims to file appeals as of right (rather than merely applications for leave to appeal), and empowered courts to grant any relief to victims whose rights were violated provided that it did not violate defendants' constitutional right to be free from double jeopardy (and that, if a sentence of incarceration would be modified, the victim requested relief within 30 days of the alleged violation). As a result of the 2013 amendments to § 11-103, the Court held that Mr. Antoine had standing to challenge the trial court's alleged violations of his rights.

On the merits, the Court concluded that the trial court had violated Mr. Antoine's rights under §§ 11-402(b) and (d) and 11-403(b). Mr. Antoine sufficiently had invoked his rights because the trial court, the prosecutor, and the defendant all knew that he wished to be heard. The trial court violated those rights because it had not allowed Mr. Antoine an opportunity to testify under oath or submit a victim impact statement before it bound itself to give Mr. Bostic probation before judgment. Thus, the Court held that when a crime has produced an identifiable victim who has made known his or her desire to submit a victim impact statement and provide testimony before disposition, a trial court must defer its decision to approve or reject a plea agreement until the victim has been afforded a reasonable opportunity to exercise those rights.

The more difficult question was what remedy to provide. The trial court had thought that it lacked authority to revise Mr. Bostic's sentence after agreeing to the plea agreement. The Court disagreed, and (1) vacated Mr. Bostic's sentence and the trial court's approval of the plea agreement (but not its conditional acceptance of Mr. Bostic's guilty plea), and (2) remanded for further consideration of the plea agreement after affording Mr. Antoine his statutory rights. On remand, the Court held, the trial court either could again approve Mr. Bostic's plea agreement or reject the plea agreement pursuant to Rule 4-243(c)(4).

The Court explained that its remedy vindicated Mr. Antoine's rights and did not violate Mr. Bostic's constitutional right to be free from double jeopardy. Because the trial court would not yet have bound itself to a particular sentence, it could take Mr. Antoine's victim impact evidence into account before deciding whether to approve the plea agreement. And the vacatur of Mr. Bostic's sentence, but not his conditional guilty plea, did not place him twice in jeopardy. The only way that Mr. Bostic's guilty plea would be undone would be if he himself elected to withdraw it.

State of Maryland v. Karl Smith, No. 2094, September Term, 2018, filed January 30, 2020. Opinion by Fader, C.J.

<https://mdcourts.gov/data/opinions/cosa/2020/2094s18.pdf>

CRIMINAL PROCEDURE – PLEA AGREEMENTS – MOTIONS FOR JUDGMENTS OF ACQUITTAL

CRIMINAL PROCEDURE – COMMON LAW – DOUBLE JEOPARDY

CRIMINAL PROCEDURE – APPEALS BY THE STATE – STATUTORY AUTHORIZATION

Facts:

On June 21, 2018, Karl Smith appeared before the Circuit Court for Baltimore City facing several charges relating to the possession of a firearm and ammunition. At the beginning of the hearing, Mr. Smith’s attorney advised the court that the State had extended a plea deal in exchange for a guilty plea to one count of wearing, carrying, or transporting a handgun in a vehicle in violation of § 4-203(a)(1)(ii) of the Criminal Law Article (2012 Repl.). After an examination of Mr. Smith by his counsel, the circuit court found that Mr. Smith was “tendering [his] guilty plea freely, knowingly and voluntarily,” and stated: “I accept your plea of guilty.”

At the court’s request, the prosecutor provided a statement of facts in support of the guilty plea. After the prosecutor finished reading the statement, Mr. Smith’s counsel stipulated, “No additions, modifications or deductions.” The circuit court then asked the prosecutor, “Do you have an Operability Report?” The prosecutor did not respond, and Mr. Smith’s counsel stated, “Your Honor, I make a motion.” The court replied, “Motion is granted. Case is dismissed.” Mr. Smith’s counsel told him, “[Y]ou’ve been acquitted of all the charges.” The clerk docketed Mr. Smith’s motion as a motion for judgment of acquittal, granted by the circuit court as to all charges. The State appealed.

Held: Reversed.

The Court began by discussing general principles governing plea bargains, dismissal, and acquittals in criminal cases. Because Rule 4-324 permits a defendant to move for a judgment of acquittal only (1) at the conclusion of the State’s evidence or (2) at the close of all the evidence, and Rules 4-242 and 4-243 do not allow the parties to present evidence at a pretrial guilty plea hearing, the Court concluded that a defendant cannot make—and a trial court cannot consider—a motion for judgment of acquittal during a pretrial hearing concerning whether a court will accept a guilty plea or approve a plea agreement. Instead, if the trial court finds the factual basis in support of the plea insufficient or otherwise finds the plea agreement deficient, then its only option is to reject the plea and enter a plea of not guilty pursuant to Rule 4-242(c).

