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Notes: Negligently Inflicted Emotional Distress Resulting Solely from Property Damage Is Not a Compensable Injury. *Dobbins v. Washington Suburban Sanitary Commission*, 338 Md. 341, 658 A.2d 675 (1995)

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NEGLIGENTLY INFLICTED EMOTIONAL DISTRESS
RESULTING SOLELY FROM PROPERTY DAMAGE IS NOT
A COMPENSABLE INJURY. *Dobbins v. Washington
Suburban Sanitary Commission*, 338 Md. 341, 658 A.2d 675
(1995).

I. INTRODUCTION

Up to one-half of all Americans will suffer from a mental disorder at some point during their lifetime.¹ In a typical year, fifty-one million Americans will be affected by mental illness.² If these disorders are not properly recognized and treated, society will be left paying the economic and social costs.³ Maryland courts, however, have never compensated a plaintiff for emotional distress resulting solely from negligently inflicted property damage.⁴

In order to prevent fabricated claims, recovery for emotional injuries was traditionally granted only if the injuries followed physical impact.⁵ During the last century, however, the Court of Appeals of Maryland began to move away from this harsh rule that denied recovery to individuals with legitimate claims.⁶ In an effort to compensate a plaintiff who experiences genuine emotional injuries but to bar claims that are frivolous, Maryland's high court placed two separate requirements on plaintiffs before they could recover for negligently inflicted emotional distress.⁷ A plaintiff must first demonstrate that the mental injury has manifested into a "physical

1. *See Fifty-one Million Americans Suffer; Costs Society \$160 Billion, Yet Eminent Physicians Said Mental Illnesses Can Be Successfully Treated*, PRNewswire, October 2, 1995, available in WESTLAW, PRWIREPLUS Database.

2. *See id.*

3. *See id.* "Under-recognition and under-treatment of mental disorders is a serious problem that burdens society with a great cost both socially and economically." *Id.*

4. *See, e.g., Dobbins v. Washington Suburban Sanitary Comm'n*, 338 Md. 341, 351, 658 A.2d 675, 679-80 (1995); *see also Zeigler v. F Street Corp*, 248 Md. 223, 226, 235 A.2d 703, 705 (1967); *State ex rel. Aronoff v. Baltimore Transit Co.*, 197 Md. 528, 540, 80 A.2d 13, 18 (1951).

5. *See CHARLES T. McCORMICK, HANDBOOK ON THE LAW OF DAMAGES* § 89, at 319-20 (1935).

6. *See infra* notes 39-57, 93-98 and accompanying text. If individuals have legitimate claims, they should be compensated for their injuries. *Cf., e.g., Alabama Fuel & Iron Co. v. Baladoni*, 73 So. 205 (Ala. Ct. App. 1916).

7. *See infra* notes 8-9 and accompanying text.

injury.⁸ Next, the plaintiff must demonstrate that the injury was a foreseeable outcome of the defendant's conduct.⁹ In recent years, however, the court has moved towards relaxing one or both of these requirements.¹⁰

In *Dobbins v. Washington Suburban Sanitary Commission*,¹¹ the court explained its position on relaxing these two requirements. In *Dobbins*, a pipe under the defendant's control broke on two separate occasions flooding the plaintiffs' residence.¹² The defendant's negligent conduct caused property damage to the residence, and the plaintiff alleged that she subsequently suffered emotional distress.¹³ The Court of Appeals of Maryland denied recovery for the mental injuries asserting that the requirement of foreseeability had not been relaxed and that the emotional injury sustained by the plaintiff did not satisfy the existing foreseeability requirement.¹⁴ The court held that under Maryland law a plaintiff cannot be compensated for emotional injuries that stem solely from the negligent destruction of the plaintiff's property.¹⁵

II. HISTORICAL DEVELOPMENT

The ability to recover for emotional distress was traditionally predicated on the requirement that the plaintiff also suffered a direct physical impact.¹⁶ Most courts, including Maryland courts,¹⁷ have rejected this requirement and have adopted the "physical injury" rule.¹⁸ Under this rule, emotional distress is equated with a physical injury if the plaintiff can prove a physical manifestation.¹⁹ Recovery is far from certain, however, as the plaintiff must also prove that the physical manifestation was proximately caused by the defendant's negligent act.²⁰ Thus, while the adoption of the broader "physical

8. See, e.g., *Vance v. Vance*, 286 Md. 490, 497, 408 A.2d 728, 732 (1979); *Bowman v. Williams*, 164 Md. 397, 404, 165 A. 182, 184 (1933); *Green v. T.A. Shoemaker & Co.*, 111 Md. 69, 83, 73 A. 688, 693 (1909).

9. See, e.g., *Henley v. Prince George's County*, 305 Md. 320, 334, 503 A.2d 1333, 1340 (1986).

10. See *Belcher v. T. Rowe Price Found., Inc.*, 329 Md. 709, 735-36, 621 A.2d 872, 885 (1993).

11. 338 Md. 341, 658 A.2d 675 (1995).

12. See *id.* at 342-43, 658 A.2d at 675-76.

13. See *id.* at 342-44, 658 A.2d at 675-76.

14. See *id.* at 350-51, 658 A.2d at 679-80.

15. See *id.* at 351, 658 A.2d at 679-80.

16. See *infra* notes 22-23 and accompanying text.

17. See *infra* notes 39-57 and accompanying text.

18. See *infra* notes 24-26 and accompanying text.

19. See *infra* note 26 and accompanying text.

20. See *infra* notes 58-92 and accompanying text.

injury" rule appears to increase the plaintiff's likelihood of success, proving proximate cause is a high hurdle.

A. Development of the "Physical Injury" Rule

1. Nationwide Overview

Historically, courts have been reluctant to compensate individuals for interference with their emotional well-being.²¹ Gradually, however, courts began to recognize a responsibility to compensate people for their injuries, regardless of whether the injury was physical or emotional.²² Therefore, if a plaintiff could show a physical impact to their body, they would become eligible to recover damages for emotional distress that resulted from this impact.²³

A majority of courts now recognize that the "physical impact" rule is unfair and illogical.²⁴ This recognition is based on the premise that a person can suffer emotional distress even absent contact with an object.²⁵ The majority of states that have abandoned the "physical impact" rule require plaintiffs to prove only that they have experienced a "physical injury" or physical manifestation as a result of the defendant's negligence.²⁶

A minority of states have proceeded even further, rejecting both the "physical impact" and "physical injury" rule.²⁷ These jurisdic-

21. See W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 54, at 360 (5th ed. 1984).

22. See, e.g., *Alabama Fuel & Iron Co. v. Baladoni*, 73 So. 205 (Ala. Ct. App. 1916).

23. See MCCORMICK, *supra* note 5, § 89, at 319-20. A physical impact occurs when a physical object strikes the plaintiff's body. See *id.*

24. See, e.g., *Towns v. Anderson*, 579 P.2d 1163, 1165 (Colo. 1978); *Vicnire v. Ford Motor Credit Co.*, 401 A.2d 148, 155 (Me. 1979); *Payton v. Abbott Labs.*, 437 N.E.2d 171, 181 (Mass. 1982); *Sears, Roebuck & Co. v. Young*, 384 So. 2d 69, 71 (Miss. 1980); *Wyatt v. Gilmore*, 290 S.E.2d 790, 793 (N.C. Ct. App. 1982); *Ellington v. Coca Cola Bottling Co.*, 717 P.2d 109, 111 (Okla. 1986); *Melton v. Allen*, 580 P.2d 1019, 1022 (Or. 1978).

25. See KEETON ET AL., *supra* note 21, § 54, at 364. "[S]o far as substantial justice is concerned, it would seem that it is possible to have nearly as much assurance that the mental disturbance is genuine when the plaintiff escapes 'impact' only by an inch." *Id.*

26. See, e.g., *Payton*, 437 N.E.2d at 181 (requiring that physical harm be "manifested by objective symptomatology and substantiated by expert medical testimony").

