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RECENT DEVELOPMENT

COLEMAN V. SOCCER ASS'N OF COLUMBIA: THE DOCTRINE OF CONTRIBUTORY NEGLIGENCE WILL REMAIN THE STANDARD IN MARYLAND FOR NEGLIGENCE CASES UNLESS THE LEGISLATURE TAKES ACTION OTHERWISE.

By: Katelyn Vu

The Court of Appeals of Maryland reaffirmed the doctrine of contributory negligence. *Coleman v. Soccer Ass'n of Columbia*, 432 Md. 679, 685, 69 A.3d 1149, 1152 (2013). The court added that although it has the power to judicially abrogate the common law, it is reluctant to make changes that are contrary to the state's public policy set forth by the Maryland General Assembly. *Coleman*, 432 Md. at 691, 69 A.3d at 1156.

On August 19, 2008, James Coleman ("Coleman") suffered injuries while coaching youth practice for the Soccer Association of Columbia ("SAC"), in Howard County, Maryland. During the practice, Coleman went to retrieve a ball from one of the soccer goals and jumped up to hang from the goal's crossbar. The goal was unanchored to the ground and fell on top of him. As a result, Coleman suffered several facial injuries which resulted in three metal plates being inserted into his face.

Coleman sued SAC for negligence in the Circuit Court for Howard County. Coleman proffered a jury instruction on comparative negligence, but the judge refused his request and instructed the jury on contributory negligence. The jury found that SAC was negligent, and that SAC's negligence caused Coleman's injuries. However, the jury further found that Coleman was negligent as well, and that his negligence also contributed to his injuries. Applying the doctrine of contributory negligence, the court barred Coleman from any recovery, entering judgment in favor of SAC. Before briefing and oral argument in the Court of Special Appeals of Maryland, the Court of Appeals of Maryland granted certiorari to consider whether the doctrine of contributory negligence should be upheld.

The court began its analysis by examining the common law doctrine of contributory negligence. *Coleman*, 432 Md. at 685, 69 A.3d at 1152. Under the doctrine of contributory negligence, a plaintiff who contributes to his or her injury by his or her own negligence is barred from all recovery. *Id.* (citing *Irwin v. Sprigg*, 6 Gill. 200, 205 (1847)). The standard of contributory negligence was initially adopted at a time when courts were concerned about plaintiff-minded juries awarding sums large enough to suppress newly developing industries. *Coleman*, 432 Md. at 686, 69 A.3d at 1153 (citing *Harrison v. Montgomery Cnty. Bd. of Educ.*, 295 Md. 442, 450, 456 A.2d 894, 898 (1983)). The standard of contributory negligence was also adopted to prevent courts from assisting a wrongdoer in recovering

damages for injuries to which the wrongdoer had contributed. *Coleman*, 432 Md. at 686-87, 69 A.3d at 1153 (citing *Harrison*, 295 Md. at 450, 456 A.2d at 898). The court then affirmed that the contributory negligence standard was the valid standard governing negligence cases in Maryland, and that any change in the standard was for the legislature to decide. *Coleman*, 432 Md. at 686, 69 A.3d at 1152 (citing *Harrison*, 295 Md. at 463, 456 A.2d at 905).

The court noted that the declaration of Maryland's public policy is generally a function of the Maryland General Assembly. *Coleman*, 432 Md. at 689, 69 A.3d at 1155 (citing *Harrison*, 295 Md. at 459, 456 A.2d at 903). More importantly, the court indicated that it was particularly reluctant to change a common law rule that is contrary to the state's public policy set forth by the legislature. *Coleman*, 432 Md. at 690, 69 A.3d at 1155 (citing *Harrison*, 295 Md. at 459, 456 A.2d at 903). The abrogation of contributory negligence additionally requires the substitution of an alternative standard. *Coleman*, 432 Md. at 688, 69 A.3d at 1154 (citing *Harrison*, 295 Md. at 454-55, 456 A.2d at 900-01). The court stated that the decision of which alternative standard to adopt was a matter of public policy, and therefore was a decision for the legislature. *Coleman*, 432 Md. at 688, 69 A.3d at 1154 (citing *Harrison*, 295 Md. at 454-55, 456 A.2d at 900-01).

The court proceeded to review the trend in other jurisdictions that adopted comparative negligence as a replacement for contributory negligence. *Coleman*, 432 Md. at 688-89, 69 A.3d at 1154 (citing *Harrison*, 295 Md. at 453, 456 A.2d at 899). As of 1983, the last time the court addressed the issue of comparative negligence, thirty-nine states had adopted the comparative negligence standard. *Coleman*, 432 Md. at 688, 69 A.3d at 1154 (citing *Harrison*, 295 Md. at 453, 456 A.2d at 899). The court pointed out that of those states, thirty-one had adopted the doctrine by statute. *Coleman*, 432 Md. at 688, 69 A.3d at 1154 (citing *Harrison*, 295 Md. at 453, 456 A.2d at 899).

The court then considered the significance of the General Assembly's repeated failure to enact bills seeking to change the contributory negligence standard. *Coleman*, 432 Md. at 693, 69 A.3d at 1157. From 1966 to 1982, twenty-one bills were proposed to the Maryland legislature, none of which were enacted. *Id.* (citing *Harrison*, 295 Md. at 462, 456 A.2d at 904). The court emphasized that the legislature's repeated failure to enact bills seeking to change the common law doctrine of contributory negligence is a significant indication of the State's current public policy. *Coleman*, 432 Md. at 693, 69 A.3d at 1157.

The dissent argued that the court was not so bound by the doctrine of *stare decisis* such that it would inhibit the court from judicially abrogating a common law rule that was unsound in modern circumstances. *Coleman*, 432 Md. at 704, 69 A.3d at 1163 (Harrell, J., dissenting). The dissent further stated that because the court created the doctrine of contributory negligence, the court had the duty and responsibility to change it. *Id.* at 702, 69 A.3d at 1162 (Harrell, J., dissenting). Furthermore, the dissent advocated for the

prospective application of a pure comparative fault system. *Id.* at 725, 69 A.3d at 1177 (Harrell, J., dissenting).

The Court of Appeals of Maryland addressed the dissent's concerns by determining whether the court has the power to abolish the contributory negligence standard. *Coleman*, 432 Md. at 691, 69 A.3d at 1156. The court acknowledged that the common law is subject to judicial modification in light of modern circumstances or increased knowledge. *Id.* (citing *Ireland v. State*, 310 Md. 328, 331-32, 529 A.2d 365, 366 (1987)). The court further acknowledged that an equally established principle is that the common law should not be changed by judicial action, contrary to the State's public policy set forth by the legislature. *Coleman*, 432 Md. at 691, 69 A.3d at 1156 (citing *Ireland*, 310 Md. at 331-32, 529 A.2d at 366).

The concurrence agreed with the majority that the decision to abrogate contributory negligence should be deferred to the General Assembly, but admitted that a system of comparative negligence would be more equitable for determining liability cases in Maryland. *Coleman*, 432 Md. at 738, 69 A.3d at 1184 (Greene J., concurring).

In *Coleman*, the Court of Appeals of Maryland held that the valid standard in Maryland governing negligence cases was the doctrine of contributory negligence. The court refused to follow the trend from forty-five other states which abolished the doctrine of contributory negligence to instead adopt the doctrine of comparative negligence as the standard governing negligence cases. Although the court acknowledged that judicial abrogation is well within its power, the court emphasized the importance of the Maryland General Assembly in making these types of public policy decisions. This holding makes it clear that the court will refuse to take sides when faced with a public policy debate, and will continue to defer the issue to the legislature.