The Court proceeded to address Mr. Smith's motion to dismiss the State's appeal on the basis of Maryland's common law protection against double jeopardy. The Court denied the motion on two independent grounds. First, the Court held that the substance of the trial court's action was a dismissal, not an acquittal, because it was based not on a consideration of the State's evidence, but on the State's inability to produce a particular piece of evidence at a time when it had no obligation to produce its evidence. Relying on *State v. Hallihan*, 224 Md. App. 590 (2015), the Court noted that all that was before the trial court was the prosecutor's statement identifying the factual basis for Mr. Smith's guilty plea, and the purpose of such a statement is to ensure the voluntariness of the plea, not to test the sufficiency of the State's case. Because the judgments were, in substance, dismissals, double jeopardy did not bar the State's appeal.

Second, relying on *Johnson v. State*, 452 Md. 702 (2017), the Court held that the trial court was "totally without authority to act" when it purported to acquit Mr. Smith. It was without authority to acquit under Rule 4-324 because trial had not even started, much less proceeded to the conclusion of the State's evidence; and it was also without authority to dismiss because its only permissible actions with respect to the guilty plea and plea agreement were to accept or reject the former under Rule 4-242(c) and approve or reject the latter under Rule 4-243(c). Because the trial court was "totally without authority to act," double jeopardy did not bar the State's appeal.

Extending *Johnson*, the Court held that the State's appeal also was authorized by § 12-302(c) of the Courts & Judicial Proceedings Article. For double jeopardy purposes, the substance of a court's action is what governs, and the Court adopted the same rule for purposes of statutory appealability. Thus, the Court held that a nominal acquittal that was in substance a dismissal and that was entered in a circumstance in which a trial court was "totally without authority to act," was a dismissal for purposes of determining the State's statutory right to appeal. The Court denied Mr. Smith's motion to dismiss the State's appeal.

Finally, on the merits, the Court held that the circuit court erred by entering judgment in favor of Mr. Smith due to the State's failure to produce an operability report upon demand during a pretrial hearing to consider approval of a plea agreement. The Court reversed the judgments and remanded for further proceedings.

Daniel S. Muffoletto v. Donna S. Towers and the Council of Unit Owners of Cambridge Landing Townhouse Condominium, No. 1850, September Term 2017, filed January 31, 2020. Opinion by Kenney, J.

<https://mdcourts.gov/data/opinions/cosa/2020/1850s17.pdf>

STATUTE OF LIMITATIONS – COMPUTATION OF PERIOD OF LIMITATION – ACCRUAL OF RIGHT OF ACTION OR DEFENSE – CONTINUING INJURY

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WATER LAW – RIPARIAN AND LITTORAL RIGHTS – IN GENERAL – WHO ARE RIPARIAN OWNERS

WATER LAW – RIPARIAN AND LITTORAL RIGHTS – EASEMENTS

APPEAL AND ERROR – SCOPE AND EXTENT OF REVIEW – DISCOVERY – SANCTIONS

Facts:

The case involves a dispute between two unit owners in a waterfront condominium regime regarding the width of their assigned boat slips. As now constructed, the width of appellant’s slip is thirteen-feet and appellee’s slip is nineteen-feet. Appellant became aware of the different widths shortly after buying his unit on June 18, 2004. Appellant alleged that the mooring piles separating the two slips were moved by the unit owners’ predecessors-in-title approximately thirty-five years ago. For that reason, he sought a declaratory judgment that the slips were intended and initially constructed to be equal widths of sixteen feet each, and sought injunctive relief requiring that the mooring piles be moved to provide each party a slip sixteen-feet wide.

During the discovery stage of this case, when appellee received what it considered non-responsive answers to interrogatories she moved to compel proper responses from appellant, which the court granted and ordered appellant to respond by a set date. When appellant failed to submit his answers to appellee as ordered, appellee responded with a motion for sanctions. Finding a failure to provide responses as ordered and prejudice to appellee, the trial court concluded that sanctions were appropriate.

The trial court granted summary judgment in favor of the appellee based on limitations and laches. Appellant challenged the trial court's grant of summary judgment, contending that limitations renew every day that the mooring piles remain in their present location. More specifically, he advanced the concept of "continuing harm" to toll the statute of limitations, arguing that he suffered continuing harm from the alleged moving of the mooring piles.

