



1990

Recent Developments: Andresen v. Andresen: Maryland Courts Not Permitted to Redetermine Marital Properly More Than 30 Days After Final Divorce Decree

Ellen W. Cohill

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



Part of the [Law Commons](#)

Recommended Citation

Cohill, Ellen W. (1990) "Recent Developments: Andresen v. Andresen: Maryland Courts Not Permitted to Redetermine Marital Properly More Than 30 Days After Final Divorce Decree," *University of Baltimore Law Forum*: Vol. 20 : No. 2 , Article 11.
Available at: <http://scholarworks.law.ubalt.edu/lf/vol20/iss2/11>

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 snolan@ubalt.edu.

proper grounds for which evidence of subsequent conduct should be admitted. *Id.*

Finally, the *Wilson* court was careful to reconcile its holding with the federal rule on subsequent remedial measures. The federal rule reasonably restricts the admissibility of such evidence to those situations where needed; that is, "when offered for another purpose such as providing ownership, control or feasibility of precautionary measures, if controverted, or impeachment." Fed. R. Evid. 407. However, the court pointed out that the advisory committee's note to Federal Rule 407 expressly lists "existence of duty" as a valid basis for admitting evidence of subsequent remedial measures. *Wilson*, 317 Md. at 297 n.8, 563 A.2d 405 n.8. Thus, the court restated the principle that evidence of subsequent conduct should not be received as an admission of negligence or liability, but that the standard of care exception is Maryland law. *Id.* at 300-01, 563 A.2d at 400.

In *Wilson*, the Court of Appeals of Maryland held that evidence of prior and subsequent hospital practices were relevant and admissible to prove the alleged breach of the applicable standard of care. In addition, the court provided a test to determine admissibility of such prior evidence. However, the danger inherent in following the *Wilson* standard is that the allowability of prior or subsequent evidence could provide indirect proof of causation, or in effect, the exception could "swallow the [general] rule" prohibiting the admission of such evidence. *Id.* at 300, 563 A.2d at 400 (quoting 5 L. McLain, Maryland Practice: Maryland Evidence § 407.1 (1987, 1989 Supp.)). Consequently, to allow both prior and subsequent evidence might make such evidence tantamount to an admission of negligence, which the court of appeals has expressly precluded.

—Stephen E. Cobill

Andresen v. Andresen: MARYLAND COURTS NOT PERMITTED TO REDETERMINE MARITAL PROPERTY MORE THAN 30 DAYS AFTER FINAL DIVORCE DECREE

In *Andresen v. Andresen*, 317 Md. 380, 564 A.2d 399 (1989), the Court of Appeals of Maryland considered the power of a court to modify a 1981 divorce decree, which would have allowed a former spouse to share her former husband's military pension. The court held that the petitioner had not established any grounds upon which the trial court's

final judgment could have been reexamined. *Id.* at 391, 564 A.2d at 405. The court reasoned that there was no authority under Maryland law which allowed a court to redetermine marital property more than thirty days after the decree became final except in cases of fraud, mistake, irregularity or clerical errors. *Id.* at 387, 564 A.2d at 403. Thus, the Court of Appeals of Maryland affirmed the trial court's ruling.

Ruth and Ralph Andresen were divorced in Maryland on November 13, 1981. The divorce decree provided for alimony and payment of attorney's fees but did not include sharing Mr. Andresen's military pension benefits, which at that time could not have been subjected to division upon divorce according to federal law.

On March 12, 1986, Ms. Andresen filed a motion in the Circuit Court for Montgomery County to modify the 1981 divorce decree to allow her to share Mr. Andresen's military pension. Because Ms. Andresen's motion failed to specify the procedural mechanism by which a court could reopen the four-year-old divorce decree, Mr. Andresen's motion to dismiss was granted. Ms. Andresen appealed, and the Court of Appeals of Maryland granted certiorari prior to a decision by the intermediate appellate court to consider whether Mr. Andresen's motion to dismiss was properly granted. On appeal, Ms. Andresen argued that the changes in the law constituted sufficient justification to reopen the enrolled divorce decree to allow sharing of Mr. Andresen's military pension benefits. *Id.* at 383, 564 A.2d at 401.

