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Recent Developments: Legal Aid Bureau v. Bishop's Garth Assocs. Ltd. Partnership: Judiciary's Ability to a Ward Attorney's Fees Limited

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of alcohol. The aforementioned witnesses characterized Houck as uncooperative, combative, hostile, and belligerent. Another paramedic stated that Houck "appeared to be intoxicated — he smelled of alcohol, had bloodshot eyes, all he could do was moan, 'he could not converse.'" *Id.* In short, it was the considered opinion of those in contact with Houck after the accident that Houck consumed alcohol to the extent that his normal coordination, faculties, and physical and mental abilities were substantially and materially impaired. *Id.*

The trial judge, in consideration of the foregoing evidence, submitted the case to the jury on the question of the "proximate cause of this accident..." and "the compensatory damage aspects," but had "a serious problem sending it on punitive damages." The trial judge determined that, as a matter of law, neither Lockett, nor Houck exhibited such a wanton and reckless disregard for human life as would permit him to submit the question of punitive damages to the jury. *Id.* at 359, 539 A.2d at 1121.

The court of appeals, then considered the requisite conditions for the imposition of punitive damages:"

We think that in civil automobile accident cases involving a drinking driver whether the driver had a wanton or reckless disregard for human life, in the operation of an automobile, is to be tested by a sliding scale. As the degree of impairment by the voluntary consumption of alcohol increases, the need for other aggravating circumstances lessens, and *visa versa*.

Id. at 362, 539 A.2d at 1122. The court opined that the act of outrageous driving, as well as the act of driving after the point of voluntary intoxication, permitted the inference that the driver did not care whether he killed or injured others. The court clarified that "[w]hat must not be forgotten is that the discretion to award punitive damages becomes available only when the combination of relevant facts demonstrates by a preponderance of the evidence that the driver had a wanton or reckless disregard for human life." *Id.* at 363, 539 A.2d at 1123. Thus, individuals who drive negligently, but not outrageously, and who have not consumed alcohol beyond the point of intoxication are not subject to punitive damages. *Id.*

The court concluded that regarding Lockett's case, the judge did not err in withholding the issue of punitive damages from the jury since, as a matter of law, the facts were not sufficient to indicate that she was legally intoxicated. The court of

appeals did hold, however, that a finding by the jury that Houck was intoxicated would have been sufficient to infer that he exhibited a wanton or reckless disregard for human life, thus justifying an award of punitive damages. The facts and circumstances surrounding Houck's behavior were sufficient to indicate outrageous conduct. The lower court erred, therefore, in keeping from the jury the issue of punitive damages. *Id.*

The holding in *Lockett v. Nast* reinforces legislation responding to the public sentiment for more stringent penalties against those who operate motor vehicles while intoxicated. Thus, punitive awards will be made available to an increasing number of drunk driving victims. The court warned, however, that "[t]he step we take today — recognizing that one who drinks to the point of becoming intoxicated and then undertakes the operation of a motor vehicle may be found to have had a wanton disregard for human life — is not an invitation to claim punitive damages in any case where negligence and drinking can be shown." *Id.* at 370, 539 A.2d at 1127 (emphasis added).

—Jules R. Bricker

Legal Aid Bureau v. Bishop's Garth Assocs. Ltd. Partnership: JUDICIARY'S ABILITY TO AWARD ATTORNEY'S FEES LIMITED

In *Legal Aid Bureau v. Bishop's Garth Assocs.* 75 Md. App. 214, 540 A.2d 1175 (1988) the Court of Special Appeals of Maryland held that the Circuit Court for Carroll County abused its discretion by imposing attorney's fees against the Legal Aid Bureau under Md. Rule 1-341. The court reasoned that Legal Aid produced factual issues for the consideration of the fact-finder and that the judge was clearly erroneous in finding that Legal Aid was motivated by "bad faith" and a "lack of substantial justification." As a result, the decision by the Circuit Court for Carroll County was reversed.

The case revolved around a landlord-tenant suit brought in the District Court for Carroll County. In 1981, Josephine Brunner and Salvatore Torres leased an apartment at a housing project known as Bishop's Garth. Three years later, Bishop's Garth sought restitution of the premises by bringing an action against Brunner and Torres, claiming breach of their lease. Through their counsel, the Legal Aid Bureau, the tenants requested a jury trial. The jury found in favor of the landlord.

When the defendants' appeal was dismissed for procedural reasons, Bishop's Garth filed for and was granted attorney's fees under Md. Rule 1-341.

In its opinion, the court of special appeals drew particular attention to a meeting between a Legal Aid attorney and the managing general partner of Bishop's Garth. The Legal Aid lawyer requested photostats of other tenants' complaints against Brunner and Torres, along with pictures showing Brunner and Torres's children damaging the housing project's property. When denied this information, the Legal Aid attorney allegedly announced, "I'm sure you know that we can stretch this thing out... Based on that fact, don't you think it might be to your advantage to come to some agreement with Mrs. Brunner and — save yourself some money?" *Id.* at 219, 540 A.2d at 1177. In a footnote, the court referred to The Maryland Lawyers Rules of Professional Conduct and the ABA Code of Professional Conduct. They then commented that there was no doubt that the lawyer's "somewhat tactless remarks" inspired the plaintiff's request for punitive measures pursuant to Md. Rule 1-341. *Id.* at 219, 540 A.2d at 1178.