Appellant also challenged the trial court's decision to impose a sanction for appellant's discovery violation as an abuse of discretion. He argued that the trial court erred by failing to consider the factors set forth in *Taliaferro v. State*, 295 Md. 376, 390 (1983).¹

Held: Affirmed.

Judgment of the Circuit Court for Dorchester County affirmed; Case remanded to that court for entry of a separate declaratory judgment in accordance with the opinion. Costs to be paid by appellant.

The continuing harm doctrine rests on a new affirmative act and does not apply to a continuing effect of an earlier act, which, in this case, was the alleged moving of the mooring piles.

Laches is an equitable defense intended to ensure fairness in the judicial system. Based upon grounds of sound public policy, it discourages fusty demands for the peace of society. It applies when an aggrieved party has burdened the defense by an unreasonable delay in asserting a cause of action. In this case, the mooring piles have been in their present location for thirty-five years, and it appears that only the persons who could provide definitive information surrounding their current placement both died before this suit was filed.

When ruling on discovery disputes, circuit courts have broad discretion in determining whether sanctions should be imposed. But before imposing sanctions, a circuit court should consider the factors set out in *Taliaferro v. State*, 295 Md. 376, 390–91 (1983), and whether the sanctioned violations were persistent and deliberate. But it is not necessary for the court to go through a checklist and note its consideration for each factor because these factors frequently overlap and do not lend themselves to a compartmental analysis. For that reason, we do not look at each incident in isolation, but rather within the history and context of the entire case. Here, the trial court found that there were both technical and substantial violations; that appellant failed to correct the violations; that appellant failed to offer any reason for the violations; that appellee was prejudiced by them; and that the resulting prejudice would not be cured by a postponement. Therefore, the trial court did not abuse its discretion in imposing sanctions.

¹ In pertinent part, the *Taliaferro* factors are:

- (1) Whether the disclosure violation was technical or substantial,
- (2) The timing of the ultimate disclosure,
- (3) The reason, if any, for the violation,
- (4) The degree of prejudice to the parties respectively offering and opposing the evidence,
- (5) Whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance.

Taliaferro, 295 Md. at 390-391 (enumeration added).

Montgomery County, Maryland v. Fernando Rios, No. 2642, September Term 2018, filed February 28, 2020. Opinion by Beachley, J.

<https://mdcourts.gov/data/opinions/cosa/2020/2642s18.pdf>

WORKERS' COMPENSATION – STATUTE OF LIMITATIONS

Facts:

Rios filed a request for modification of his workers' compensation award, alleging permanent partial disability, less than one month before the expiration of the statute of limitations. At the time of filing, he had not yet obtained a medical evaluation for permanent impairment as required by COMAR 14.09.09.02B. He obtained the medical evaluation prior to the hearing but after the statute of limitations had expired. The Workers' Compensation Commission held that Rios's claim was not barred by the statute of limitations and awarded the modification.

The County noted a record appeal to the Circuit Court for Montgomery County, alleging that Rios's claim was barred by the statute of limitations due to Rios's failure to obtain the medical evaluation prior to the expiration of limitations. The circuit court affirmed the Commission's decision, and the County appealed.

Held: Affirmed.

Section 9-736(b)(3) of the Labor and Employment Article only requires that the modification of the award be "applied for" within the limitations period. Consistent with *Gang v. Montgomery Cty.*, 464 Md. 270 (2019), which held that failure to file a Motion for Modification form required under COMAR within the limitations period does not bar an otherwise timely claim, Rios was likewise not required to have a written medical evaluation prior to the expiration of limitations. Thus, the Court rejected the County's argument that COMAR imposed an additional requirement—obtaining a written medical evaluation—to satisfy limitations as prescribed by LE § 9-736(b)(3). Furthermore, the Court rejected the County's argument that, absent a written medical evaluation, Rios could not have a "basis in fact" for his modification request as required by *Buskirk v. C.J. Langenfelder & Son, Inc.*, 136 Md. App. 261 (2001).

ATTORNEY DISCIPLINE

*

By a Per Curiam Order of the Court of Appeals dated February 6, 2020, the following attorney has been disbarred:

SAMUEL EDWARD HENSLEY

*

By an Order of the Court of Appeals dated February 11, 2020, the following attorney has been placed on inactive status by consent:

NEDA BIGGS

*

By an Order of the Court of Appeals dated February 28, 2020, the following attorney has been suspended:

THOMAS IAN MOIR

*

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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