



3-1-2018

Recent Developments: Doe v. Alternative Medicine Maryland, LLC

Marrio B. Davis

Follow this and additional works at: <https://scholarworks.law.ubalt.edu/lf>



Part of the [State and Local Government Law Commons](#)

Recommended Citation

Davis, Marrio B. (2018) "Recent Developments: Doe v. Alternative Medicine Maryland, LLC," *University of Baltimore Law Forum*: Vol. 48 : No. 2 , Article 6.

Available at: <https://scholarworks.law.ubalt.edu/lf/vol48/iss2/6>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact hmorrell@ubalt.edu.

RECENT DEVELOPMENT

DOE V. ALTERNATIVE MED. MD., LLC.: GROWERS OF MEDICAL CANNABIS WERE ENTITLED TO INTERVENE IN AN ACTION REGARDING THE ISSUANCE OF GROWERS' LICENSES BECAUSE THEIR MOTION WAS TIMELY AND THEY SHOWED AN IMPEDIMENT TO AN INTEREST THAT WAS NOT ALREADY ADEQUATLY REPRESENTED.

By: Marrio B. Davis

The Court of Appeals of Maryland held that certain pre-approved medical cannabis growers were entitled to intervention as of right under Maryland Rule § 2-214 (“Md. Rule § 2-214”). *Doe v. Alternative Med. Md., LLC*, 455 Md. 377, 168 A.3d 21 (2017). In compliance with Md. Rule § 2-214, the growers’ motion to intervene was timely, they had a clear interest in the case not represented by the current parties, and they demonstrated an impediment to that interest. *Id.* The court further held that the growers were entitled to intervention under section 3-405 of the Courts and Judicial Proceedings of the Maryland Code (“CJ §3-405”). *Id.* However, the court affirmed the lower court’s denial of the trade associations’ and patients’ motion for intervention. *Id.*

The Maryland General Assembly created the Natalie M. LaPrade Medical Cannabis Commission (“Commission”) in 2013 to facilitate pre-approvals and licensing procedures for medical cannabis growers in Maryland. In August of 2016, the Commission pre-approved the top fifteen applications for medical cannabis grower licenses. Alternative Medicine Maryland, LLC (“AMM”), an African-American owned business, was not one of the applicants selected for a grower license.

AMM filed a complaint alleging that the Commission violated section 13-3306 of the Maryland Health Code (“HG § 13-3306”) by failing to consider racial and ethnic diversity in their pre-approval process for medical cannabis grower licenses. AMM additionally sought an order to prohibit the Commission from issuing final approvals on the fifteen pre-approved grower licenses until the Commission complied with HG §13-3306. The court ultimately granted AMM’s request for a temporary restraining order and preliminary injunction.

The Commission filed a motion to dismiss arguing that the pre-approved growers were necessary parties which AMM failed to include as defendants. Later, several businesses with pre-approved licenses and patients filed motions to intervene. These parties contended that they had a direct interest in the action which would be prejudiced by any delay. The circuit court denied the motions to intervene and consequently, the motion to dismiss, concluding that the interveners had not met their burden of showing

intervention as of right. The growers filed a petition for a writ of *certiorari* and a motion to stay the circuit court proceedings, which were granted.

The Court of Appeals of Maryland first examined whether the circuit court erred in denying the growers' motion to intervene. *Doe*, 455 Md. at 419, 168 A.3d at 46. For intervention to be granted as of right the motion must meet the following requirements: timeliness, party must claim an interest related to the subject of the action, the disposition of the action must impair or impede that person's ability to protect that interest, and the interest is not already adequately represented by existing parties. *Id.* at 415, 168 A.3d at 44 (citing Maryland Rule 2-214(a)(2)).

In applying these requirements, the court examined four factors in its determination of timeliness. *Doe*, 455 Md. at 420, 168 A.3d at 47. These factors included the purpose for which the intervention was sought, the probability of prejudice to the parties, the progression of the proceedings, and the reasons for delaying intervention. *Id.* (citing *Md.-Nat'l Capital Park & Planning Comm'n v. Town of Washington Grove*, 408 Md. 37, 70, 968 A.2d 552, 572 (2009)). Applying these factors, the court found that the growers sought to intervene to protect their medical marijuana companies which constituted a valid property interest. *Doe*, 455 Md. at 420, 168 A.3d at 47. The interest in their companies would have been impeded by AMM's requested order to withhold final approvals of their licenses. *Id.* Furthermore, the motion to intervene was only filed two months after AMM's complaint and AMM never raised the issue of untimeliness. *Id.* Ultimately, the court concluded that the motion was filed in the appropriate time and there was no delay in seeking intervention. *Id.*