Maryland Rule 1-341, which corresponds with Fed. R. Civ. P. 11, declares

In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the adverse party in opposing it.

Rule 1-341's "bad faith" requirement encompasses the notion that before sanctions can be applied, one must act "for purposes of delay." *Blanton v. Equitable Bank*, 61 Md. App. 158, 163, 485 A.2d 694 (1985).

The court of special appeals was disturbed by the trial judge's finding that the tenants' indulgence in a jury trial and subsequent appeal was not in good faith and bereft of substantial justification. The trial judge expounded that the request for a jury trial was motivated by a desire for delay in order to unduly coerce Bishop's Garth to dismiss the action. Md. Rule 1-341, however, is inapplicable to justifiable delays, especially if the behavior causing the delay concerns the assertion of a fundamental right. *Legal Aid*, 540 A.2d at

1178.

The appellate court referred to the Comment following Md. Rule 1-341 to help identify whether the case was "frivolous." According to the Comment, filing an action, defense, or similar matter on a client's behalf is not frivolous just because the facts are not thoroughly supported or because the attorney anticipates developing important evidence via discovery alone. Furthermore, the lawyer need not believe that his client's argument eventually will succeed. On the other hand, the Comment asserts that an action is frivolous if the client's motivation behind pursuing the action is to harass or maliciously injure another. Additionally, a frivolous action includes a situation in which the lawyer cannot argue in good faith on the merits of the case or he cannot substantiate his case by arguing in good faith that the law be extended, modified, or reversed. *Id.* at 221-22, 540 A.2d at 1179. Considering case law, with an eye on the Comment, the court ruled that the trial judge was clearly erroneous in finding that the jury trial request was inappropriate.

Close attention was paid to the remark in the trial judge's opinion that, "It became clear during the trial that the defendant's case was totally without merit." (emphasis added by the court). The court of special appeals responded, "We think it erroneous to determine a lack of substantial justification from the vantage point of judicial hindsight because hindsight, judicial or otherwise, is always 20/20, irrespective of any astigmatism foresight may suffer." *Id.* at 222, 540 A.2d at 1179. Instead, the appellate court found that the applicable test has nothing to do with hindsight. Rather, it is a matter of "whether the action or defense to it was initiated in bad faith or without substantial justification." *Id.* *Dent v. Simmons* reinforced the *Legal Aid* court's stance by expressing the view that the losing party should not suffer the imposition of Rule 1-341 sanctions for introducing a legal theory based on imagination or dilute reasoning. *Dent v. Simmons*, 61 Md. App. 122, 127-28, 485 A.2d 270 (1985).

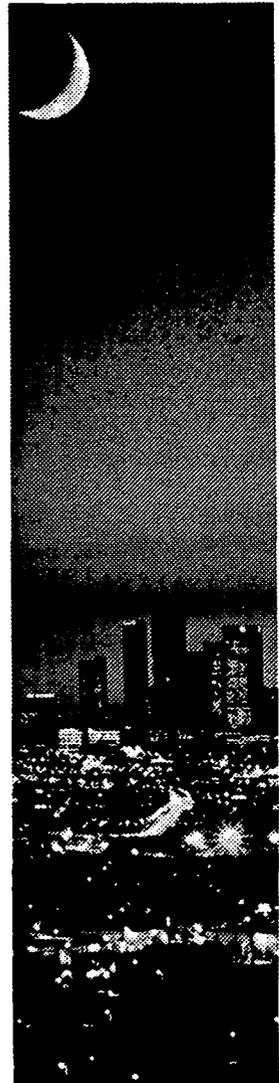
Dent molded the court's approach to a situation in the case *sub judice* in which a witness for the defense testified under oath at trial that he resided in the apartment rented by Brunner and Torres for at least five weeks. This action flagrantly violated the lease provision forbidding an individual unnamed on the lease to stay there in excess of thirty days. This testimony contradicted not only answers to interrogatories that Brunner and Torres had filed, but their lawyer's opening statement as well. Nonetheless, the court refused to apply Rule 1-341 sanctions to this situation

wherein a witness testified in an unanticipated manner. Remarking that it is the jury's role to determine which witnesses to believe, the court added, "the fact that the jury may believe one witness instead of others does not mean that the party whose witnesses were not believed defended in 'bad faith' or 'without substantial justification.'" *Legal Aid*, 75 Md. App. at 223, 540 A.2d at 1179.

The court went on to emphasize that trial counsel cannot assume the role of fact-finder. Relying upon *Insel v. Solomon*, the court agreed that as a matter of law, a substantial justification exists for an action's defense as long as one reasonably believes that a case creates a factual issue for the finder of fact. *Insel v. Solomon*, 63 Md. App. 384, 398, 491 A.2d 963 (1985).

Thus, *Legal Aid* more clearly defines the scope of Md. Rule 1-341. The court reiterates that the rule is not meant to prevent individuals with causes supported by fragile or imaginative legal theories from having their day in court because they fear the imposition of sanctions. Instead, "no one who avails himself or herself of the right to seek redress in a Maryland court of law should be punished merely for exercising that right." *Legal Aid*, 75 Md. App. at 224, 540 A.2d at 1180. The Court of Special Appeals of Maryland, therefore, limits the judiciary's ability to award attorney's fees by encouraging more circumscribed and judicious utilization of Rule 1-341.

—Gregory R. Smouse



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