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Recent Developments: Department of Natural Resources v. Welsh: Sovereign Immunity Did Not Bar Action to Quiet Title

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harvest, namely the proceeds of these two life insurance policies . . ." *Gilbert* at 459.

Afterwards Judge Raymond G. Thieme, Jr. of the Circuit Court for Anne Arundel County held evidentiary hearings pursuant to Md Rule BV9 and used Judge Proctor's findings to conclude that Gilbert purposefully failed to disclose the civil suit and this nondisclosure was material so as to violate DR 1-101(a) and DR 1-102 & (4) of the ABA Model Code of Professional Responsibility. A judge's factual findings are prima facie correct and will not be changed unless clearly erroneous. *Attorney Grievance Comm. v. Kemp* 303 Md. 664, 674, 496 A.2d 672 (1985). The court of appeals indicated that a person with a law degree should be able to read question ten as clearly asking for any and all involvement in civil litigation and dismissed Gilbert's claim that he had misread the question.

Gilbert was not a novice with the court system as he had confrontations with the law on many occassions during a six month period in 1967. During this period, Gilbert "was charged with conspiracy to commit forgery, forgery and uttering, murder and accessory to murder, homicide and assault." *Gilbert* at 455. Out of these charges he was adjudicated guilty for forgery and uttering and he was imprisoned between November 1970 and August 1972. Shortly after these charges, Gilbert was arrested for the murder of his wife on June 4, 1967. On March 13, 1969, Gilbert and his sister were indicted for murder and conspiracy to commit murder. When Gilbert's sister was acquitted, his charges were nol prossed on June 24, 1974.

Gilbert finally graduated from law school in 1980 and completed the application in question on May 20, 1980. Shortly thereafter, Gilbert's petition "for expungement of all the records associated with the nol prossed indictment for his wife's murder" was granted on June 23, 1980. *Gilbert* at 455. He passed the July 1980 Bar Examination and the next step was the character investigation to determine a candidate's present moral fitness to practice law in Maryland.

The *initial committee* (character committee of the third judicial circuit), on October 21, 1980, recommended unanimously not to grant admission. The State Board of Law Examiners, pursuant to Rule 4c, concluded by a 3-2 vote that Gilbert be admitted since he had the present moral character fitness to practice law. The weight used in these proceedings is clear and convincing evidence. *See In re Application of James G.*, 296 Md. 310, 462 A.2d 1198 (1983). In that case, the court looked at Gilbert's hardships through the years including "the birth of a Down's Syndrome child during his first marriage and the fact that his first wife [was murdered]." *Gilbert* at 485. In determining his present moral character, the court noted that the history of criminal action occurred 16 years ago and was within a six month period. Also, the murder charge was nol prossed, and since 1981 Gilbert had practiced in the District of Columbia without incident.

However, when the civil suit came to the attention of the Attorney Grievance Commission (AGC), they conducted evidentiary hearings and filed a petition for disciplinary action. Gilbert insisted his nondisclosure was neither purposeful or material. Judge Thieme thought otherwise for the following reasons: Gilbert's contention that the application was done in haste was discounted because by looking at the dates of his signatures it was determined that at least three days transpired before the application was submitted and the non disclosure of the civil suit was purposeful because Gilbert had many opportunities to provide this information, but did not.

The court of appeals found the context of the word "material" as used in DR 1-101(a) had never been previously defined in Maryland. The court used several analogies to other areas of law such as summary judgment – "whether the resolution of any material matter of fact may affect the outcome of the case," *King v. Bankered* 303 Md 98, 111, 492 A.2d 688 (1985); and insurance – an "ommission" is material if it would affect the insurer's decision about providing insurance or evaluating the risk." *Maryland Indemnity v. Steers*, 221 Md. 380, 385, 157 A.2d 803 (1960). The court decided to adopt the definition that the Supreme Court of North Dakota applied in *In re Howe*, 257 N.W. 2d 420 (N.D. 1977), which dealt with the same rule as the case at bar. Their definition of a material omission is one that "has the effect of inhibiting the efforts of the bar to determine an applicant's fitness to practice law." *Id.* at 422. Overall, the various standards reflect on how the decision-making process is affected by a particular fact or representation.

