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# Recent Developments: Long v. State: Courts Cannot Modify a Consent Order without Giving the Parties an Opportunity to Be Heard Because to Do Otherwise Would Violate the Parties' Right to Due Process

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***Long v. State:***  
**Courts Cannot Modify a Consent Order Without Giving the Parties an Opportunity to Be Heard Because to Do Otherwise Would Violate the Parties' Right to Due Process**

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By: Dawn A. Anderson

The Court of Appeals of Maryland held that courts cannot modify a consent order without giving the parties notice and an opportunity to be heard because to do otherwise would violate the parties' right to due process. *Long v. State*, 371 Md 72, 807 A.2d 1 (2002). In so holding, the court reinforced the effect of a consent order by requiring that court ordered modifications occur only after the parties are given a full opportunity to be heard on the matter.

Derrick Long, Sr. was ordered to pay \$25 per week child support for his daughter. Long neglected to comply with the order and failed to appear for the hearing addressing his neglect to provide child support. Pursuant to Md. Rule 15-207(e), the state filed a petition for contempt in the circuit court. At the contempt hearing, evidence showed Long failed to pay any support or arrearage resulting in back owed support of \$2975.00. Long claimed jail and job problems caused non-payment, however the trial court found no legitimate reason to prevent Long from working. The court also found that Long had no personal assets of any kind.

The Circuit Court for Washington County found Long in contempt from May 1999 through

September 1999 and ordered Long imprisoned pending payment of \$700 to purge the contempt. Long appealed to the Court of Special Appeals of Maryland. In addition, Long and the state filed a joint motion to vacate the sentence arguing that the state could not sanction him with incarceration because he had no ability to pay the purge amount required to release him from incarceration. The parties attached a consent order to the motion, stating that the sentence was to be vacated and Long was to be released. The order did not provide for remand for further consideration.

The Court of Special Appeals of Maryland vacated the contempt charge, but remanded the case to the Circuit Court for Washington County, to determine what, if any, conditions of release reasonably assured the petitioner's appearance at further proceedings. Long and the State appealed the ruling, alleging that the court abused its discretion by modifying the agreed upon consent order resulting in a material change.

In a joint motion to the Court of Appeals of Maryland, the parties claimed that the intermediate court erred in modifying the consent order, thereby making the order adverse to the intent of the parties. Long contended that the court's actions deprived the parties the benefit of their

bargain, and that in holding as it did, the intermediate court deprived the parties of their right to litigate through briefing and oral arguments on merits. Finally, Long asserted that, according to Md. Rule 15-207(e), he could not be incarcerated pending a hearing because he had no ability to purge himself of the contempt.

The Court of Appeals of Maryland first examined consent orders generally, defining them as hybrids that combine contract law and judicial decrees. *Id.* at 82, 807 A.2d at 7. Consent orders memorialize an agreement of parties who relinquish the right to litigate the matter in exchange for a certain, carefully negotiated, outcome. *Id.* The court noted that consent orders have the "same force and effect as any other judgments. . . ." *Id.* (citing *Jones*, 356 Md. 513, 740 A.2d 1004 (1999)).

The court further explained that the parties define the scope of a consent agreement. Therefore, a court must first look to the agreement to interpret it. *Long*, 371 Md. at 83, 807 A.2d at 7. The court noted that when interpreting a consent order the objective test of contracts applies. *Id.* at 84, 807 A.2d at 8. The court must consider "[t]he written language . . . , irrespective of the intent of the parties . . . , unless the written

language is not susceptible of clear and definite understanding, or unless there is fraud, duress, or mutual mistake.” *Id.* The court further noted that public policy dictates that consent orders be accepted because “law favors compromise and amicable adjustments.” *Id.* (quoting *Sisson v. Baltimore*, 51 Md. 83 (1879)).

The court continued by addressing whether the intermediate court erred in modifying the consent order. *Id.* at 81, 807 A.2d at 7. The court reiterated the general rule that consent orders cannot be modified by the court; they should be accepted or denied as proposed. *Long*, 371 Md. at 87, 807 A.2d at 10. Courts may suggest modifications and allow the parties to amend the consent order on their own. In addition, the court stated that when a court modifies a consent order an appeal is allowable. *Id.*

The court further stated that, generally, parties cannot appeal a consent order after it has been accepted by the court. *Id.* at 86, 807 A.2d at 9. Parties who enter into a consent order agree to give up legal rights to litigate the matter. *Id.* However, a court’s refusal to enter consent is reviewable for abuse of discretion. *Id.*

In applying these principles, the court observed that the proposed consent order provided that Long’s sentence be vacated and had no provision for remand to the circuit court. *Long*, 371 Md. at 88, 807 A.2d at 10. The court of special appeals modified the order by remanding the case to the circuit court and subjecting Long to incarceration without an opportunity to be heard.

*Id.* at 89, 807 A.2d at 11. In acknowledging the intermediate court’s attempt to ensure Long’s appearance at future hearings, the court of appeals indicated that the parties could have included provisions to secure Long’s appearance at further proceedings in their agreement. The court cannot materially modify the existing agreement and alter the bargain of the parties. *Id.*

The court noted that while it is greatly concerned over Long’s failure to pay child support, the ultimate goal is not to punish parents, but to provide support for children. *Id.* at 92, 807 A.2d at 13. The court held that the court of special appeals erred in modifying the consent order without giving the parties notice and an opportunity to be heard, and remanded the case in part. *Id.*

The Court of Appeals of Maryland has reinforced Maryland law dealing with consent orders. This reinforcement continues to support the strength and weight of consent orders. Consent orders should be given reverence by the courts when the order does not violate fairness and is reasonable. Courts can still accept or reject a proposed order; however, courts seeking to modify a consent order must give the parties notice and allow them an opportunity to be heard. This supports the constitutional protection of parties. Further, judgments that modify consent orders without these protections will be subject to reversal on appeal. The strictness and inflexibility of consent orders suggests that parties, and therefore their attorneys, must be very precise in drafting. This holding

protects the parties’ rights to agree to settle a civil matter, coinciding with public policy.

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