27. See, e.g., *Taylor v. Baptist Med. Ctr., Inc.*, 400 So. 2d 369, 374 (Ala. 1981); *Molien v. Kaiser Found. Hosps.*, 616 P.2d 813, 817 (Cal. 1980); *Montinieri v. Southern New England Tel. Co.*, 398 A.2d 1180, 1184 (Conn. 1978); *Rodrigues v. State*, 472 P.2d 509, 519 (Haw. 1970); *Bass v. Nooney Co.*, 646 S.W.2d

tions require only that the plaintiff show emotional distress as a result of the defendant's negligence.²⁸ In 1987, the Supreme Court of Texas adopted this minority view in *St. Elizabeth Hospital v. Garrard*.²⁹ In *Garrard*, a mother gave birth to one healthy male and one stillborn female.³⁰ The female was taken away and disposed of in an unmarked grave without the parents' consent or knowledge.³¹ The plaintiffs filed suit alleging negligence, but they did not state that "the mental anguish manifested itself physically."³² The court granted recovery, however, emphasizing that "[i]t is well recognized that certain psychological injuries can be just as severe and debilitating as physical injuries."³³ Furthermore, the court noted that the physical manifestation requirement is an unnecessary restriction in our current society.³⁴

During the past century, courts have gradually moved away from the traditional approach which denied individuals recovery for their emotional injuries.³⁵ Today, most jurisdictions only require that

765, 772 (Mo. 1983); *Johnson v. Supersave Mkts., Inc.*, 686 P.2d 209, 213 (Mont. 1984); *Schultz v. Baberton Glass Co.*, 447 N.E.2d 109, 113 (Ohio 1983); *St. Elizabeth Hosp. v. Garrard*, 730 S.W.2d 649, 650 (Tex. 1987), *overruled on other grounds by* *Boyles v. Kerr*, 855 S.W.2d 593, 595-96 (Tex. 1993). See *infra* note 29 for a detailed discussion of *Garrard*.

28. See, e.g., *Garrard*, 730 S.W.2d at 654, *overruled on other grounds by* *Boyles v. Kerr*, 855 S.W.2d 593, 595-96 (Tex. 1993). "The distinction between physical injury and emotional distress is no longer defensible." *Id.* See *infra* note 29 for a detailed discussion of *Garrard*.

29. 730 S.W.2d 649 (Tex. 1987), *overruled on other grounds by* *Boyles v. Kerr*, 855 S.W.2d 593, 595-96 (Tex. 1993). In *Garrard*, the Supreme Court of Texas abolished the physical injury requirement and recognized the independent tort of negligent infliction of mental anguish. See *id.* at 654. Six years later in *Boyles*, the same court "overrule[d] the language of *Garrard* to the extent that it recognize[d] an independent right to recover for negligently inflicted emotional distress." *Boyles*, 855 S.W.2d at 595-96. However, *Garrard* still stands for the proposition that in Texas a plaintiff claiming emotional distress no longer has to "establish a physical manifestation of injury before recovering for that anguish." *Krishnan v. Sepulveda*, 916 S.W.2d 478, 487 n.3 (Tex. 1995) (citing *Garrard*, 730 S.W.2d at 654).

30. See *Garrard*, 730 S.W.2d at 654, *overruled on other grounds by* *Boyles v. Kerr*, 855 S.W.2d 593, 595-96 (Tex. 1993).

31. See *id.*

32. *Id.*

33. *Id.* at 653. The court explained that the advancement of medical research has allowed our society to achieve "a much more detailed and useful understanding of the interaction between mind and body." *Id.*

34. See *id.* at 653-54. This type of restriction interferes with an individual's "freedom from severe emotional distress [which] is an interest . . . the law should serve to protect." *Id.* at 653. The court reasoned that the justice system is obligated to compensate people for genuine claims of mental anguish regardless of whether a physical injury occurs. See *id.*

35. See *supra* note 21 and accompanying text.

plaintiffs demonstrate that they suffered a “physical injury” as a result of the negligent act.³⁶ A few jurisdictions still require the harsh standard of proving a physical impact before granting recovery.³⁷ On the opposite end of the spectrum, however, a small minority of jurisdictions allow a plaintiff to recover after establishing only an emotional injury as a result of the negligence.³⁸

2. The Rule in Maryland

In the 1909 case of *Green v. T.A. Shoemaker*,³⁹ the Court of Appeals of Maryland rejected the “physical impact” rule in favor of the “physical injury” rule.⁴⁰ In *Green*, the plaintiff suffered emotional distress, absent physical impact, as a result of repetitive blasting in the vicinity of her house.⁴¹ Recovery for emotional distress was previously barred absent physical impact under the rationale that this rule prevented imaginary or frivolous claims.⁴² The *Green* court rejected this rationale recognizing that a claim of emotional distress can just as easily be fabricated after a physical impact.⁴³ Thus, the court granted recovery and adopted the “physical injury” rule.⁴⁴

The Court of Appeals of Maryland reaffirmed the “physical injury” rule in *Bowman v. Williams*.⁴⁵ In *Bowman*, the plaintiff suffered emotional distress without a physical impact from the fright of watching a truck negligently collide with the house that he and his family were currently occupying.⁴⁶ Applying the holding in *Green*, the court allowed recovery asserting that nervous shock is compensable without a physical impact if it results “in some clearly apparent and substantial physical injury, as manifested by an external condition

36. See *supra* notes 24-26 and accompanying text.

37. See *supra* notes 22-23 and accompanying text.

38. See *supra* note 27 and accompanying text.

39. 111 Md. 69, 73 A. 688 (1909).

40. See *id.* at 83, 73 A. at 693.

41. See *id.* at 72, 73 A. at 689. During one particular blasting session, “a stone burst through the roof and ceiling and came down through plaintiff’s bed, mattress, and spring, and broke the slats and rollers. [The stone] weighed 22 pounds.” *Id.* at 73, 73 A. at 689.

42. See *id.* at 80, 73 A. at 692.

43. See *id.* “[A] nervous injury arising from actual physical impact is as likely to be imagined as one resulting from fright without physical impact, and . . . the former is as capable of simulation as the latter.” *Id.* at 81, 73 A.2d 692.

44. See *id.* at 83, 73 A. at 693.

45. 164 Md. 397, 165 A. 182 (1933).

46. See *id.* at 399, 165 A. at 182. As a result of watching this accident, the plaintiff instantaneously fell over and developed a hysterical condition. See *id.* at 399, 165 A. at 182-83. Furthermore, the plaintiff became very nervous and was not able to start working again for six months. See *id.* at 399, 165 A. at 183.

or by symptoms clearly indicative of a resultant pathological, physiological, or mental state."⁴⁷

The Court of Appeals of Maryland further clarified the holdings of *Green* and *Bowman* in *Vance v. Vance*.⁴⁸ In *Vance*, the court had to determine if a plaintiff exhibited a "physical injury"⁴⁹ after she was informed that her marriage was void.⁵⁰ The court opined that the "physical injury" rule, adopted in *Green*, was the "modern trend"⁵¹ and that the standard applied in *Bowman* was the rule in Maryland.⁵² The *Vance* court further explored the "physical injury" rule by analyzing the four ways a plaintiff may prove that emotional distress caused a "physical injury."⁵³ "The first three categories pertain to manifestations of a physical injury through evidence of an external condition or by symptoms of a pathological or physiological state."⁵⁴ The fourth category, clarified by the *Vance* court, allows recovery for emotional distress if the plaintiff has "[p]roof of a 'physical injury' by evidence indicative of a 'mental state.'"⁵⁵ The court of appeals defined the word "physical" as an "injury for which recovery is sought[, and which] is capable of objective determination."⁵⁶ The *Vance* court held that the plaintiff's symptoms of

47. *Id.* at 404, 165 A. at 184.

48. 286 Md. 490, 408 A.2d 728 (1979).

49. One witness testified that the plaintiff "was in a state of emotional collapse." *Id.* at 493, 408 A.2d at 730. Another witness testified that the plaintiff was emotionally depressed and "a wreck." *See id.* at 494, 408 A.2d at 730. Furthermore, the plaintiff testified at trial and asserted that she was unable to function and believed that she was on the verge of a nervous breakdown and had symptoms of an ulcer. *See id.* at 493, 408 A.2d at 730.

