

Recent Developments in the Law

Vol. No. XLIII

September 2002

In order to keep you abreast of the recent developments in the law, we are reporting the substance of several current decisions of major import in the jurisdictions of Maryland, the District of Columbia, and Virginia

This material is being provided for your general information only, and is not a substitute for obtaining legal advice. The information provided is not given as legal advice nor in the course of an attorney-client relationship. You should always consult an attorney for advice about the specific circumstances of your case.

Recent Developments

in the Law

Jeffrey R. Schmieler, Esquire
Saunders & Schmieler, P.C.
8737 Colesville Road
Suite L-200
Silver Spring, Maryland 20910
(301) 588-7717
www.sslawfirm.com

© Saunders & Schmieler, P.C. 2002

MARYLAND COURT OF APPEALS

MARYLAND COURT OF SPECIAL APPEALS

Workers' Compensation - Wrongful Death -- *Ditto v. Stoneberger*, 2002 WL 1973818 (Md. App. August 28, 2002). The Court of Special Appeals affirmed a jury verdict which awarded damages to the estate of a mentally retarded man who was killed when a metal pipe fell off the roof of a building which was being demolished and struck him in the head. The court also affirmed the award of damages to the sister of the deceased, who was also mentally retarded, and to the niece of the deceased. In a matter of first impression, the court held that the sister and niece of the deceased were substantially dependent on his social security income, and thus had standing to recover wrongful death benefits. The test for such dependency is whether the financial support was in fact relied upon for livelihood under circumstances which indicated an intent on the part of the deceased to furnish such support. The court looked to the dictionary definition of "substantial" in its decision that the deceased's contribution to both his sister and niece was of real worth and considerable value.

Attorney-Client Privilege - Breach of Contract -- *Elkton Care Center Associates T/A Medpointe v.*

Quality Care Management, Inc., 2002 WL 1980452 (Md. App. August 29, 2002). The Court of Special Appeals affirmed a jury verdict in favor of the management company which had brought action against a nursing home owner for breach of contract. The nursing home owner's appeal was based on the fact that the trial judge had allowed into evidence attorney work-product memoranda outlining defenses to a wrongful termination action which had inadvertently been included in discovery material. The appellate court adopted the five-factor "intermediate" test for determining whether attorney-client privilege had been waived. The reasonableness of precautions taken to prevent inadvertent disclosure, the number of inadvertent disclosures, and the extent of the waiver all favored waiver in this case since the privileged document was contained in a half-full box of documents and was tabbed for discovery by the plaintiffs. And, the delay and lack of measures taken to rectify disclosure and the lack of overriding interests of justice served by relieving the party of its error also strongly favored waiver.

Declaratory Judgments - Insurance Coverage -- *Howard v. Montgomery Mutual Insurance Company*, 2002 WL 1980460 (Md. App. August 29, 2002). During the pendency of a personal injury tort suit, the tortfeasor's insurer denied coverage and thus refused to defend or indemnify defendant for any resulting judgment. Plaintiff brought declaratory judgment action against insurer which sought to establish that the insurer was in fact required to defend and indemnify the defendant. Defendant insurer was granted summary judgment by the trial court, which ruled that the plaintiff lacked standing to pursue the declaratory judgment action. The Court of Special Appeals vacated the trial court's grant of summary judgment to defendant insurance company and remanded. Emphasizing that dismissal is rarely appropriate in a declaratory judgment action, the appellate court held that as long as there is an identified legal interest, such as one for property, contract, tortious invasion or privilege, standing will be conferred. Moreover, the court held that an anticipatory declaratory judgment actions may be brought by or against a tortfeasor's liability insurer before the termination of the pending tort action, as long as the issues in the declaratory judgment action are independent and separable from the claims of the tort claimant.

Insurance - Fraud -- *Cooper v. Berkshire Life Insurance Co.*, 2002 WL 1980449 (Md. App. August 29, 2002). The Court of Special Appeals affirmed in part and reversed in part a grant of summary judgment to defendant insurance companies and their agents on claims of fraudulent misrepresentation and negligent misrepresentation. The insureds filed suit against the companies and their agents alleging that the agents misrepresented the terms of a "vanishing premium" life insurance policy. First, addressing the liability of the insurance companies, the court held that the plaintiff was unjustified in believing that the agents' representations and policy attachments guaranteed the premiums and dividends of the policy, and upheld the grant of summary judgment as to this issue. However, the court held that the companies could have inaccurately illustrated the terms of the policy, which is a factual question of material misrepresentation and would thus present a jury question. And, that since the companies were under a duty to the insureds to provide accurate present and future facts regarding the policy premiums, summary judgment was also improper for the insureds negligent misrepresentation claims. Second, as to the claims against the insurance agents, the law in Maryland is such that questions of fact will arise regarding the representations made to potential insured and the relationship between the parties, so summary judgment was improper as to all the counts against the insurance agents. Finally, the statute of limitations defense for all the causes of action, based on the "discovery rule" and the principles of "inquiry notice", should have been decided by a trier of fact, and thus summary judgment was improper.

Interspousal Immunity - Intentional Torts -- *Bozman v. Bozman*, 2002 WL 2007920 (Md. App. Sept. 4, 2002). A husband filed malicious prosecution charges against his wife, alleging that on three separate occasions the wife had filed false criminal charges against husband, namely stalking, harassment, and multiple violations of a protective order. The trial court dismissed the husband's complaint on the ground that it was barred by interspousal immunity. The Court of Special Appeals affirmed in part and

vacated in part. First, the appellate court held that although the affirmative defense of interspousal immunity has been significantly eroded, it was still the law in Maryland. For interspousal immunity to be barred, the crimes alleged must be "outrageous." They must involve extreme violence of the most invasive and personal sort, the threat of death and a display of the means by which to carry out that threat, or an extreme physical and psychic trauma. While the husband did endure distress, embarrassment and inconvenience, the conduct of the wife was not "outrageous." However, the Court of Special Appeals remanded, since the trial court wrongly did not consider evidence proffered by the husband which would have shown that the couple was divorced before the termination of the malicious prosecution proceedings, and would thus leave inapplicable the interspousal immunity defense.

Local Government Tort Claims Act -- *Hargrove v. Mayor and City Council of Baltimore, 2002 WL 31011356 (Md. App. September 10, 1999). The Court of Special Appeals affirmed the trial court's dismissal of a suit by motorists against the mayor, city council and city police officer following an accident involving the officer. The dismissal was due to the fact that the plaintiffs did not conform to the Local Government Tort Claims Act notice requirement, §5-304 of the Courts and Judicial Proceedings Article of the Maryland Code, which requires that in an action for unliquidated damages brought against a local government, notice of the claim is required within 180 days of the accident. The appellate court held that the trial court did not abuse its discretion in denying a motion for reconsideration, reasoning that the plaintiffs did not show good cause for why no notice was filed in accordance with the statute. The court reiterated that the test for good cause is ordinary prudence; that is, whether the claimant prosecuted his claim with the degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances.*

U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISTRICT OF COLUMBIA COURT OF APPEALS

CIRCUIT COURT OF VIRGINIA

U.S. DISTRICT COURT, WESTERN DISTRICT OF VIRGINIA

For full text of the above opinions, click on www.courts.state.md.us, www.dcca.state.dc.us, www.uscourts.gov, or e-mail schmielerj@sslawfirm.com

SAUNDERS and SCHMIELER, P.C.
LAW OFFICES