The court of appeals began its discussion of the applicable law by reviewing the changes in federal law. "On June 26, 1981, the United States Supreme Court ruled that, as matter of federal law, courts could not subject military retirement pay to division upon divorce." *Id.* at 382, 564 A.2d at 400 (citing *McCarty v. McCarty*, 453 U.S. 210 (1981)). After the Andresen's divorce became final in 1981, federal statutory law changed thereby allowing courts to consider military pensions as marital assets for distribution in divorce proceedings. *Id.* In response to the *McCarty* decision, Congress enacted the Uniformed Services Former Spouses' Protection Act (USFSPA) on September 8, 1982, effective February 1, 1983. The Act was codified in pertinent part as 10 U.S.C.A. § 1408 (c)(1). The USFSPA provided:

Subject to the limitations of this

section, a court may treat disposable retired or retainer pay payable to a [service] member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court.

317 Md. at 383, 564 A.2d at 401.

The court noted that the purpose of the USFSPA was to overrule the *McCarty* decision thereby allowing state law to determine whether military pensions were marital property. *Id.* at 384, 564 A.2d at 401. In addition, the court examined the legislative history which revealed that the USFSPA was retroactive and allowed divorce decrees entered between the date of the *McCarty* decision and the effective date of the USFSPA to be reopened. *Id.*

Furthermore, the court noted that under Maryland law, as construed in *Deering v. Deering*, 292 Md. 115, 437 A.2d 883 (1981), pensions, including military pensions were marital property. In addition, the Maryland General Assembly had confirmed, as now codified in the Family Law Article, that a military pension shall be considered as any other pension or retirement benefit. Md. Fam. Law Code Ann. § 8-203(b) (1984).

Pursuant to the USFSPA, the court found approximately thirty-five state courts had reopened divorce decrees. However, these jurisdictions followed Federal Rule 60(b)(5) and/or 60(b)(6), which allowed post-final judgment relief. 317 Md. at 386, 564 A.2d at 402. Additionally, it was found that eight states reserved equity or other broad powers to revise a final judgment. *Id.* at 386-87, 564 A.2d at 403. Although the majority of courts had reopened finalized divorce decrees to permit a former spouse to share military pension proceeds, the Court of Appeals of Maryland held that Maryland law did not allow a Maryland court to reopen a divorce decree, which had been enrolled for more than thirty days, except as provided by Maryland Rule 2-535. *Id.* at 387, 564 A.2d at 403.

In support of its decision, the court of appeals reiterated its earlier decision in *Platt v. Platt*, 302 Md. 9, 485 A.2d 250 (1984), where it had held that the trial court lacked the power to revise a five-year-old divorce decree. *Andresen* 317 Md. at 388, 564 A.2d at 403. In *Platt*, the court had emphasized that there was no authority under Maryland law which would allow a re-examination of marital

property distribution thirty days after the decree became enrolled, except for fraud, mistake, irregularity or clerical error. *Id.*

The court recognized that because there were other states that did not permit trial courts to reopen final divorce decrees, Congress could not have intended the USFSPA to override state law, even though Congress clearly intended USFSPA to be retroactive. *Id.* at 390-91, 564 A.2d 404-05. Although the legislative history of the USFSPA disclosed that final judgments could be reopened, the court reasoned that this disclosure merely reflected Congress' awareness that the law in the majority of states allowed a reopening of final judgments. *Id.* "On the other hand," the court stated, "there is nothing in the legislative history demonstrating that Congress intended to preempt state procedural law setting forth the grounds for reopening a final judgment." *Id.* at 391, 564 A.2d at 405.

Despite the USFSPA, military spouses divorced in Maryland between the period of the *McCarty* decision, June 26, 1981, and the effective date of the USFSPA, February 1, 1983, were dealt a severe blow by the *Andresen* decision. According to Maryland law, a court cannot redetermine marital property more than thirty days after a divorce decree becomes final. Thus, the decision in *Andresen* demonstrated that nothing short of fraud, mistake, irregularity, or clerical error can justify the reopening of a final divorce decree.

—Ellen W. Cobill

**Potomac Elec. Power Co. v. Smith:
MARYLAND'S CAP ON
NONECONOMIC DAMAGES
RENDERED CONSTITUTIONAL IN
WRONGFUL DEATH ACTIONS**

The Court of Special Appeals of Maryland in *Potomac Elec. Power Company v. Smith*, 79 Md. App. 591, 558 A.2d 768 (1989), held that Md. Cts. & Jud. Proc. Code Ann. section 11-108 (1989), a statute placing a cap on noneconomic damages, is constitutional as applied to a wrongful death action. Although the Maryland cap was found constitutional in the United States District Court for the District of Maryland, the Maryland courts had not yet addressed the issue.