50. *See id.* at 501, 408 A.2d at 734. The plaintiff married the defendant under the assumption that the defendant was legally divorced from his first wife. *See id.* at 492, 409 A.2d at 728. After an 18 year marriage, the defendant and plaintiff separated. *See id.* The plaintiff filed for a divorce and asked the court to grant her alimony and child support. *See id.* In response, the defendant filed a motion to annul the marriage because he had never divorced his first wife. *See id.*

51. *Id.* at 497, 408 A.2d at 732.

52. *See id.* at 500, 408 A.2d at 733; *see supra* note 47 and accompanying text.

53. *See id.* at 500-01, 408 A.2d at 733-34.

54. *Id.* at 500, 408 A.2d at 733. These categories were created for the purpose of ensuring that plaintiffs demonstrate objective evidence of an injury. *See id.* By having these requirements the courts can "guard against feigned claims." *Id.*

55. *Id.*

56. *Id.* at 500, 408 A.2d at 733-34. The court recognized that this is not a dictionary definition of "physical." *See id.* at 500, 408 A.2d at 733. Nonetheless, with this decision, Maryland followed many other jurisdictions that utilize a similar definition of "physical." *See, e.g., id.* at 500-01, 408 A.2d at 734; *see also* *Petition of United States*, 418 F.2d 264, 269 (1st Cir. 1969) (depression, emotional upset and inability to continue working at sea); *D'Ambra v. United States*, 396 F. Supp. 1180, 1183 (D.L.R.I. 1973), *aff'd*, 518 F.2d 275 (1st Cir.

crying, shock, insomnia, ulcer, depression, and deterioration of physical appearance were objectively determinable and thus satisfied the "physical injury" rule.⁵⁷

B. Proximate Cause

Once physical manifestations are proved, however, recovery may still be denied unless the plaintiff also satisfies the elements of proximate cause and foreseeability.⁵⁸ That is, the resulting harm must be caused by and be a foreseeable consequence of the negligent act.⁵⁹ Absent such proof, the plaintiff will not be compensated.

1. National Overview

a. *The Compensability of Emotional Distress Resulting from Negligent Property Damage*

Generally, the majority of jurisdictions have denied compensation for emotional distress caused by the negligent damage to a person's property.⁶⁰ Courts deny compensation because the result of emotional distress is not foreseeable when the negligence only causes damage to property.⁶¹ A few jurisdictions have allowed recovery, however, in instances in which damage to property causes subsequent

1975) (psychoneurosis, loss of appetite, insomnia, nightmares of accident); *Daley v. LaCroix*, 179 N.W.2d 390 (Mich. 1970) (loss of weight, inability to perform household chores, extreme nervousness and irritability).

57. See *Vance*, 286 Md. at 501, 408 A.2d at 734. The court ruled that the plaintiff's mental distress satisfied the fourth category since the plaintiff "suffered an objectively manifested, definite nervous disorder." *Id.*; see also *Belcher v. T. Rowe Price Found., Inc.*, 329 Md. 709, 730-31, 621 A.2d 872, 882-83 (1993).

58. See *infra* notes 60-92 and accompanying text.

59. See *infra* notes 69-70, 73-92 and accompanying text.

60. See W.E. Shipley, Annotation, *Recovery for Mental Shock or Distress in Connection with Injury to or Interference with Tangible Property*, 28 A.L.R.2d 1070, 1089 (1953); see also, e.g., *Anders v. Tremont Lumber Co.*, 129 So. 649 (La. 1930) (affirming trial court's decision to bar emotional distress damages resulting from property damage caused by a lumber company); *Smith v. Clough*, 796 P.2d 592 (Nev. 1990) (denying recovery for emotional distress when a car ran into the front of a person's house while he was at home).

61. See, e.g., *B.F. Goodrich Co. v. Hughes*, 194 So. 842 (Ala. 1940). The court held that recovery will be denied when emotional distress results solely from damage to property. See *id.* at 847. Recovery will be granted only "where there has been a physical injury to a person, under circumstances warranting the recovery of compensatory damages therefore, mental suffering, which is natural incident thereto, furnishes one of the elements of recoverable damages." *Id.*

emotional suffering.⁶² For example, in *Rodrigues v. State*,⁶³ the Supreme Court of Hawaii had to determine if the plaintiff could recover for emotional distress when the plaintiff's house was negligently flooded as a result of a clogged drainage culvert.⁶⁴ The court recognized that it was foreseeable that damage to property could cause a subsequent emotional injury.⁶⁵ As with all negligence cases, the court noted, an individual must avoid behaviors that might result in foreseeable injuries including mental distress.⁶⁶ The case was remanded to the trial court to determine if the plaintiff's injury "was a reasonably foreseeable consequence of the defendant's act."⁶⁷

b. Establishing Proximate Cause

Courts have established two contrasting theories to determine if a defendant's negligent conduct was the proximate cause of a plaintiff's injury.⁶⁸ The first theory is the foreseeability test.⁶⁹ Under this majority viewpoint, a defendant is held liable for an injury if the consequence was a reasonably foreseeable result of the defendant's conduct.⁷⁰ The second theory, embraced by a small minority of jurisdictions, is the direct tracing test.⁷¹ Under this theory, a defendant is liable for any consequences that can be directly traced to the original act.⁷²

62. See, e.g., *Rodrigues v. State*, 472 P.2d 509, 520-21 (Haw. 1970).

63. 472 P.2d 509 (Haw. 1970).

64. See *id.* at 520-21.

65. See *id.* at 521.

66. See *id.*

67. *Id.* Made up of a cross-section of the community, the jury is in the best position to apply the reasonable man standard to determine if a plaintiff's mental distress should be compensated. See *id.* at 521 n.8.

68. See KEETON ET AL., *supra* note 21, § 43, at 280-301; see also *Pitre v. Opelousas Gen. Hosp.*, 530 So. 2d 1151, 1160 (La. 1988).

69. See, e.g., *Milwaukee & St. P. Ry. v. Kellogg*, 94 U.S. 469 (1876); *Cone v. Inter County Tel. Co.*, 40 So. 2d 148 (Fla. 1949); *Engle v. Director Gen.*, 133 N.E. 138 (Ind. Ct. App. 1921); *Shideler v. Habiger*, 243 P.2d 211 (Kan. 1952).

70. See KEETON ET AL., *supra* note 21, § 43, at 281-82 ("[L]iability is restricted to the scope of the original risk created . . .").

71. See, e.g., *Pitre*, 530 So. 2d at 1160; *Williams v. Brennan*, 99 N.E. 516 (Mass. 1912); *Burlington & M.R. Co. v. Westover*, 4 Neb. 268 (1876); *cf. State v. James*, 144 N.W. 216 (Minn. 1913).

72. See KEETON ET AL., *supra* note 21, § 43, at 294-95. "Direct consequences are those which follow in sequence from the effect of the defendant's act upon conditions existing and forces already in operation at the time, without intervention of any external forces which come into active operation later." *Id.* § 43, at 294. Furthermore, the direct tracing test is adopted by almost all courts "when unforeseeable harm to a plaintiff follows an impact upon his person." *Pitre*, 530 So. 2d at 1160.

2. Proximate Cause in Maryland

Maryland, relying heavily on the foreseeability test,⁷³ generally denies recovery for emotional distress that results from witnessing damage to property.⁷⁴ This is illustrated by *State ex rel. Aronoff v. Baltimore Transit Co.*⁷⁵ In *Aronoff*, the plaintiff was supervising his employees who were installing windows.⁷⁶ A street car negligently collided with his truck and shattered the glass therein.⁷⁷ A loud noise resulted causing the plaintiff to instantaneously have a heart attack and die within an hour and a half of the accident.⁷⁸ The court denied recovery because the resulting injury was not an outcome that was foreseeable.⁷⁹ The court recognized that because the risk of injury in this case was an unusual and extraordinary occurrence, allowing the decedent to recover would create a duty that would "place an unreasonable burden upon users of highways."⁸⁰

In *Zeigler v. F Street Corp.*,⁸¹ the Court of Appeals of Maryland was presented with a case analogous to *Aronoff*.⁸² In *Zeigler*, the plaintiffs alleged that the defendant, who owned the adjacent property, caused property damage by negligently depositing dirt and debris on the plaintiffs' property.⁸³ The plaintiffs further alleged that this property damage caused the decedent to become very upset, which

73. See *infra* notes 88-92 and accompanying text.

74. See, e.g., *State ex rel. Aronoff v. Baltimore Transit Co.*, 197 Md. 528, 539-40, 80 A.2d 13, 18 (1951).

75. 197 Md. 528, 80 A.2d 13 (1951).

