



1999

# Recent Developments: *Beynon v. Montgomery Cablevision Ltd.*: Accident Victim's Estate May Recover Damages for Pre-Impact Fright if a Jury Is Capable of Making an Objective Determination That the Victim Experienced Anguish and Distress before Impending Death

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## Recommended Citation

Bowers, Catherine (1999) "Recent Developments: *Beynon v. Montgomery Cablevision Ltd.*: Accident Victim's Estate May Recover Damages for Pre-Impact Fright if a Jury Is Capable of Making an Objective Determination That the Victim Experienced Anguish and Distress before Impending Death," *University of Baltimore Law Forum*: Vol. 29 : No. 2 , Article 5.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol29/iss2/5>

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## ***Beynon v. Montgomery Cablevision Ltd.:***

### **Accident Victim's Estate May Recover Damages for Pre-Impact Fright if a Jury is Capable of Making an Objective Determination that the Victim Experienced Anguish and Distress Before Impending Death**

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By Catherine Bowers

In a case of first impression, the Court of Appeals of Maryland addressed whether the estate of an accident victim may be awarded damages in a survival action when the victim, who died immediately upon impact, experienced pre-impact fright. *Beynon v. Montgomery Cablevision Ltd.*, 351 Md. 460, 718 A.2d 1161 (1998). The court held that when a decedent experiences great anxiety and fear of imminent death immediately prior to the fatal physical impact, the decedent's estate may recover for emotional distress and mental anguish that can be measured by an objective determination.

In the early morning of June 8, 1990, Montgomery Cablevision Limited Partnership was installing replacement cable on Interstate 495 ("capital beltway"). *Beynon*, 351 Md. at 464, 718 A.2d at 1163. Montgomery Cable coordinated with the Maryland State Police to have traffic on the capital beltway stopped during the cable replacement. *Id.* During the repair, traffic backed up one mile on both sides of the capital beltway. *Id.* James P. Kirkland ("Kirkland") was at the end of the traffic congestion in his tractor-trailer. *Id.* Kirkland testified that his trailer was stopped in a middle lane, and that there was traffic on both sides of him. *Id.*

At the same time, Douglas K.

Beynon ("Beynon") was traveling at 55 m.p.h. in the same direction as Kirkland. *Id.* at 464-65, 718 A.2d at 1163. Beynon was approximately 192 feet behind Kirkland's tractor-trailer when he realized he was going to crash. *Id.* at 465, 718 A.2d at 1163. Beynon slammed on his brakes and veered to the right. *Id.* However, Beynon was unable to stop his vehicle, hit the rear of Kirkland's trailer, and was killed on impact. *Id.*

In the Circuit Court for Montgomery County, Beynon's parents contended that Beynon suffered and should be compensated for pre-impact fright, which was defined as "the mental anguish the decedent suffered from the time he became aware of the impending crash until the collision." *Id.* at 465, 718 A.2d at 1164. Beynon's parents presented the seventy-one and a half feet of skid marks to prove that Beynon reacted to the imminent danger of crashing. *Id.* at 465, 718 A.2d at 1163. The trial court agreed that the parents presented sufficient evidence of pre-impact fright and instructed the jury that it could make an award for pain, suffering, and mental anguish. *Id.* at 465-66, 718 A.2d at 1164. The jury returned a verdict for the petitioners, and awarded \$1,000,000.00 to Beynon's estate for pre-impact fright. *Id.* at 466, 718 A.2d at 1164. The court

reduced the award to \$350,000 pursuant to section 11-108(b) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland. *Id.* The Court of Special Appeals of Maryland reversed the judgment for post-impact fright, concluding that a cause of action based only on fright cannot stand without physical injury to the victim or an injury capable of objective determination. *Id.* at 467-69, 718 A.2d at 1164-65 (citing *Montgomery Cablevision Ltd. v. Beynon*, 116 Md. App. 363, 388, 696 A.2d 491, 503 (1997)). The intermediate appellate court stated that damages for pre-impact fright cannot be awarded when a victim dies on impact or never regains consciousness. *Id.* at 469, 718 A.3d at 1165 (citing *Montgomery Cablevision Ltd.*, 116 Md. App. at 388, 696 A.2d at 503). The Court of Appeals of Maryland granted certiorari, reversed the court of special appeals and remanded the case with instructions to reinstate the trial court's judgment. *Id.* at 509, 718 A.2d at 1185.