Fifteen year old Chrisianthia Lambert was electrocuted by a downed power line owned and maintained by the Potomac Electric Power Company ("PEPCO"). The wire was hanging two or three feet above

a footpath that cut through a PEPCO right-of-way. PEPCO had knowledge that the footpath was regularly used by both adults and children. Prior to the incident, the wire had been held up by a cross arm attached to a utility pole. When one side of the cross arm snapped off, PEPCO, in violation of a statute, placed the wire on the other side of the cross arm. This second side eventually broke, resulting in the downed wire. Over a one month span, PEPCO had been warned on three separate occasions that the wire was down; yet, no corrective action was taken. Lambert was walking along the footpath when she came in contact with the downed wire. She died instantly as 7,600 volts of electricity were sent through her body.

Pursuant to their action for wrongful death, a jury awarded Lambert's parents, Doris Smith and George Lambert, \$500,000 in compensatory damages and \$7,500,000 in punitive damages. The judge then reduced the award of compensatory damages to \$350,000, the cap on noneconomic damages, set by section 11-108(b). Noneconomic damages include pain, suffering, inconvenience, physical impairment, loss of consortium, but do not include punitive damages. Md. Cts. & Jud. Proc. Code Ann. § 11-108 (1989). Both parents appealed the reduction.

The Court of Special Appeals of Maryland began its analysis of the cap by affirming the trial court's application of the cap to wrongful death actions. *Id.* at 623, 558 A.2d at 785. After discussing the legislative history and purposes of the statute, the court reasoned that the application effectuates the legislative intent in alleviating the liability/insurance crisis by limiting certain damage awards to \$350,000. *Id.* at 623, 558 A.2d at 784. "The fact that the cap does not expressly enumerate the types of personal injury actions within its ambit is a function of its breadth, not a limitation of its application." *Id.*

The court then turned to the issues of whether the cap violated various portions of the United States Constitution as well as the Maryland Declaration of Rights. Specifically, the parents argued that the cap violated their rights to a jury trial, due process and equal protection under the law. The court, after analyzing each issue, determined that the statute did not violate either the Maryland Declaration of Rights or the United States Constitution. *Id.* at 625-35, 558 A.2d at

786-96.

The parents contended that the application of the cap "invades the fact-finding province of the jury by restricting its ability to determine and fully assess damages." *Id.* at 626, 558 A.2d at 786. The court disagreed, stating that the wrongful death action is a statutory creation, and, as such, the legislature may limit and condition awards under such an action. *Id.* at 628, 558 A.2d at 787.

Next, the parents contended that a plaintiff whose recovery is so limited is denied access to the court and a full remedy at law because there are no alternative remedies to recover the full amount of the injury. *Id.* In dismissing this claim, the court reasoned that even with this cap, wrongful death beneficiaries are entitled to a greater remedy than provided prior to the enactment of the statute permitting wrongful death actions. Prior to the enactment of the wrongful death statute, a beneficiary had no remedy. *Id.* at 628, 630, 558 A.2d at 786, 788. Therefore, since the legislature created the remedy then it also could limit the award. *Id.*

Finally, the parents argued that because the cap limited an "important personal right," it should be tested under the equal protection analysis using the "heightened review" standard. *Id.* at 632, 558 A.2d at 789. The court again disagreed, holding that a recovery under a wrongful death action is not an "important personal right," in that it was only created twenty years ago. *Id.* at 635, 558 A.2d at 790. Instead, the court determined that the appropriate equal protection analysis was the rational basis test. *Id.* at 632, 558 A.2d at 787. Since the plaintiffs had not been able to produce any persuasive evidence that the statute, as applied, was unreasonable or arbitrary, the statute was held constitutional. *Id.* at 635, 558 A.2d at 790.

The court, therefore, concluded that section 11-108 of the Md. Cts. & Jud. Proc. Code Ann. is constitutional as applied to a wrongful death action. *Id.* at 638, 558 A.2d 793. Yet, this is probably the first of many state tests to challenge the constitutionality of Maryland's cap. The holding, however, dealt only with the cap as applied to a statutorily created action. Thus, although the court implied that the cap would be constitutional if applied to any personal injury action, the issue has yet to be decided.

—Thomas J. S. Waxter, III