76. See *id.* at 529-30, 80 A.2d at 13-14.

77. See *id.*

78. See *id.* at 530-31, 80 A.2d at 14. The plaintiff "was detrimentally affected, was greatly shocked and frightened, and sustained a severe nervous upset and emotional strain, precipitating a heart attack from which he died." See *id.* at 531, 80 A.2d at 14 (emphasis in original). The official cause of death was coronary thrombosis. See *id.*

79. See *id.* at 539, 80 A.2d at 18. The court explained that the injury could not "have been contemplated as a natural and probable consequence thereof." *Id.* (quoting *Baltimore City Passenger Ry. v. Kemp*, 61 Md. 74, 81 (1883)). The *Aronoff* court concluded that a person does not ordinarily die as a result of noise, excitement, and confusion. See *id.* at 539-40, 80 A.2d at 18. Furthermore, the court, in deciding to deny compensation because the decedent's emotional injury stemmed solely from property damage, emphasized that the decedent was standing inside the store when the accident occurred and the store had no glass in the windows at the time of the accident. See *id.* at 539, 80 A.2d at 18.

80. *Id.* at 540, 80 A.2d at 18 (quoting *Cote v. Litawa*, 71 A.2d 792, 795 (N.H. 1950)). After the court noted that no duty was breached, it recognized that the plaintiffs' complaint had to be dismissed. See *id.* (construing *Jackson v. Pennsylvania R.R.*, 176 Md. 1, 4, 3 A.2d 719, 721 (1939)).

81. 248 Md. 223, 235 A.2d 703 (1967).

82. See *id.* at 225, 235 A.2d at 705.

83. See *id.* at 224-25, 235 A.2d at 704-05.

ultimately led to his death.⁸⁴ The court denied recovery based on the general rule established in *Aronoff* that, ordinarily, no compensation will be given for emotional distress that results from property damage.⁸⁵ In dicta the court suggested, however, that if the property damage was "inspired by fraud, malice, or like motives, mental suffering [would be] a proper element of damage."⁸⁶ Furthermore, property damage that was caused by intentional conduct or conduct that places a plaintiff's personal safety in danger would also be an exception to the general rule denying recovery.⁸⁷

The foreseeability requirement was clarified in *Henley v. Prince George's County*.⁸⁸ In *Henley*, a wrongful death suit was brought against the defendants for allowing a recently released inmate to remain on their property when they allegedly knew of his violent intentions.⁸⁹ The court held that liability would attach if there was a sufficient nexus between the negligent act and the subsequent injury.⁹⁰ The court emphasized, however, that compensation would be denied for remote consequences.⁹¹ The case was remanded to the trial court for a determination of liability.⁹²

C. Recent Development in Maryland

The court of appeals revisited the requirements needed to prove negligent infliction of emotional distress in *Belcher v. T. Rowe Price Foundation, Inc.*⁹³ In *Belcher*, the court granted relief in a workers' compensation claim for a purely psychological injury.⁹⁴ The plaintiff suffered from emotional problems after a three-ton beam broke loose

84. *See id.* at 225, 235 A.2d at 705.

85. *See id.* at 226, 235 A.2d at 705.

86. *Id.*

87. *See id.* In *Zeigler*, none of these exceptions existed; therefore, the plaintiffs were not able to recover. *See id.*

88. 305 Md. 320, 503 A.2d 1333 (1986).

89. *See id.* at 324-27, 503 A.2d at 1335-37. After a criminal trial, the released inmate was convicted of the murder of the plaintiff. *See id.* at 327 n.1, 503 A.2d at 1336 n.1.

90. *See id.* at 334, 503 A.2d at 1340.

91. *See id.* at 333, 503 A.2d at 1340. "The concept that all persons owe a duty to all other person to use reasonable care to protect them from harm must be limited if we are to avoid liability for unreasonably remote consequences." *Id.* Furthermore, the court emphasized that when determining foreseeability the current societal standards should always be taken into consideration. *See id.* at 334, 503 A.2d at 1340.

92. *See id.* at 340-41, 503 A.2d at 1343-44. "[T]he issue of proximate cause . . . [is] properly resolved by trial not by summary judgment." *Id.* at 340, 503 A.2d at 1343.

93. 329 Md. 709, 621 A.2d 872 (1993).

94. *See id.* at 745-46, 621 A.2d at 890.

from a construction crane, crashed through the roof, and landed five feet from where the plaintiff was sitting.⁹⁵ Utilizing tort principles,⁹⁶ the court allowed recovery after determining that the plaintiff's injury qualified under the definition of "physical injury" as explained in *Vance*.⁹⁷ Furthermore, the *Belcher* court recognized the importance of relaxing the requirements on compensating plaintiffs for their mental distress because emotional injuries are as real and disabling as bodily injuries.⁹⁸

Nevertheless, the decision in *Belcher* relaxing the "physical injury" rule as a requirement for compensation of mental distress, did not clearly state whether the holding was meant also to relax the foreseeability test. In *Dobbins v. Washington Suburban Sanitary Commission*,⁹⁹ the Court of Appeals of Maryland specifically addressed the relaxation of the foreseeability requirement.

III. THE INSTANT CASE

On January 16, 1988, a pipe broke flooding the residence of Scheller M. and Mildred H. Dobbins.¹⁰⁰ On September 29, 1989, a

95. *See id.* at 713, 621 A.2d at 874. "The sound was deafening; it was [as] if a bomb had exploded." *Id.*

96. The court applied tort principles after making two conclusions. *See id.* at 722, 621 A.2d at 878. First, the legislature did not demonstrate an intention to exclude compensability of an accidental injury that results only in emotional harm. *See id.* Second, the workers' compensation case law lacked a definite answer. *See id.*

97. *See id.* at 745-46, 621 A.2d at 890. The court concluded that the injuries sustained by the plaintiff were "capable of objective determination." *Id.* at 746, 621 A.2d at 890. The plaintiff "suffered sleep disturbances, nightmares, heart palpitations, chest pain, and headaches as a result of the occurrence." *Id.* at 713, 621 A.2d at 874; *see also supra* notes 48-57 and accompanying text.

98. *See id.* at 735-36, 621 A.2d at 885.

We have traced the development of the law of Maryland as interpreted in our judicial opinions concerned with liability for negligently inflicted mental harm, from a standard limiting such liability to purely physical trauma to a standard permitting recovery for damages for trauma resulting from purely emotional distress that can be objectively determined. The recognition that a person should be compensated for mental harm resulting from the negligent act of another is in accord with the ever increasing knowledge in the specialties which have evolved in the field of medicine and in the disciplines of psychiatry and psychology. Persons suffering from severe mental distress are no longer simply warehoused in Bedlam type institutions; they are treated by medical experts at no small cost. We are now aware that mental injuries can be as real as broken bones and may result in even greater disabilities.

Id.

99. 338 Md. 341, 658 A.2d 675 (1995).

100. *See id.* at 342-43, 658 A.2d at 675-76. Scheller and Mildred Dobbins were

second pipe broke and the Dobbinses' house was flooded for the second time.¹⁰¹ Both of the pipes were under the control of the Defendant, Washington Suburban Sanitary Commission (WSSC).¹⁰² As a result of the floods, the Dobbinses sustained property damage.¹⁰³ Ms. Dobbins also alleged that she suffered emotional injuries as a direct result of the flood.¹⁰⁴ The Dobbinses filed suit in the Circuit Court for Montgomery County alleging negligence, trespass, and loss of consortium, and requesting compensation for property damage and "personal injury."¹⁰⁵ Ms. Dobbins admitted in a deposition that the WSSC did not damage her house intentionally.¹⁰⁶ She further conceded "that the flooding had not directly injured her in any physical way."¹⁰⁷

WSSC filed a motion for summary judgment, and after a hearing their motion was denied.¹⁰⁸ Judge S. Michael Pincus of the Circuit

husband and wife. *See id.* at 342, 658 A.2d at 675. Their residence, which they owned and occupied, was located in Gaithersburg, Maryland. *See id.* at 343, 658 A.2d at 675.

