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# Recent Developments: State v. Wiegmann: Domestic Relations Master Has No Authority to Order an Arrest of an Individual Found to Be in Contempt

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# *State v. Wiegmann*

## DOMESTIC RELATIONS MASTER HAS NO AUTHORITY TO ORDER AN ARREST OF AN INDIVIDUAL FOUND TO BE IN CONTEMPT

By Richard Dirk Selland

The Court of Appeals of Maryland held that masters have no authority to order an arrest pending review of the master's recommendation of contempt. *State v. Wiegmann*, 350 Md. 585, 714 A.2d 841 (1998). The court not only looked at the authority of masters in domestic cases, but also the continued viability of the common-law rule permitting individuals illegally arrested to resist such an arrest. The court declined to abolish this common-law rule, holding that such an action is better left to the legislature.

On September 21, 1995, Kevin Wiegmann appeared at a contempt hearing in the Circuit Court for Howard County before Master Patrick because he failed to pay court-ordered child support. At the conclusion of the hearing, Master Patrick held that Wiegmann was in contempt, entered a judgment for arrears totaling $14,993.65, and sentenced him to 45 days in jail, to begin immediately.

When Wiegmann refused to cooperate with the deputies who were to escort him from the courtroom, a struggle ensued. After striking one of the deputies in the jaw, Wiegmann was handcuffed and taken into custody. Wiegmann was charged with resisting arrest, and assault and battery. He was convicted of battery, but was acquitted of resisting arrest. The Court of Special Appeals of Maryland vacated Wiegmann's conviction and remanded the case to the circuit court, holding that Wiegmann's arrest was illegal because masters have no implicit or express authority to order arrests. Certiorari was granted, and the issues before the Court of Appeals of Maryland were: (1) whether a domestic relations master had the power to order an arrest pending a judicial order; and (2) whether the defendant had a right to resist an unlawful arrest.

The court recognized that the statutes governing the use of masters in domestic relations cases and the Maryland rules both limit a master's authority. *Wiegmann*, 350 Md. at 591, 714 A.2d at 844. The court first noted that Maryland Rule 9-207(a)(1) authorizes a master to preside at a contempt hearing regarding "noncompliance with an order relating to the payment of alimony or child support." *Id.* The question then was whether Master Patrick had the authority to order an arrest of an individual held in contempt. *Id.* By examining Maryland Rule 2-541(c), which enumerates the powers given to the master for the purpose of regulating proceedings in the hearing, the court found that masters shall only make findings of fact and in their advisory capacity, provide recommendations to the circuit court. *Id.* at 592, 714 A.2d at 844. Additionally, the rules do not expressly allow masters to hold litigants against their will. *Id.*

The State argued that the list of masters' powers is not an exhaustive list and that the power to detain is implicit in Rule 2-541(c) "because such power is inherent in the authority conferred upon a master to 'regulate all proceedings' at a hearing." *Id.* In interpreting the rule and in particular the phrase "regulate all proceedings," the court looked at the purpose, the language, and the history of the rule to ascertain its meaning. *Id.* The court noted that the interpretation urged by the State "would be wholly inconsistent with the advisory, clerical, and ministerial functions that masters have traditionally performed," and concluded that the rules do not expressly, nor implicitly, provide masters with the power to detain litigants against their will. *Id.* at 593, 714 A.2d at 845.

In examining the role and

powers of a master, the court further analyzed the Maryland Constitution and relevant case law. *Id.* The court noted that "a master is not a judicial officer" nor is a master vested with any judicial powers from the state constitution, but is regarded merely as an advisor to the court. *Id.* at 593-94, 714 A.2d at 845 (citing *Noli v. Noli*, 101 Md. App. 243, 646 A.2d 1021(1994)) (Holding that a master "decides nothing, but merely reports to the court the result of the examination of the proceedings"). The court also conducted a careful review of the minutes from the Court of Appeals Standing Committee on Rules of Practice and Procedure and found that there was a concern about "an unconstitutional delegation of judicial power to domestic masters." *Id.* at 596, 714 A.2d at 846. Therefore, the court of appeals determined that the state's interpretation of the rule was in contrast to the history of the rule. *Id.*

The State argued that in the alternative, Wiegmann's arrest was "the functional equivalent of an arrest warrant" and as such, he had no right to resist the arrest. *Id.* at 600, 714 A.2d at 848. The court dismissed this claim by reiterating the fact that a master is not a judicial officer and therefore, "has no part in the process of issuing any warrant" nor can a master order an arrest. *Id.* Additionally, the subjective good faith belief by the deputies that the master had the authority to make the arrest is not enough. *Id.* As the Court of Special Appeals of Maryland held, "[a] judicially authorized warrant is the cornerstone of the Fourth Amendment, and analogizing the situation in the case sub judice to an arrest pursuant to an invalid warrant denigrates the importance of the warrant to our constitutional framework." *Id.* at 601, 714 A.2d at 849 (quoting *Wiegmann*, 118 Md. App. 317, 347, 702 A.2d 928, 943 (1997)).

The court next considered whether it would abolish the common-law right to resist an illegal warrantless arrest. *Id.* Under the long-standing common-law rule, "one illegally arrested may use any reasonable means to effect his escape, even to the extent of using such force as is reasonably necessary." *Id.* However, the court of appeals has recognized a current trend in limiting one's right to resist such an arrest. *Id.* at 601-02, 714 A.2d at 849. The court has carved out a few exceptions to the rule by holding that citizens do not have a right to resist arrest where they were involved in an illegal frisk, an unlawful *Terry* stop, or an arrest done under the auspices of a facially deficient warrant. *Id.* at 602, 714 A.2d at 849. Nevertheless, the court concluded that changes in such doctrine should be left to the will of the legislature, thereby upholding the right of an individual to resist such an arrest. *Id.* at 604, 714 A.2d at 850.

In a strong dissenting opinion, Judge Chasanow stated that there was no justification for extending this common-law rule permitting one to use force to resist arrest, especially when the detention is ordered by an individual sitting on the bench. *Id.* at 607-08, 714 A.2d at 852. Additionally, because individuals are allowed to resist "arrests which are not based on probable cause does *not* mean we should authorize force to resist a detention ordered in open court after a contempt finding by the . . . master garbed in a black robe." *Id.* at 609, 714 A.2d at 853.

The split decisions of both the court of special appeals and the court of appeals reflects the difficulty in deciding whether changes in a common-law rule should be left to the courts or the legislature. The Court of Appeals of Maryland held that where the common-law rule conflicts with modern policy, the will of the legislature should govern. *Id.* at 605, 714 A.2d at 850. The *Wiegmann* decision states loud and clear that Masters do not have the authority to arrest defendants and reaffirms the common-law rule that citizens may use force to resist such an arrest. However, Judge Chasanow in his dissent raises a good point that "[a]uthorizing resistance by force in a courtroom will serve no public purpose, will diminish respect for the courts, and will only result in escalating violence." *Id.* at 609, 714 A.2d at 853. This decision provides Marylanders with the belief that respect for the courts and the law is a belief of the past.