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Matthew F. Penater

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Remsburg v. Montgomery:
**A Leader of a Hunting Party Has No Duty to Protect a Victim of an Accident
Resulting from the Negligence of a Hunting Party Member**

By: Matthew F. Penater

The Court of Appeals of Maryland held, in a case of first impression, the leader of a hunting party has no duty to protect a victim of an accident resulting from the negligence of a hunting party member. *Remsburg v. Montgomery*, 376 Md. 568, 603, 831 A.2d 18, 38 (2003). The court found no special relationship existed creating a special duty to protect a victim from third-party negligence. *Id.* at 599, 831 A.2d at 36.

On November 28, 1998, Charles and Brian Montgomery (“Montgomerys”) hid at the edge of their property to hunt deer. Shortly thereafter, James Remsburg, Sr.’s (“James, Sr.”) hunting party, which included his son James Remsburg, Jr. (“James, Jr.”), positioned themselves near the Montgomerys. As the Montgomerys moved to a new location, a shotgun slug grazed Brian Montgomery’s neck and passed through Charles Montgomery’s right shoulder. James, Jr., believing he aimed at a deer, shot from a tree stand located near the Montgomerys’ position.

The Montgomerys filed suit in the Circuit Court for Frederick County against James, Jr. and James, Sr. alleging negligence and trespass. James, Sr. filed a Motion

for Summary Judgment claiming the Montgomerys failed to assert a legally cognizable duty on James, Sr. to protect them from third-party actions. The circuit court granted the motions. The Court of Special Appeals of Maryland vacated the decision with respect to the negligence claim, holding factual disputes existed that could establish James, Sr. had a duty to protect the Montgomerys from James, Jr.’s negligent acts. The Court of Appeals of Maryland granted certiorari.

The court of appeals began by discussing whether an individual owed a duty to protect a victim from third-party negligent acts. *Id.* at 583, 831 A.2d at 27. Generally, absent a special duty, there is no duty to protect someone from the actions of a third party. *Id.* The court identified three ways that create a special duty to protect another from a negligent third party: (1) by statute or rule, (2) by a contractual or other private relationship, or (3) by virtue of a special relationship. *Id.* at 583-84, 831 A. 2d at 27. The court briefly analyzed the first two methods and found they did not apply to the facts of this case. *Id.* at 585, 589-90, 831 A.2d at 28, 30.

There is no duty to control a third person’s conduct unless a special relationship exists between certain parties. *Id.* at 583, 831 A.2d at 27. The Restatement (Second) of Torts § 315 (1965) identifies: (1) relationships between the actor and third party giving rise to a duty to control third-party conduct and (2) relationships between actor and other giving the other a right to protection. *Id.* at 590, 831 A.2d at 31.

Addressing the first prong of this analysis, the court examined the nature of the relationship between James, Sr. and James, Jr. *Id.* To create a special relationship giving rise to a legal duty, the actor must have control over the third party and special knowledge of the risk a third party poses to others. *Id.* at 591, 831 A.2d at 31. Cases in which such a relationship existed involved such extreme circumstances as the negligent release of a contagious patient from a hospital and the escape of a homicidal maniac from a private sanitarium due to negligence. *Id.* at 591, 831 A.2d at 32. These cases suggest the requirement of a custodial relationship to establish a duty to protect. *Id.* at 592, 831 A.2d at 32. The court held James, Sr.’s

status as the hunting party's leader did not constitute custodial control over James, Jr. and did not establish that duty. *Id.*

Under the Restatement (Second) of Torts § 314A (1965), a duty to protect may also be established by virtue of the relationship between James, Sr. and the Montgomerys. *Id.* at 594, 831 A.2d at 32. The court previously recognized such a relationship existed between an innkeeper and his guests and a common carrier and its passengers. *Id.* In each case, victims were dependant on the actor by virtue of their situational relationship. *Id.*, 831 A.2d at 33. The court determined the Montgomerys controlled their own land and did not depend on anyone for protection. *Id.* The court also noted although both parties interacted in the past regarding hunting rights, those interactions did not create a dependent relationship. *Id.* The court concluded the Montgomerys did not depend on James, Sr. for protection from James, Jr. and no special relationship existed. *Id.*

In addition to the Restatement, a special relationship may also be established by "virtue of a party's actions." *Id.* at 595, 831 A.2d at 33. In determining whether such a relationship existed, the court of appeals applied the standard formulated in *Ashburn v. Anne Arundel County*. *Id.* at 595, 831 A.2d at 34 (citing *Ashburn*, 306 Md. 617, 510 A.2d 1078 (1986)). Originally applied to a police officer, the *Ashburn* test requires an actor to affirmatively act "to protect the

specific victim . . . thereby inducing the victim's specific reliance" upon the protection. *Id.* at 596, 831 A.2d at 34. The *Ashburn* test requires both affirmative action to protect a specific victim and specific reliance by the victim on that action. *Id.* James, Sr.'s previous dealings with the Montgomerys regarding hunting rights did not constitute affirmative actions to protect the Montgomerys. *Id.* at 599, 831 A.2d at 36. Furthermore, the court concluded the Montgomerys did not specifically rely on James, Sr.'s actions for protection. *Id.* The court held no special relationship existed. *Id.* at 599, 376 Md. at 599, 831 A.2d at 36.

The Court of Appeals of Maryland stated it previously applied the *Ashburn* test only to matters involving public officials. *Id.* The court acknowledged the expansion of the *Ashburn* test; however, special relationships will be analyzed on a case-by-case basis. *Id.* The *Ashburn* test must focus primarily on a party's conduct that may induce reliance by another party. *Id.*

This case firmly establishes application of the *Ashburn* test to private matters and will no doubt generate more litigation in the area of liability for third-party negligence. Although the applicability of the *Ashburn* test appears clear, the court's requirement for a case-by-case analysis will only serve to confuse the question of when a special relationship does or does not exist. The Court of Appeals of Maryland has opened the floodgates

to third-party actions, which may well only be closed by clear, restrictive future holdings.

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