101. *See id.* at 343, 658 A.2d at 676. "The Dobbinses alleged that on this occasion '[t]he great quantity of water caused the entire basement floor to heave itself upwards lifting the entire structure above it and causing structural damage to their home.'" *Id.* (quoting Joint Record Extract at 4, *Dobbins v. Washington Suburban Sanitary Comm'n*, 338 Md. 341, 658 A.2d 675 (1995) (Sept. Term 1994 No. 122)).
102. *See id.* at 342-43, 658 A.2d at 675-76. According to the Dobbinses' second amended complaint, the pipes were "installed, maintained and were the property of the [d]efendant, WSSC; in connection with supplying water service to the [p]laintiffs and others in Montgomery County, Maryland, the [d]efendant ha[d] installed a system of water mains, pipes and connections." Joint Record Extract at 2, *Dobbins v. Washington Suburban Sanitary Comm'n*, 338 Md. 341, 658 A.2d 675 (1995) (Sept. Term 1994 No. 122).
103. *See Dobbins*, 338 Md. at 342-43, 658 A.2d at 675-76. The property damage claim had been settled by the parties and, therefore, was not addressed by the court. *See id.* at 343, 658 A.2d at 676.
104. *See id.* at 342-43, 658 A.2d at 676. In their complaint the Dobbinses stated:
[A]s a direct result of the damage caused to the home, the Plaintiff, MILDRED DOBBINS, received severe, painful and permanent injuries to her body as well as severe and protracted shock to her nervous system, all of which have caused her and will continue to cause her great pain and mental anguish.
Id. at 343, 658 A.2d at 676 (quoting Joint Record Extract at 7, *Dobbins v. Washington Suburban Sanitary Comm'n*, 338 Md. 341, 658 A.2d 675 (1995) (Sept. Term 1994 No. 122)).
105. *See id.* at 342, 658 A.2d at 675.
106. *See id.* at 343, 658 A.2d at 676.
107. *Id.* Ms. Dobbins also stated that she never went downstairs into the flooded basement but rather remained upstairs. *See id.* Nonetheless, Ms. Dobbins's psychiatrist clearly stated that the flooding was "the precipitant for her psychiatric . . . problems." *See id.* at 344, 658 A.2d at 676.
108. *See id.* at 343-44, 658 A.2d at 676.

Court for Montgomery County acknowledged that the modern trend is “away from a bright-line rule barring recovery for emotional distress, and toward a case-by-case inquiry into the natural and expected result of the defendant’s particular conduct.”¹⁰⁹ Before a settlement conference, however, summary judgment was granted by Circuit Court Judge for Montgomery County, James L. Ryan,¹¹⁰ who ruled that the Dobbinses had no cause of action.¹¹¹ The Dobbinses subsequently appealed to the Court of Special Appeals of Maryland.¹¹² The Court of Appeals of Maryland granted certiorari prior to intermediate appellate review.¹¹³

The court began its analysis of the primary issue¹¹⁴ by examining the applicable case law dealing with negligent infliction of emotional

109. *Id.* at 344, 658 A.2d at 676. Judge Pincus decided that a jury should decide whether the injuries that Ms. Dobbins sustained “were the natural and expected result of the defendant’s alleged negligence.” *Id.*

110. After Judge Pincus denied WSSC’s motion for summary judgment, there was a calendar call before the Administrative Judge for Montgomery County, Paul Weinstein. *See* Appellants’ Brief at 1, *Dobbins v. Washington Suburban Sanitary Comm’n*, 338 Md. 341, 658 A.2d 675 (1995) (Sept. Term 1994 No. 122). The Administrative Judge questioned if a cause of action existed in this case. *See id.* The parties then appeared in front of Judge Ryan in the Circuit Court for Montgomery County. *See id.*

111. *See Dobbins*, 338 Md. at 344, 658 A.2d at 676. Judge Ryan also stated: “‘It appears that some emotional problems have developed with the Plaintiff or Plaintiffs, but by law the Plaintiffs’ claims for mental anguish and emotional upset and distress cannot be chargeable to the Defendant in this case.’” *Id.*

112. *See id.*

113. *See id.*

114. Before the court of appeals addressed the merits, it reviewed the procedures for granting summary judgment. *See id.* at 344-45, 658 A.2d at 676-77. First, the court of appeals stated “‘that a court may grant a motion for summary judgment ‘in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of a law.’” *Id.* (quoting Md. R. Civ. P. 2-501(e)). Second, the court asserted that when deciding a motion for summary judgment a court cannot decide any facts in dispute but rather rule on the motion as a matter of law. *See id.* at 345, 658 A.2d at 677 (citing *Baltimore Gas & Elec. Co. v. Lane*, 338 Md. 34, 43, 656 A.2d 307, 311 (1995)); *Southland Co. v. Griffith*, 332 Md. 704, 712, 633 A.2d 84, 87 (1993); *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737, 625 A.2d 1005, 1010 (1993). Third, the court explained that when ruling on a motion for summary judgment a judge must evaluate the facts in the light most favorable to the party against whom judgment is entered. *See id.* (citing *Beard v. American Agency*, 314 Md. 235, 246, 550 A.2d 677, 682 (1988); *Kramer v. Bally’s Park Place*, 311 Md. 387, 389, 535 A.2d 466, 467 (1988); *Liscombe v. Potomac Edison Co.*, 303 Md. 619, 621-22, 495 A.2d 838, 839 (1985)). Finally, the court opined that “[i]n reviewing the trial court’s decision . . . we must determine whether the court was legally correct to grant summary judgment.” *Id.* (citing *Lane*, 338 Md. at 43, 656 A.2d at 311; *Southland*, 332 Md. at 712, 633 A.2d at 87-88).

distress.¹¹⁵ First, the court acknowledged that the traditional rule in Maryland was that a plaintiff cannot recover for emotional injuries which result from negligent damage to a plaintiff's property.¹¹⁶ Furthermore, the court recognized that because Ms. Dobbins did not allege in her complaint that she feared for her safety or that her safety was in jeopardy, she could not invoke the personal safety exception established in *Zeigler v. F Street Corp.*¹¹⁷

Next, the court rejected the Dobbinses' contention that the holding of *Belcher v. T. Rowe Price Foundation, Inc.*¹¹⁸ overruled the traditional rule of denying recovery as a matter of law by relaxing the foreseeability requirement.¹¹⁹ The Dobbinses asserted that "recovery for emotional injuries should be limited only by a proximate cause analysis involving a fact-specific inquiry into the foreseeability of the harm."¹²⁰ The WSSC contended, however, that the holding of *Belcher* did not disturb the traditional rule prohibiting recovery.¹²¹

In affirming the trial court's decision, the court of appeals reasserted the two distinct and separate requirements which have been used to limit the compensability of mental suffering.¹²² First, the court reviewed Maryland's transition from the "physical impact" rule to the "physical injury" rule.¹²³ The court recognized that if a plaintiff can establish a "physical injury" that is capable of objective determination, recovery will be granted even absent a physical impact.¹²⁴ Second, the court reviewed the rules of foreseeability that

115. *See id.* at 345-51, 658 A.2d at 677-80.

116. *See id.* at 345, 658 A.2d at 677 (citing *Zeigler v. F Street Corp.*, 248 Md. 223, 235 A.2d 703 (1967); *State ex rel. Aronoff v. Baltimore Transit Co.*, 197 Md. 528, 80 A.2d 13 (1951)).

117. *See id.* In *Zeigler*, 248 Md. at 226, 235 A.2d at 705, the court of appeals stated that if "the personal safety of the decedent was put in jeopardy" recovery might have been allowed. Furthermore, the *Zeigler* court recognized that if "the act occasioning the injury to the property is inspired by fraud, malice, or like motives, mental suffering is a proper element of damages." *Id.*

118. 329 Md. 709, 621 A.2d 872 (1993).

119. *See Dobbins*, 338 Md. at 346, 658 A.2d at 677. For a discussion of the foreseeability requirement see *supra* notes 60-92 and accompanying text.

120. *Dobbins*, 338 Md. at 346, 658 A.2d at 677. The Dobbinses also contended that the holding in *Belcher* barred the WSSC from asserting that the injuries sustained by Ms. Dobbins were unforeseeable. *See id.*

121. *See id.*

122. *See id.* at 347-51, 658 A.2d at 677-80.

