

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 149
Judicial Proceedings

(Senator Kelley, *et al.*)

Courts - Right of Party to Be Present at Trial

This bill provides that a party to an action may not be excluded from the courtroom (regardless of the party's physical or mental capacity) except: (1) by the party's voluntary waiver; (2) to preserve decorum; or (3) to continue the orderly proceedings of the court.

Fiscal Summary

State Effect: None. The bill's changes are procedural in nature and are not expected to have a significant impact on State finances.

Local Effect: None – see above.

Small Business Effect: None.

Analysis

Current Law: A party generally has the right to be present at and participate in trial of the party's case. This right stems from the due process clause of the Maryland and U.S. constitutions as well as Maryland common law. The Court of Appeals has the authority to issue rules and regulations to govern the practice and procedure in all Maryland courts, and those rules and regulations are to be liberally construed.

Background: This bill is in response to a 2001 decision by the Maryland Court of Appeals, in which the court ruled that a severely disabled youth, who was unable to

communicate and unable to comprehend the proceedings due to his disability, was properly involuntarily excluded from the courtroom during his medical malpractice trial.

The boy, an eleven-year-old hydrocephalic child with developmental disabilities, suffered a cardiac arrest that left him essentially in a vegetative state. He functioned at the level of a one-month old infant and was unable to communicate.

The boy's parents, on his behalf, subsequently sued the two hospitals that had been responsible for his care prior to the cardiac arrest (one of which settled) and hospital staff for medical malpractice. The trial was bifurcated to separate the issue of liability from damages.

The hospital filed a motion to have the youth's presence excluded from the liability portion of the trial, arguing that the boy was unable to communicate or assist counsel and unable to understand the proceedings, so that his presence in the courtroom would be for no purpose other than to prejudice the jury. After viewing a videotape of the child and reviewing relevant deposition transcripts and medical records, the trial court agreed and held that, in the liability phase of the trial, the prejudice from his presence would extend beyond "any instructions that could be offered."

The plaintiffs appealed to the Court of Special Appeals, which upheld the trial court's decision to involuntarily exclude the boy from the liability portion of the proceedings. The Court of Appeals also upheld the trial court's decision.

The Court of Appeals issued a narrow ruling, holding that:

In the liability phase of a bifurcated trial, the court has discretion to exclude a plaintiff where, after a hearing and an opportunity to observe the plaintiff, either in person, or by other reliable means, the court determines, on the record, that: (1) the plaintiff is severely injured; (2) the plaintiff attributes those injuries to the conduct of the defendant(s); (3) there is a substantial prospect that the plaintiff's presence in the courtroom may cause the jury to side with the plaintiff out of emotional sympathy rather than on the evidence; (4) the plaintiff is unable to communicate or participate in the trial in any meaningful way; and (5) the plaintiff would be unable even to comprehend the proceeding.

Green v. N. Arundel Hosp. Ass'n, Inc., et al., 366 Md. 597, 785 A.2d 361 (2001). The court reasoned that, although a party has a right to be present at trial, that right is not absolute. While juror sympathy for a party's condition alone is insufficient to establish

juror prejudice, there are other factors that may lead a court to determine that the mere presence of a party serves no purpose other than for its prejudicial effect.

The court noted that the crux of the judicial function is to provide all parties with a fair trial. The court also noted that several other jurisdictions had reached the same conclusion under similar facts, including Minnesota, Arizona, California, Connecticut, Indiana, New York, North Dakota, Oregon, Tennessee, and the U.S. Court of Appeals for the First and Sixth Circuits. The U.S. Supreme Court subsequently declined to review the case.

Additional Information

Prior Introductions: SB 185 of 2002 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: HB 340 (Delegate Kelley, *et al.*) – Judiciary.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Legislative Services

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