The court held that the nondisclosure of the civil suit enabled Gilbert to use his expungement in a self-serving manner that "plainly inhibited efforts to assess Gilbert's present moral character fitness to practice law." *Gilbert* at 460. Therefore, the omission was clearly material. Gilbert relied on *In re Application of G.L.S.*, 292 Md. 378, 439 A.2d 1107 (1982) where there was nondisclosure of a criminal conviction. However, that case is easily distinguishable because G.L.S. volunteered additional information during the admission process unlike Gilbert.

Gilbert's other contentions were also found to have no validity. Gilbert asserted that the civil suit had no bearing on the disciplinary proceedings, but the court ruled it was relevant in determining whether the omission was deliberate which has a direct bearing on one's present moral character. Gilbert also complained that his mother, father and a witness from his earlier trial should have been allowed to testify at the hearing. However, the witness' veracity was not at issue so his testimony was properly excluded. The only testimony allowed from Gilbert's parents was what state of mind Gilbert had as he worked on the application and at no other time. Furthermore, Gilbert contends that the disciplinary hearings had the effect of convicting him of his wife's murder thereby denying him due process of law. However, this is misplaced because the findings did not determine guilt or innocence, but only had a bearing on his fitness to practice law.

Thus, the court of appeals has provided some guidelines as to what they consider a material omission on a bar application. If this omission reflects on a candidates truthfulness and candor, which is the most important character qualification, *AGC v. Levitt*, 286 Md. 238, 406 A.2d 1298 (1979), then strong disciplinary action will be called for. To determine if a purposefully dishonest omission or misrepresentation requires disbarment as the proper sanction, the court will mainly look to the severity of the misconduct and any compelling extenuating circumstances.

– Robert Feldman

Department of Natural Resources v. Welsh: SOVEREIGN IMMUNITY DID NOT BAR ACTION TO QUIET TITLE

In a recent decision, the Court of Appeals of Maryland held that: (1) sovereign immunity did not bar action to quiet title based on the Department of Natural Resources' allegedly unconstitutional taking, and (2) that the department had not acquired interest in land belonging to plaintiff's predecessors, who had not been named as parties in earlier condemnation proceeding. *Dep't. of Natural Resources v. Welsh*, 308 Md. 54, 517 A.2d 722 (1986). As a result of this decision, the Rocky Gap State Park in Allegany County has lost a thirty three acre tract of land.

In 1983, W. Mitchell Welsh brought suit against the Department of Natural Resources to quiet title to land. Apparently, in 1966, the department obtained title to a 1,000 acre tract in Allegany County through a condemnation proceeding. The

metes and bounds description of the 1,000 acre tract also included Welsh's thirty three acres. However, Mr. Welsh was not a party in the original 1966 condemnation proceeding against George E. Coffman et ux.

The department had a title search conducted on the land in question in 1966 in preparation for the condemnation proceeding. This search conformed to the industry standard of sixty years. However, this search did not reveal the thirty three acre transfer by Maza Boor to Grafton Brant by deed dated August 20, 1877 and recorded March 5, 1878. Grafton Brant's thirty three acre tract through a series of conveyances is now vested in W. Mitchell Welsh. The same Maza Boor conveyed a 1,000 acre tract to Delilah Boor by deed dated February 20, 1878 and recorded March 12, 1878. "Through a series of conveyances this 1,000 acre tract came into the possession of George E. Coffman and Loretta K. Coffman, his wife, by deed dated July 15, 1940." *Dept of Natural Resources* 308 Md. at 56, 517 A.2d at 723. The metes and bounds description of the 1,000 acre tract included the Welsh's thirty three acre tract. "Welsh became aware of the State's claim to the property in 1983 when he was discussing a timber report with an employee of the department." *Id.* Consequently, he filed a quiet title action in the Circuit Court for Allegany County.

The Circuit Court for Allegany County ruled against the department's defense of sovereign immunity. However, the trial court ruled that the department had acquired title through the condemnation proceeding. *Id.* at 58, 517 A.2d at 724. On appeal, the Court of Special Appeals of Maryland affirmed the trial court's decision as to sovereign immunity, but reversed the trial court in its ruling that the department had acquired title through the condemnation proceeding. *Welsh v. Dep't. of Natural Resources*, 65 Md. App. 710, 722, 501 A.2d 1351, 1357 (1986). Thus, the Court of Appeals of Maryland granted the department's petition for a writ of certiorari so as to address the important questions presented by this case.