123. *See id.* at 347-48, 658 A.2d at 677-78; see also *supra* notes 39-57 and accompanying text.

124. *See Dobbins*, 338 Md. at 347-48, 658 A.2d at 678 (quoting *Belcher v. T. Rowe Price Found., Inc.*, 329 Md. 709, 734-35, 621 A.2d 872, 884-85 (1993)). By requiring a "physical injury" that is capable of objective determination, the court of appeals believed that fabricated claims would be adequately minimized. *See id.* at 347-48, 658 A.2d at 678 (quoting *Belcher v. T. Rowe Price Found., Inc.*, 329 Md. 709, 734-35, 621 A.2d 872, 884-85 (1993)).

are utilized by the Maryland courts.¹²⁵ The court reaffirmed Maryland's decision "to avoid liability for unreasonably remote consequences"¹²⁶ and adopted section 435(2) of the Second Restatement of Torts.¹²⁷ Under section 435(2), recovery is denied when "it appears 'highly extraordinary' that the negligent conduct should have brought about the harm."¹²⁸

Relying on the foreseeability doctrine, the court of appeals emphasized that recovery for emotional distress resulting solely from damage to property would be barred.¹²⁹ The court determined that mental suffering caused solely by damage to a person's property "was 'an unusual and extraordinary result' and that it should not 'have been contemplated as a natural and probable consequence.'"¹³⁰ Thus, the court of appeals concluded that the circuit court correctly followed the traditional foreseeability rules when it granted summary judgment.¹³¹ Furthermore, the court noted that the lower court accepted the fact that Ms. Dobbins had a "physical injury" capable of objective determination.¹³² Therefore, when Judge Ryan ruled in favor of the WSSC, he was clearly denying compensation because Ms. Dobbins's injury was unforeseeable.¹³³

Nonetheless, the Dobbinses contended that the foreseeability rules had been liberalized by the holding in *Belcher*.¹³⁴ The court of appeals noted, however, that the *Belcher* court was only relaxing the

125. *See id.* at 348, 658 A.2d at 678; *see also supra* notes 88-92 and accompanying text.

126. *Dobbins*, 338 Md. at 348, 658 A.2d at 678 (quoting *Henley v. Prince George's County*, 305 Md. 320, 333, 503 A.2d 1333, 1340 (1986)).

127. *Id.* (adopting RESTATEMENT (SECOND) OF TORTS § 435(2) (1965)).

128. *Id.* (quoting *Henley*, 305 Md. at 334, 503 A.2d at 1340). A negligent actor should only be held liable for an injury which could have been forecasted before the negligent event occurred. *See* RESTATEMENT (SECOND) OF TORTS § 435(2) cmt. d (1965).

129. *See Dobbins*, 338 Md. at 349, 658 A.2d at 679.

130. *Id.* (quoting *State ex rel. Aronoff v. Baltimore Transit Co.*, 197 Md. 528, 540, 80 A.2d 13, 18 (1951)).

131. *See id.* The court emphasized that refusal to compensate Ms. Dobbins "was not based on the 'physical injury' rule or any concern that Ms. Dobbins's emotional injuries may have been feigned." *Id.* at 349-50, 658 A.2d at 679.

132. *See id.* at 350, 658 A.2d at 679. According to Ms. Dobbins's psychiatrist, Paul A. Silver, M.D., Ms. Dobbins's symptoms during the four years following the second flood were "significant feelings of depression, difficulty concentrating, and completing tasks, as well as anxiety regarding social activities." Joint Record Extract at 32-33, *Dobbins v. Washington Suburban Sanitary Comm'n*, 338 Md. 341, 658 A.2d 675 (1995) (Sept. Term 1994 No. 122). Also, the psychiatrist concluded that these symptoms were caused by the water main breaks. *See Dobbins*, 338 Md. at 344, 658 A.2d at 676.

133. *See id.* at 349-50, 658 A.2d at 679.

134. *See id.* at 350, 658 A.2d at 679; *see also supra* note 98.

“physical injury” rule.¹³⁵ The court was, therefore, bound to follow the traditional rule established in *State ex rel. Aronoff v. Baltimore Transit Co.*¹³⁶

(1) ordinarily, emotional injuries are not the “consequences that ensue in the ordinary and natural course of events” from negligently inflicted property damage¹³⁷ and (2) such injuries should not be contemplated, in light of all the circumstances, “as a natural and probable consequence” of a negligently inflicted injury to property.¹³⁸

Therefore, the court affirmed the summary judgment and ruled that, generally,¹³⁹ compensation will be denied when a plaintiff suffers negligently inflicted emotional distress resulting from damage to property.¹⁴⁰

IV. ANALYSIS

A. Critique of Rationale

In *Dobbins v. Washington Suburban Sanitary Commission*,¹⁴¹ the Court of Appeals of Maryland declined to hold a defendant liable for emotional suffering which is allegedly caused by damage to a plaintiff’s property.¹⁴² The court correctly concluded that a

135. See *Dobbins*, 338 Md. at 350, 658 A.2d at 679.

136. 197 Md. 528, 539, 80 A.2d 13, 18 (1951); see also *supra* notes 73-80. and accompanying text.

137. *Dobbins*, 338 Md. at 350, 658 A.2d at 679 (quoting *State ex rel. Aronoff v. Baltimore Transit Co.*, 197 Md. 528, 539, 80 A.2d 13, 18 (1951)). “[P]roperty damage is not the proximate cause of emotional injury” *Id.* at 351 n.3, 658 A.2d at 679 n.3.

138. *Id.* at 350-51, 658 A.2d at 679 (quoting *Aronoff*, 197 Md. at 539, 80 A.2d at 18). “[A] defendant has no duty to prevent emotional injuries flowing from property damage.” *Id.* at 351 n.3, 658 A.2d at 679 n.3.

139. The court acknowledged that if Ms. Dobbins had a reasonable fear for her personal safety, this general rule would not apply. See *id.* at 351 n.4, 658 A.2d at 680 n.4. Furthermore, if fraud, malice, or like motives exist, the general rule does not apply. See *id.* at 346 n.2, 658 A.2d at 677 n.2 (quoting *Zeigler v. F Street Corp.*, 248 Md. 223, 226, 235 A.2d 703, 705 (1967)).

140. See *id.* at 351, 658 A.2d at 679-80.

141. 338 Md. 341, 658 A.2d 675 (1995).

142. See *id.*; see also Shipley, *supra* note 60, at 1089. Even cases decided after *Dobbins* continue to deny plaintiffs compensation for negligent infliction of emotional distress that stems solely from property damage. For example, recently, in *Kleinke v. Farmers Cooperative Supply & Shipping*, 549 N.W.2d 714 (Wis. 1996), the Supreme Court of Wisconsin denied the plaintiffs recovery for emotional suffering that resulted when their basement was negligently flooded with 300 gallons of fuel. Basing its decision on public policy considerations, the court “conclude[d] that it is unlikely that a plaintiff could ever recover for the emotional distress caused by negligent damage to his or her property.” *Id.* at 716.

plaintiff should be compensated only for foreseeable injuries.¹⁴³ The only alternative to this approach is the direct tracing test, which allows plaintiffs to recover for unforeseeable damages if directly traceable to the negligent act.¹⁴⁴ If this minority approach had been adopted by the Maryland court, Ms. Dobbins might not have been barred from recovery as a matter of law.¹⁴⁵ The court correctly recognized, however, that only foreseeable injuries resulting from negligence should be compensable.¹⁴⁶

If the Maryland courts were to decide that a defendant could be liable for injuries to a plaintiff that were unforeseeable, the distinct difference between negligence and intentional tort principles would be destroyed. Intentional tort law holds a defendant liable for all injuries, both foreseeable and unforeseeable, resulting from the intentional act.¹⁴⁷ If the minority approach were adopted, the court would also hold a defendant liable for all injuries, both foreseeable and unforeseeable, if they were directly traceable¹⁴⁸ to the negligent act.¹⁴⁹ Negligence cases, like *Dobbins*, are based on the principle of fault;¹⁵⁰ therefore, a defendant should be held liable only for injuries which were reasonably foreseeable at the time he breached his duty.¹⁵¹

143. See *Dobbins*, 338 Md. at 348, 658 A.2d at 678. The court emphasized that the goal of the foreseeability rules is to ensure that compensation will be denied for injuries that are remote and unlikely. See *id.* (quoting *Henley v. Prince George's County*, 305 Md. 320, 333, 503 A.2d 1333, 1340 (1986)).

