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# Recent Developments: Sheppard v. State: Trial Judge May Not Impose a Condition of Probation That Usurps an Administrative Agency's Authority

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*Sheppard v. State*

The Court of Appeals of Maryland held in *Sheppard v. State*, 344 Md. 143, 685 A.2d 1176 (1996), that a judge may not prohibit a driver from operating a motor vehicle as a condition of a three-year term of probation. The ruling by the court of appeals made clear that, although judges generally may exercise broad discretion when imposing conditions of probation, a judge cannot prohibit a driver from operating a motor vehicle as part of probation, since the legislature has delegated the authority of licensing drivers to the Motor Vehicles Administration. The ruling by the court of appeals clarified the preemption and separation of powers issues that arose when the trial judge overstepped his authority by attempting to suspend a driver's license as part of a probation term.

Frances Diana Sheppard ("Sheppard") was convicted of two counts of driving under the influence of alcohol for offenses occurring on August 23, 1994 and March 6, 1995, pursuant to the Transportation Article, section 21-902(b) of the Annotated Code of Maryland. Among the conditions of her probation, the trial judge prohibited Sheppard from operating a motor vehicle during her three-year probation term. This requirement imposed particular hardships for Sheppard, because she did not live near public transportation and she wanted to return to work as a registered nurse.

**Trial Judge May Not  
Impose A Condition  
Of Probation That  
Usurps An  
Administrative  
Agency's Authority**

By Douglas May

Prior to this case, Sheppard had been arrested for driving under the influence of alcohol in 1982 and 1983.

After being convicted in the Circuit Court for Worcester County, Sheppard appealed her case to the Court of Special Appeals of Maryland on the single issue of whether a trial judge may lawfully prohibit a defendant, convicted of driving under the influence, from operating a motor vehicle for a three-year term of probation. The Court of Appeals of Maryland, on its own motion, issued a writ of certiorari to review the case.

The court of appeals began its analysis by acknowledging that under Maryland law a trial judge has broad discretion in imposing conditions of probation, but that this power is not unlimited. *Sheppard*, 344 Md. at 145, 685 A.2d at 1177 (citing MD. ANN. CODE art. 27, § 639(a)(1996)). The court noted that other states were divided as to whether the vehicle code deprives courts from suspending a driver's license. *Id.* at 146, 685 A.2d at 1177. The

court pointed out that some states have permitted trial judges to suspend a driver's license as a condition of probation when the legislature has expressly granted the power to the trial court. *Id.* at 147, 685 A.2d at 1177. According to the court, the issue in the case at bar hinged on the preemption and separation of powers controversy between the judiciary and a legislature. *Id.* at 146, 685 A.2d at 1177.

The court began to resolve the issue by comparing *Sheppard* with *Towers v. State*, 92 Md. App. 183, 607 A.2d 105 (1992), a case in which a pharmacist was placed on probation with the condition that he not work in a pharmacy without the court's permission, even if the State Board of Pharmacy reinstated his license to practice. *Sheppard* at 147, 685 A.2d at 1178. In its analysis, the *Towers* court stated that "[w]e are dealing with overlapping circles of authority that are statutorily based, and it is therefore to the respective statutes that we must first turn." *Sheppard* at 147, 685 A.2d at 1178 (quoting *Towers*, 92 Md. App. at 189-90, 607 A.2d at 108). To support its position that the legislature had delegated the power to restore *Towers*' license to the Maryland State Pharmacy Board, the *Towers* court relied on *U.S. v. Sterber*, 846 F.2d 842 (2d Cir. 1988). *Sheppard* at 148, 685 A.2d at 1178 (citing *Towers v. State*, 92 Md. App. at 193-94, 607 A.2d at 110). From *Towers*, the *Sheppard*

court concluded that it must first determine whether the legislature intended for the courts to be able to suspend drivers' licenses as part of probation. *Id.* at 148, 685 A.2d at 1178.

In examining the Transportation Article of the Annotated Code of Maryland, the court looked at statutes that govern how long a driver's license may be suspended when one is convicted of driving under the influence, and when a driver's license may be reinstated. *Id.* at 149-51, 685 A.2d 1179-80. In the instant case, the judge's three year suspension was longer than any suspension term in the statutes. *Id.* at 149-50, 685 A.2d 1179 (citing MD. CODE ANN., TRANSPORTATION § 16-404(c)(2) (1996)). The statutes also specify certain time periods that a driver must wait before applying for reinstatement of her driver's license, and in more serious cases the Motor Vehicle Administration ("MVA") may undertake an investigation of the driver's habits and abilities before reinstating his license. *Id.* at 150-51, 685 A.2d 1179-80 (citing MD. CODE ANN., TRANSPORTATION § 16-208(b) (1996)). Thus, the trial judge's suspension of Sheppard's driver's license was contrary to Maryland law, because the statutes did not enable the trial judge to suspend a driver's license for three years and because the legislature has enacted specific laws that empower the MVA to suspend or reinstate a driver's license. *Id.* at 151, 685 A.2d 1180.

Finally, the court bolstered its

analysis with a number of decisions where the court of special appeals ruled that the trial court exceeded its jurisdiction, similar to the trial judge in the present case. *Id.* at 151-53, 685 A.2d at 1180-81. In *Smith v. Smith*, the court held that the trial court could not prohibit a convicted child abuser from seeking custody of her children, because the Juvenile Court had jurisdiction over this matter. *Sheppard* at 152, 685 A.2d at 1180 (citing *Smith v. Smith*, 80 Md. App. 371, 374, 563 A.2d 1129, 1130 (1989)). Similarly, the court used *In Re David K.* to explain that if the trial court suspended a driver's license, the MVA would not be able to keep track of who was licensed to drive. *Sheppard* at 153, 685 A.2d 1181 (citing *In Re David K.*, 48 Md. App. 714, 723-25, 429 A.2d 313, 318-19 (1981)). In the dicta of *In Re David K.*, the court also noted that the defendant could enter into a voluntary agreement to surrender his license as part of his probation, but the *Sheppard* court said that this was not an issue for *Sheppard* because she appealed the condition of her probation. *Sheppard* at 153-54, 685 A.2d 1181 (citing *In Re David K.*, 48 Md. App. at 721-22, 429 A.2d at 317).

*Sheppard v. State* sends a clear message to trial judges not to suspend the driver's license of a person convicted of drunk driving as part of a probation term, unless authorized by statute. The court based its ruling on the notion that a trial judge cannot usurp the power of the MVA to suspend a

driver's license, even if they are tempted by the public's demand to keep drunk drivers off the road.