The department urged reversal of the court of special appeals on two grounds. First, the department argued that no suit may be brought against them because of the doctrine of sovereign immunity. *Id.* at 58, 517 A.2d at 724. Second, "[t]he department contends that it reasonably complied with eminent domain law and that, as a consequence, it acquired title to the tract in question." *Id.* at 66, 517 A.2d at 728. The Court of Appeals of Maryland rejected both arguments, and affirmed the judgment of the court of special appeals.

"Under the doctrine of sovereign immunity, neither a contract nor a tort action may be maintained against the State unless specific legislative consent has been given and funds (or the means to raise them) are available to satisfy the judgment." *Id.* at 59, 517 A.2d at 724. However, Judge Smith stated that

> [t]he State, in the exercise of that power, [eminent domain], can only act lawfully, and any taking of property alleged to have been made by an agency of the State, not done in the mode prescribed by law, is not the act of the State, but the unlawful usurpation by the individual taking or appropriating the property . . .

Dept. of National Resources 308 Md. at 62, 517 A.2d at 726 (quoting *Dunne v. State*, 162 Md. 274, 287-88, 159 A. 751, 756, cert. denied, 287 U.S. 564 (1932)). The court of appeals "[l]ong ago recognized that agents of the state do not enjoy immunity with respect to unlawful or unconstitutional acts." *Id.* at 60, 517 A.2d at 725. The department, not knowing of Welsh's interest, committed an unlawful or unconstitutional act by not notifying or joining Welsh in the original proceeding in 1966. Therefore, the court concluded that sovereign immunity was inapplicable since the department's actions were unlawful.

The court of appeals had little trouble in disposing of the department's second contention that it acquired the Welsh's tract under eminent domain. The court stated that "[i]t was incumbent upon the department to designate as defendants the record owners of the tract in question." *Id.* at 67, 517, A.2d at 728. The department only gained the interest or title of the defendant so designated. Consequently, since Welsh's predecessors in title were not designated, the court of appeals ruled "[t]hat the interest of Welsh in the thirty three acres in dispute in the case at bar has not been acquired by the department." *Id.* at 69, 517 A.2d at 729.

In conclusion, the decision of the court of appeals in this case may change the rule of sixty years in title searches since the sixty year search standard may as a result of this opinion not constitute a reasonable effort in determining title. All attorneys and title companies will be on notice that in determining title sixty years may not be an adequate time frame, or reasonable effort especially in cases involving eminent domain.

–Rex S. Caldwell, III

Colorado v. Spring: DEFENDANT NEED NOT KNOW CONTENTS OF QUESTIONING TO EFFECT A VALID *MIRANDA* WAIVER.

The United States Supreme Court recently decided another case dealing with the often-litigated *Miranda* rights issue. In *Colorado v. Spring*, ___ U.S. ___, 107 S.Ct. 851 (1987), the Court held that a suspect's awareness of all the crimes about which he may be questioned is not relevant in determining the validity of his decision to waive his Fifth Amendment privilege against self-incrimination. The Court's holding also resolved a conflict among the federal circuits, since prior to *Spring* several circuits had found that a suspect's awareness of the subject matter of an interrogation was a relevant factor to be considered in determining the validity of a Fifth Amendment privilege waiver.

In 1979, respondent John Leroy Spring and a companion shot and killed a man in Colorado. Afterwards, agents of the Bureau of Alcohol, Tobacco and Firearms (ATF) received information from an informant detailing respondent's involvement in the interstate transportation of stolen firearms. The ATF agents set up an undercover purchase of firearms from respondent, and on March 30, 1979, arrested him.

The ATF agents advised respondent of his *Miranda* rights. Nevertheless, respondent signed a written form stating that he understood and waived his rights, and proceeded to answer the ATF agents' questions. At first the ATF agents directed their questioning to the firearms transaction that led up to the arrest. The agents then shifted their questioning and inquired whether respondent had ever shot anyone. Respondent answered that he had shot someone once. The agents eventually asked respondent if he had shot a man named Walker in Colorado. Respondent answered no, ending the interview. Respondent was placed in a Kansas City, Missouri jail.

On May 26, 1979, Colorado law enforcement officials visited respondent in Kansas City. Respondent was given *Miranda* warnings, but again signed a written form indicating that he understood his rights and was willing to waive them. The officers let it be known that they wished to ask questions about the Colorado homicide. In an interview that lasted 1-½ hours, respondent confessed to the Colorado murder.

Mr. Spring was charged in Colorado State Court with first degree murder. Spring moved to suppress both of his statements on the ground that his waiver of *Miranda* rights was invalid. The trial court found that the ATF agents' failure to inform re-