144. See *supra* notes 71-72 and accompanying text.

145. The facts of the case indicate that Ms. Dobbins alleged that WSSC was negligent in maintaining the water pipes and that the subsequent injuries to Ms. Dobbins were a *direct result* of the floods to her residence. See *Dobbins*, 338 Md. at 342-44, 658 A.2d at 675-76 (emphasis added).

146. See *id.* at 350-51, 658 A.2d at 679.

147. See KEETON ET AL., *supra* note 21, § 8, at 37. "For an intended injury the law is astute to discover even very remote causation." *Derosier v. New England Tel. Co.*, 130 A. 145, 152 (N.H. 1925).

148. See *supra* note 72 and accompanying text for explanation of directly traceable.

149. See KEETON ET AL., *supra* note 21, § 43, at 294. "The defendant is liable for all such consequences of the defendant's negligence, although they were unforeseeable, and lie entirely beyond the scope of the risk created . . ." *Id.*

150. See CLARENCE MORRIS & C. ROBERT MORRIS, JR., *MORRIS ON TORTS* 43 (1980). On the contrary, intentional tort cases are not based on fault or foreseeability. Rather, the focus of intentional torts is on the "intent" of the defendant. See KEETON ET AL., *supra* note 21, § 8, at 33-37.

The three most basic elements of this most common usage of "intent" are that (1) it is a *state of mind* (2) about *consequences* of an act (or omission) and not about the act itself, and (3) it extends not only to having in the mind a purpose (or desire) to bring about given consequences but also to having in mind a belief (or knowledge) that given consequences are substantially certain to result from the act.

Id. § 8, at 34.

151. See KEETON ET AL., *supra* note 21, at 281. Negligence "involves a foreseeable

In denying compensation, the *Dobbins* court appropriately affirmed the use of the foreseeability rules.¹⁵² The holding of the court of appeals is nonetheless troublesome due to the court's misapplication of the foreseeability rules. The problem stems from the court's decision that, as a matter of law, emotional injuries resulting from negligent property damage were unforeseeable.¹⁵³ This decision is consistent with the holding of *State ex rel. Aronoff v. Baltimore Transit Co.*,¹⁵⁴ a case that was ruled on over forty years ago.¹⁵⁵ At that time the court recognized that emotional injuries resulting from negligently inflicted property damage were not foreseeable.¹⁵⁶ As recognized in *Belcher*, over the past forty years society has become more aware of the debilitating effects of a psychological condition.¹⁵⁷ Consistent with this viewpoint is the rationale that forty years ago an emotional injury resulting from property damage may not have been foreseeable. As society becomes more educated, however, the foreseeability window should also be expanded.¹⁵⁸ Several jurisdictions have expanded the window of foreseeability by allowing juries to determine if the emotional distress "was a reasonably foreseeable consequence of the defendant's act."¹⁵⁹ Nonetheless, the court of

risk, a threatened danger of injury, and conduct unreasonable in proportion to the danger." *Id.* at 280. "[L]iability should extend to results further removed when certain elements of fault were present." *Derosier*, 130 A. at 152-53.

152. See *Dobbins v. Washington Suburban Sanitary Comm'n*, 338 Md. 341, 350, 658 A.2d 675, 679 (1995).
153. See *id.* at 350-51, 658 A.2d at 679-80.
154. 197 Md. 528, 80 A.2d 13 (1951).
155. This holding was affirmed by the Court of Appeals of Maryland in *Zeigler v. F Street Corp.*, 248 Md. 223, 235 A.2d 703 (1967).
156. See *Aronoff*, 197 Md. at 539, 80 A.2d at 18. The *Aronoff* court noted that psychological injuries are not "the consequences that ensue in the ordinary and natural course of events" and cannot be "contemplated as a natural and probable consequence thereof." *Id.* (quoting *Baltimore City Passenger Ry. v. Kemp*, 61 Md. 74, 81 (1883)). The Court of Appeals of Maryland, if they so desired, could have distinguished *Aronoff* and *Zeigler*, where the injured person died, from *Dobbins*, where the injured person survived. The court could have asserted that a death resulting from negligently inflicted property damage was unforeseeable, while a psychological injury that did not result in death was foreseeable. However, the court did not take this approach in *Dobbins*.
157. See *Belcher v. T. Rowe Price Found., Inc.*, 329 Md. 709, 735, 621 A.2d 872, 885 (1993). "The recognition that a person should be compensated for mental harm resulting from the negligent act of another is in accord with the ever increasing knowledge in the specialties which have evolved in the field of medicine and in the disciplines of psychiatry and psychology." *Id.* at 735-36, 621 A.2d at 885.
158. This assertion is furthered by the fact that the court of appeals has also recognized that mental injuries can be more disabling and "as real as broken bones." *Id.* at 736, 621 A.2d at 885.
159. *Rodrigues v. State*, 472 P.2d 509, 521 (Haw. 1970); see also *supra* notes 62-67 and accompanying text.

appeals chose to follow the traditional approach, keeping the foreseeability window unmodified, even after acknowledging the societal metamorphosis that has occurred over the last forty years.¹⁶⁰

One of the most compelling arguments supporting the court's viewpoint is the risk of opening the floodgates of litigation and placing a "strain on all bounds of credibility."¹⁶¹ Nonetheless, this fear has not materialized in Hawaii, a jurisdiction that has abandoned the traditional approach.¹⁶² The Supreme Court of Hawaii noted that since their decision to allow compensation for mental distress resulting from negligently inflicted destruction of property "there has been no 'plethora of similar cases'; the fears of unlimited liability have not proved true."¹⁶³

Furthermore, the jurisdictions that have abolished the traditional rule have extended foreseeability well beyond damage to residential property.¹⁶⁴ For example, the Supreme Court of Hawaii extended foreseeability to a situation where a family dog, considered by law to be personal property,¹⁶⁵ died due to the negligence of the animal quarantine station.¹⁶⁶ The supreme court affirmed the trial court's holding that emotional distress damages resulting from the negligent destruction of property is compensable.¹⁶⁷

B. *Future Implications*

The holding in *Dobbins* will greatly benefit future defendants and their insurance companies, while placing a significant roadblock in front of future plaintiffs who suffer emotional injuries after

160. See *Dobbins v. Washington Suburban Sanitary Comm'n*, 338 Md. 341, 351, 658 A.2d 675, 679-80 (1995).

161. *Campbell v. Animal Quarantine Station*, 632 P.2d 1066, 1071 (Haw. 1981).

162. See *id.*

163. *Id.*

164. See, e.g., *Knowles Animal Hosp., Inc. v. Willis*, 360 So. 2d 37, 38-39 (Fla. Dist. Ct. App. 1978); *Campbell v. Animal Quarantine Station*, 632 P.2d 1066, 1071 (Haw. 1981).

165. "The law clearly views a dog as personal property." *Campbell*, 632 P.2d at 1071 n.5 (citing *Thiele v. City of Denver*, 312 P.2d 786 (Colo. 1957); *Smith v. Costello*, 290 P.2d 742 (Idaho 1955)).

166. See *id.* at 1067. The animal quarantine station was transporting the dog by van to a local veterinarian to remove a growth on the dog's gums. See *id.* Due to the lack of ventilation in the van where the dog was located, the pet died of heat prostration. See *id.* Upon notification of the death, the whole family, except the father, cried. See *id.* Furthermore, for the next two weeks the whole family suffered severe emotional distress resulting from the loss of their pet. See *id.* The plaintiffs never sought the assistance of medical or psychiatric professionals. See *id.* The trial court ruled in favor of the plaintiffs for \$1000. See *id.*

167. See *id.* at 1071. This court allowed the trier of fact to determine if the emotional distress was proximately caused by the defendants' negligent conduct. See *id.*

damage to their property. In the future, in order for a plaintiff to recover, the facts must fall within one of the exceptions outlined in *Zeigler v. F Street Corp.*¹⁶⁸ These exceptions include fraud, malice, intentional conduct, and danger to the plaintiff's personal safety.¹⁶⁹ Therefore, under Maryland law, a trial court will most likely deny recovery to future plaintiff's unless they allege and prove one of these exceptions.