The court continued to analyze intervention as of right by examining the remaining requirements. *Doe*, 455 Md. at 415, 168 A.3d at 44. The growers were required to show an interest essential to the case and not otherwise protected by the existing parties. *Id.* Additionally, intervening parties are required to establish that the disposition of the action would potentially impair their ability to protect that interest. *Id.* at 416, 168 A.3d at 44 (citing *Washington Grove*, 408 Md. at 99, 968 A.2d at 590). Thus, the growers must demonstrate that they will be disadvantaged in some way by the case's disposition. *Doe*, 455 Md. at 416, 168 A.3d at 44 (citing *Bd. of Trs. Of Emps.' Ret. Sys. of City of Balt. V. Mayor & City Council of Balt. City*, 317 Md. 72, 89 n. 19, 562 A.2d 720, 728 n.19 (1989)).

The court found the growers had a valid interest because they had already begun hiring employees and contracting facilities to meet the state's regulatory deadlines. *Doe*, 455 Md. at 421, 168 A.3d at 47. Costs accumulated in anticipation of future business created a financial burden on the growers. *Id.* Further, the court noted that because of the growers' pre-approved status, they could be clearly disadvantaged since the disposition could impact their current status in the licensing process. *Id.* at 422, 168 A.3d at 48. Therefore, the court concluded that exclusion of the growers as parties would impede the growers' ability to protect their interests in the licensing process. *Id.* at 423, 168 A.3d at 48.

The court also found that the growers met the fourth requirement of inadequate representation. *Doe*, 455 Md. at 423, 168 A.3d at 49. This requires a comparison between the interests of the party seeking intervention and those of the current parties. *Id.* at 417, 168 A.3d at 45 (citing *Washington Grove*, 408 Md. at 102, 968 A.2d at 591). The court determined that as competitors in the medical cannabis industry, the growers and AMM had adverse interests. *Doe*, 455 Md. at 423, 168 A.3d at 49. Similarly, the Commission also could not adequately represent the growers since their interest was to license qualified growers, not to favor a particular grower over another. *Id.* Therefore, the court found it impossible for AMM or the Commission to adequately represent the growers' interests. *Id.* Having met all the requirements of Md. Rule 2-214(a)(2), the growers were entitled to intervene as of right. *Id.*

Next, the court moved to the issue of intervention as of right for the trade association and select patients. *Doe*, 455 Md. at 430, 168 A.3d at 53. The patients claimed a future interest since qualifying physicians may prescribe them medical cannabis for their illnesses. *Id.* Additionally, the trade association claimed an interest because of their advocacy for access to medical cannabis. *Id.* The court found these interests too generalized and not adequately related to the subject of the action. *Id.*

Although the trade associations' and patients' interests could be harmed, the court could not determine with any degree of certainty that the outcome of the suit would cause specialized damage different than that of the general public. *Doe*, 455 Md. at 431, 168 A.3d at 53. The court also found that the trade associations' and patients' interests could not be impaired or impeded because the disposition of the case would not prevent medical cannabis from becoming available in Maryland. *Id.* at 431, 168 A.3d at 54. Ultimately, the court found the interests of the trade associations and patients too attenuated to satisfy Md. Rule 2-214. *Id.* at 430, 168 A.3d at 53.

Finally, the court examined intervention claims brought in cases of declaratory judgment. *Doe*, 455 Md. at 419, 168 A.3d at 46. *Id.* CJ § 3-405 provides an independent basis for intervention separate from Md. Rule § 2-214 when declaratory judgment is at issue. *Id.* at 428-29, 168 A.3d at 51-2. The court noted that CJ § 3-405 applies specifically to declaratory judgment actions. *Id.* However, similar to Md. Rule §2-214, the movant needs to show an interest affected by the decision. *Id.* Therefore, the growers satisfied CJ § 3-405 by demonstrating a valid property interest that would be affected by the court's granting of AMM's order prohibiting the growers license approvals. *Id.* at 430, 168 A.3d at 53.

Ultimately, The Court of Appeals of Maryland concluded that the growers were entitled to intervention as of right and remanded the case for further proceedings. However, the trade associations and patients were not entitled to intervention. This case clarifies the court of appeal's distinction between interventions under CJ § 4-305 and Md. Rule § 2-214. Parties must only demonstrate an interest in the case that could be impeded by the disposition. The threshold for motions to intervene is rather low and should continue to

allow interested parties to intervene without much issue. Further, the case demonstrates the many parties with interests pertaining to the medical cannabis industry. Allowing these parties to intervene will keep the industry balanced and non-discriminatory.