The court of appeals began its analysis by reviewing case law from jurisdictions that allow the recovery of pre-impact fright damages and jurisdictions that do not allow such damages. *Id.* at 476-97, 718 A.2d at 1169-79. Following this review,

the court determined that the cases upholding an award of damages for pre-impact fright were more persuasive and compatible with Maryland law. *Id.* at 497, 718 A.2d at 1179.

The court next summarized Maryland law involving issues regarding recovery for emotional injury. *Id.* at 497-504, 718 A.2d at 1179-83. The court concluded that damages for emotional distress are recoverable in Maryland under two circumstances. *Id.* at 504-05, 718 A.2d at 1183. First, damages are recoverable when the emotional distress is proximately caused by the defendant's wrongful act and results in a physical injury. *Id.* (citing *Green v. T.A. Shoemaker & Co.*, 111 Md. 69, 77, 73 A. 688, 691 (1909)). Second, damages are recoverable when the emotional distress is capable of being determined in an objective manner. *Id.* (citing *Vance v. Vance*, 286 Md. 490, 500, 408 A.2d 728, 733 (1979)). Significantly, the court noted that this standard for recovery of damages for emotional distress chronologically varies the common law chain of events - wrongful fact, physical impact, physical injury and then emotional distress, for such recovery. *Id.* at 505, 718 A.2d at 1183. Thus, the court introduced a more flexible and accommodating sequence of events for recovery of emotional damages. *Id.* The court concluded, given the new accommodating sequence of events, that the compensability of pre-impact fright is permissible "when it is the proximate result of a wrongful act and it produces a physical injury or is

manifested in some objective form." *Id.*

Physical injury, the court stressed, provides the objective manifestation of the emotional injury and serves "as the yardstick by which a tort victim's emotional harm may be measured." *Id.* at 507, 718 A.2d at 1184. In the present case, the court explained, Beynon's fright was accompanied by physical injuries, the injuries that caused his death. *Id.* The court also stated that Beynon's fright was also accompanied by an independent objective manifestation of emotional distress and mental anguish. *Id.* The court concluded that Beynon's fright was capable of objective determination by the seventy-one and a half feet of skid marks that resulted from his apprehension of impending death. *Id.*

Again discussing the sequence of events and proximate cause of harm, the court stressed that the fact that Beynon's fright occurred before the crash that resulted in his fatal injuries did not affect causation. *Id.* A wrongful act need only proximately cause mental anguish, and this mental disturbance does not need to be the result of physical injury. *Id.* Thus, the court opined, the respondent was responsible for the emotional disturbance Beynon experienced due to the crash. *Id.*

In addition, the court reasoned that considering the purpose of survival statutes is to permit a decedent's estate to bring an action that the decedent would have brought had he lived, refusing to allow Beynon's estate to recover pre-impact fright damages in this survival action

would be illogical. *Id.* at 508, 718 A.2d at 1185. Had Beynon lived, he no doubt would have been permitted to recover damages for the pre-impact fright he suffered before hitting the tractor-trailer. *Id.*

The court next addressed the issue of permitting a jury to determine pre-impact fright. *Id.* The court concluded that the jury determination required the jury to use the same reasoning and common knowledge it would be permitted to use if it were determining non-economic damages such as pain and suffering. *Id.* Furthermore, the court explained that the jury only needs evidence from which they could reasonably infer that the decedent experienced fright. *Id.* The court opined that in the present case, the jury could have reasonably inferred from the seventy-one and a half foot skid marks that Beynon was aware of the impending crash and tried to avoid it. *Id.*

In a dissenting opinion, Judge Wilner disagreed with the majority determination that the existence of fright could be measured by seventy-one and a half feet of skid marks. *Id.* at 509-10, 718 A.2d at 1185-86. Judge Wilner stated that the case lacked any substantial evidence from which a jury could infer that Beynon was consciously experiencing fright while trying to stop his vehicle. *Id.* at 511, 718 A.2d at 1186. According to Judge Wilner, it was "rank speculation" for a jury to conclude that Beynon was consciously thinking about anything other than trying to avoid hitting the trailer. *Id.* Judge Wilner also expressed great concern over the amount per second of

damages awarded in the case, which was \$140,000 per second of fright. *Id.* at 512, 718 A.2d at 1187.

Significantly, in *Beynon v. Montgomery Cablevision Ltd.*, the Court of Appeals of Maryland recognized an action for pre-impact fright when the impact causes instantaneous death. As a result of this decision, when a plaintiff offers evidence that provides an objective determination of the distress suffered by the decedent, his or her estate may recover for the suffering. The court's holding permits juries to infer the decedent's fright from the evidence presented. The effect of this case will add to the unchecked speculation and conjecture in Maryland's jury rooms.