A future plaintiff may be able to strengthen their claim for compensation if the facts of their case indicate that the plaintiff witnessed the negligent destruction of property as it happened. If the plaintiff witnesses the damage as it occurs, a court may be more inclined to view the aftereffects of this damage as foreseeable.¹⁷⁰ While the current law in Maryland does not indicate that these facts would automatically result in compensation, this type of argument could aid in satisfying the foreseeability requirement.¹⁷¹

Future plaintiffs might also strengthen their case for recovery if they allege that the defendant's conduct became a nuisance and interfered with their physical comfort while they were using their property.¹⁷² For example, in *Edwards v. Talent Irrigation District*,¹⁷³ the Supreme Court of Oregon allowed plaintiffs to recover for emotional injuries stemming solely from property damage because the defendant's negligent conduct interfered with the use and enjoyment of the plaintiffs' property.¹⁷⁴

In *Edwards*, the plaintiffs alleged emotional damages after the defendant's irrigation ditch, which was damaged, flooded the plaintiffs' property.¹⁷⁵ As a result of the flooding, the plaintiffs were distressed about the loss of the use of their bathing and laundry facilities and the need to spend hours fixing and draining their

168. 248 Md. 223, 226, 235 A.2d 703, 705 (1967).

169. *See id.* (citing 25 C.J.S. *Damages* § 68 (1966)).

170. In Hawaii, a jurisdiction that allows compensation for emotional distress as a result of property damage, a defendant tried to escape liability by asserting that the plaintiff was not an eyewitness to the tortious event that caused the property damage. *See Campbell*, 632 P.2d at 1069. The Supreme Court of Hawaii rejected this argument explaining that a defendant will be liable whether a plaintiff actually observes the tortious accident or the consequences that resulted from the tortious accident. *See id.* This holding demonstrates that Hawaii courts recognize that both of these situations can create a foreseeable emotional injury. Therefore, they did not need to implement this distinction.

171. A plaintiff in Maryland who could convince the court of the need to expand the foreseeability window could recommend this distinction as a way to compensate a plaintiff for their mental injuries as a result of negligent destruction of property.

172. *See Shipley, supra* note 60, at 1087-89.

173. 570 P.2d 1169 (Or. 1977).

174. *See id.* at 1169.

175. *See id.*

property.¹⁷⁶ Thus, the court concluded that it was proper for them to be compensated for their emotional injuries.¹⁷⁷

The *Edwards* holding might provide assistance to future plaintiffs in Maryland. In *Dobbins*, the plaintiffs mentioned the *Edwards* case in their brief to the court of appeals, but they did not focus on the nuisance theory.¹⁷⁸ Future plaintiffs might bring a successful claim if they attempt to emphasize that the defendant's negligent conduct interfered with the plaintiff's use and enjoyment of his property.

Even though *Dobbins* clearly favors future defendants, one benefit for future plaintiffs stemming from *Belcher*, and reiterated in *Dobbins*, is the relaxation of the "physical injury" rule.¹⁷⁹ The *Belcher* court's statement that "[w]e are now aware that mental injuries can be as real as broken bones and may result in even greater disabilities"¹⁸⁰ indicates that Maryland courts may be headed toward the minority approach that allows recovery for mental injuries even if the emotional distress does not result in a subsequent "physical injury."¹⁸¹ Indeed, courts that have adopted this approach use similar wording to support the need to relax or abolish the "physical injury" rule.¹⁸² Under this minority approach, plaintiffs need to show only

176. *See id.* at 1170.

177. *See id.* Nonetheless, in a footnote, the court explained that their holding was limited to this particular type of case. *See id.* at 1170 n.4. The Supreme Court of Oregon recognized that the law dealing with the recovery for mental distress "is confused and perhaps in need of rethinking by the courts." *Id.* The court, however, stated that the *Edwards* case was not "a proper vehicle for reconsideration of the rules governing recovery for this type of injury." *Id.*

178. *See* Appellants' Brief at 9, *Dobbins v. Washington Suburban Sanitary Comm'n*, 338 Md. 341, 658 A.2d 675 (1995) (Sept. Term 1994 No. 122). The appellants placed this case in a string citation after making the general assertion that "[c]ourts in other jurisdictions have allowed recovery for damages for emotional distress based on property damage." *Id.*

179. *See Dobbins*, 338 Md. at 350, 658 A.2d at 679 (quoting *Belcher v. T. Rowe Price Found., Inc.*, 329 Md. 709, 735-36, 621 A.2d 872, 885 (1993)). For a discussion of the "physical injury" rule see *supra* notes 21-57 and accompanying text.

180. *Belcher v. T. Rowe Price Found., Inc.*, 329 Md. 709, 736, 621 A.2d 872, 885 (1993).

181. *See supra* notes 27-28 and accompanying text.

182. For example, in *St. Elizabeth Hospital v. Garrard*, 730 S.W.2d 649, 654 (Tex. 1987), *overruled on other grounds by* *Boyles v. Kerr*, 855 S.W.2d 593, 595-96 (Tex. 1993), the Supreme Court of Texas abolished the physical injury rule and stated: "It is well recognized that certain psychological injuries can be just as severe and debilitating as physical injuries." *Garrard*, 730 S.W.2d at 653. *See supra* note 29 for a detailed discussion of the effect of *Boyles* on the holding of *Garrard*. Likewise, in *Belcher v. T. Rowe Price Found., Inc.*, 329 Md. 709, 736, 621 A.2d 872, 885 (1993), the Court of Appeals of Maryland stated: "We are now aware that mental injuries can be as real as broken bones and may result in even greater disabilities." Arguably, the language in *Belcher* is stronger than the language in *St. Elizabeth Hospital*.

mental anguish to satisfy the injury requirement.¹⁸³ The assertion that this approach may open the floodgates of litigation should not be a reason to deny compensation for mental suffering.¹⁸⁴

V. CONCLUSION

The *Dobbins* decision is an example of the modern dilemma that courts, including Maryland, experience when trying to determine how far they will extend emotional distress damages. In *Dobbins*, the court of appeals reaffirmed that Maryland courts will not permit recovery for mental injuries that are unforeseeable.¹⁸⁵ More specifically, the court rejected the minority view that compensates a plaintiff when a defendant's conduct results in the negligent infliction of emotional distress.¹⁸⁶ The court recognized the liberalization of the "physical injury" rule requirement but refused to extend the liberalization to the foreseeability requirement.¹⁸⁷ This failure to relax the foreseeability requirement is inconsistent with the court's acknowledgment that the advancement in medical technology has increased society's awareness and knowledge regarding psychological injuries.¹⁸⁸ Future plaintiffs should use this acknowledgement to argue that psychological injuries are equally as foreseeable as physical injuries.

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183. See *Garrard*, 730 S.W.2d at 654, *overruled on other grounds by* *Boyles v. Kerr*, 855 S.W.2d 593, 595-96 (Tex. 1993). See *supra* note 29 for a detailed discussion of the effect of *Boyles* on the holding of *Garrard*. In *Garrard*, the court held that jurors have the responsibility to determine if the plaintiff's mental anguish was caused by the defendant's actions. See *Garrard*, 730 S.W.2d at 654, *overruled on other grounds by* *Boyles v. Kerr*, 855 S.W.2d 593, 595-96 (Tex. 1993). See *supra* note 29 for a detailed discussion of the effect of *Boyles* on the holding of *Garrard*.

184. See *id.* The court in *Garrard* recognized this potential problem. See *id.* The court, however, asserted that this obstacle cannot stand in the way of compensating legitimate claims. See *id.* at 653-54. The court stated: "The problem is one of proof, and to deny a remedy in all cases because some claims may be false leads to arbitrary results which do not serve the best interests of the public." *Id.* at 654.

185. See *supra* notes 100-40 and accompanying text.

186. See *supra* notes 60-72, 141-67 and accompanying text.

187. See *supra* notes 91-99, 134-40, 179-84 and accompanying text.

188. See *supra* notes 152-60 and accompanying text.