

Recent Developments in the Law

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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

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Application of the Boulevard Rule in Maryland and the District of Columbia

Introduction

While both Maryland and the District of Columbia recognize similar principles with regards to tort liability arising from collisions at intersections, only Maryland specifically refers to the laws as the “boulevard rule.” The case law is well established in Maryland as to these liability issues, whereas cases in the District are a little more scarce. What follows is an analysis of the Boulevard Rule in both jurisdictions in response to a hypothetical factual scenario whereby a favored motorist traveling at a rate of speed in excess of 10 miles per hour over the posted speed limit collides with an unfavored vehicle at an intersection, injuring the passengers of the unfavored vehicle.

Boulevard Rule in Maryland

The so-called “boulevard rule” is derived from Maryland Code § 21-403. The rule states in part:

§ 21-403. Right-of-way; vehicle entering intersection

(a) Preferential right-of-way at an intersection may be indicated by stop signs or yield signs placed in accordance with the Maryland Vehicle Law.

(b) If the driver of a vehicle approaches a through highway, the driver shall:

(1) Stop at the entrance to the through highway; and

(2) Yield the right-of-way to any other vehicle approaching on the through highway.

Md. Code Ann. Trans. § 21-403.

The Maryland Court of Appeals coined what is known as the “boulevard rule” early in case history, evident in Greenfeld v. Hook, 177 Md. 116, 132 (1939):

"it is the positive and imperative duty of a person driving an automobile over an unfavored highway, when he approaches an intersecting highway lawfully designated as a 'boulevard' or 'stop street,' to stop before entering the intersection, and having stopped, to exercise reasonable care and diligence to discover whether traffic thereon is approaching the intersection, and, having entered the intersection, to yield the right of way to such traffic, by permitting it to proceed without interruption, and that that duty persists throughout his passage across the favored way."

Id. at 132.

The automobile that does not have the right of way is so designated the “unfavored vehicle.” Consequently, they have a mandatory duty to stop and yield to the “favored vehicle.”

A variety of suits exist in Maryland case law where the boulevard rule is applied. The most common is a suit by the favored vehicle driver against the unfavored vehicle driver. An unfavored driver will be deemed negligent in a suit brought by the favored driver as a result of an accident, provided there is no evidence of contributory negligence on the part of the plaintiff. Dean v. Redmiles, 374 A.2d 329, 336, 280 Md. 137 (1977).

The Redmiles court discussed a variety of policy reasons for the boulevard rule and, among other things, emphasized the duty of unfavored drivers: “the duty of an unfavored driver to stop and yield the right-of-way is mandatory, positive and inflexible.” *Id.* at 335. However, while a defendant unfavored driver will be held negligent as a matter of law if he breaches his duty, the favored driver may also be found subject to liability to third parties, irrespective of the boulevard rule application, if they breach their duty of care.

The Redmiles case involved an action by a passenger who was injured while riding in the favored vehicle against the driver of that vehicle. The Maryland Court of Appeals agreed with the decision of the lower court that the application of the boulevard rule would NOT bar a claim against the favored driver by a third party. The court held:

"the boulevard rule does not relieve the favored driver from the duty to observe that degree of ordinary care for his own safety which is imposed upon all men. From that it follows that the boulevard rule does not relieve the favored driver from the duty to use that degree of care for a passenger in his vehicle which one expects a normally prudent driver to exercise on behalf of his passenger."

Id. at 336.

Therefore, if the favored driver in some way deviates from a reasonable standard of care in the operation of his own vehicle, then the boulevard rule will not protect him against a suit from a third party. If there is evidence of possible *favored* driver negligence, the question will be presented to a jury to determine liability.

The Redmiles decision noted the potential role that speeding would play in a suit by a passenger of an unfavored driver against a favored driver: “The fact that the favored driver is violating the speed law does not become a jury question unless the evidence is sufficient to warrant a conclusion that the

violation is a proximate cause of the injury.” *Id.* at 338.

Additionally, in Maryland “excessive or unlawful speed on the part of the favored driver ‘will ordinarily not be considered a contributing factor’ in a Boulevard case.” Thompson v. Terry, 226 A.2d 540, 544 (1967), citing Sun Cab Co. v. Faulkner, 163 Md. 477, 163 A. 194 (1932). In order to support an action for damages, the injured party must demonstrate that the driver’s excessive rate of speed was a proximate cause of the accident. This is a high burden placed on the disfavored driver because they must show that the accident occurred solely based on the deviation of care by the favored driver RATHER THAN their failure to yield as required by law.

While Maryland cases discuss the boulevard rule and specific ways to apply it depending on the parties to a suit and factual differences that might arise in personal injury cases, the District of Columbia law is not as straight-forward.

Boulevard Rule and the District of Columbia

While DC does not specifically recognize the term “boulevard rule” in case law, the decisions of the courts examining such accidents are based on the same legal principles as in Maryland. Many DC cases define these accidents as intersectional collisions. A driver that has the right-of-way approaching an intersection (or a piece of roadway where another car must either stop or yield to traffic), is considered the “favored driver.” The District of Columbia Court of Appeals has defined the favored driver’s duty of care as follows:

“even though a driver has the right of way, it is not absolute. He is still required to exercise reasonable care in entering an intersection, but the fact that he does have the right of way on a favored highway must be weighed and considered when determining whether he behaved reasonably under the circumstances. . . He has no duty to anticipate disobedience of the law or negligence by the other driver; nor is it his obligation to exercise more than ordinary care under the circumstances.” Call Carl, Inc. v. Deadwyler, 187 A.2d 701, 703 (1963). Thus, a favored driver’s negligence will be examined under the standard of ordinary reasonable care in DC.

Favored drivers, however, may still be subject to liability in an accident if they are contributorily negligent. In intersectional collision cases, contributory negligence is almost always a question of fact for the jury. Elam v. Ethical Prescription Pharmacy, Inc., 422 A.2d 1288, 1290 (1980). The jury must weigh the credibility of witnesses and resolve disputes as to speed and distances. *Id.* If a favored driver has done something that is a clear deviation from the standard of ordinary reasonable care such as failing to maintain a proper lookout for traffic or entering an intersection at an excessive rate of speed, a jury may have reason to find that the driver was contributorily negligent.

However, “only in the very rare case in which ‘the evidence is so clear and undisputed that fair-minded men can draw only one conclusion’ should there be a finding of contributory negligence as a matter of law.” *Id.*, citing Shu v. Basinger, 57 A.2d 295 (D.C.Mun.App.1948).

In the District of Columbia, while courts will take into account that a favored driver had a right-of-way in an intersectional collision, both the favored driver and the disfavored driver must adhere to the standard of reasonable care: “the exercise of reasonable care . . . obliges [both] drivers to maintain a proper lookout and see what is there to be seen.” D.C. Transit System, Inc. v. Harris, 284 A.2d 277, 278 (1971). Failure to exercise this care may result in liability for the accident.

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