

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 819

(Senator DeGrange, *et al.*)

Judicial Proceedings

Maryland Contributory Negligence Act

This bill requires that contributory negligence remain an affirmative defense that may be raised by a party being sued for damages for wrongful death, personal injury, or property damage. “Contributory negligence” is defined as the common law doctrine of contributory negligence according to its judicially determined meaning on January 1, 2011. The bill does not expand, limit, or otherwise modify the affirmative defense of contributory negligence as it existed and was applicable on January 1, 2011.

The bill takes effect on June 1, 2013, contingent on the abrogation by the Maryland Court of Appeals, by rule or judicial opinion, of the doctrine of contributory negligence or the adoption by the Maryland Court of Appeals, by rule or judicial opinion, of the doctrine of comparative negligence. The Maryland Court of Appeals must send notice of either of these events to the Department of Legislative Services (DLS) within five days of the applicable abrogation or adoption. If DLS does not receive notice from the Maryland Court of Appeals of either of these events on or before December 31, 2020, the Act is null and void.

Fiscal Summary

State Effect: None. The bill codifies current common law.

Local Effect: None. The bill codifies current common law.

Small Business Effect: None.

Analysis

Current Law: Contributory negligence is conduct on the part of the injured party which falls below the standard to which the injured party should conform for self-protection, and is a legally contributing factor cause (along with the defendant's negligence) in bringing about the plaintiff's harm. Under Maryland law, contributory negligence on the part of a plaintiff bars recovery by the plaintiff. *See Board of County Commissioners of Garrett County v Bell Atlantic*, 346 Md. 160 (1997).

Background: Maryland is one of five jurisdictions, along with Virginia, Alabama, North Carolina, and the District of Columbia, that retains the doctrine of contributory negligence. Forty-six states follow the doctrine of comparative negligence, under which a plaintiff may recover damages, but a plaintiff's recovery can be reduced if the plaintiff was partially at fault.

In a letter dated November 8, 2010, the Chief Judge of the Court of Appeals asked the court's Standing Committee on Rules of Practice and Procedure to determine whether the court could replace the doctrine of contributory negligence with a form of comparative fault through the issuance of new rules or if the change would have to be made through a judicial decision. The request also called on the committee to study the judicial and economic consequences of such a change, as well as the impact of a change to comparative fault on related legal principles, such as joint and several liability.

In response, the Rules Committee submitted its report in April 2011 and did not recommend any changes to existing Maryland Rules. The report stated:

Respectfully, the Committee believes that the doctrines of contributory negligence, comparative fault, and at least some of the various associated doctrines and legal principles associated with those doctrines are matters of substantive law that do not fall within the ambit of practice, procedure or judicial administration. To the extent they are common law doctrines, they can be changed by judicial decision, as they have in several other States, but not, in the Committee's view, by Rule.

On April 20, 2012, approximately one year after the Rules Committee's report on contributory negligence and comparative fault, the Court of Appeals granted *certiorari* in *James K. Coleman v. Soccer Association of Columbia, et al.* (No. 9, September Term 2012), a case many believe presents the court with the issue of retaining or modifying the current contributory negligence standard versus switching to a comparative fault system.

The plaintiff in the case, James K. Coleman, was a 20-year-old assistant soccer coach for the Soccer Association of Columbia (SAC). In August 2008, Coleman was taking shots

on goal while his team was practicing at a soccer field located on the property of a public school. While attempting to retrieve a ball from the goal, Coleman jumped up and grabbed the crossbar of the goal. Because the goal frame was unanchored, the goal tipped over and fell on top of Coleman, crushing his face. Coleman suffered a fractured orbit (bone structure area around the eyes) and required hospital treatment, including the insertion of a titanium plate. While in the hospital, Mr. Coleman admitted that he had been smoking marijuana on the day of the accident.

The case was tried before a jury in the Circuit Court for Howard County. In October 2011, the jury found that SAC was negligent for failing to properly secure the goal frame, but declined to award damages to the plaintiff, because it also found that Mr. Coleman was negligent when he grabbed the crossbar. Mr. Coleman appealed to the Court of Special Appeals, but also filed a direct petition to the Court of Appeals. SAC filed a cross-appeal.

The Court of Appeals, in granting *certiorari*, stated that the issue was whether the court should ameliorate or repudiate the doctrine of contributory negligence and replace it with a comparative fault regime.

Oral arguments were held in front of the Court of Appeals on September 10, 2012, and lasted for nearly two hours. In an unusual step signaling the importance of the case, the court not only solicited oral arguments from the attorneys for the plaintiff and defendants, but also from those persons and organizations who submitted “friend of the court” briefs. Proponents of a change in negligence systems argued that the all-or-nothing approach of the contributory negligence doctrine is harsh, outdated, and can result in allowing people who have harmed others to escape liability. Opponents argued that a shift to a comparative fault system would increase lawsuits and liability against businesses, and make Maryland less competitive with neighboring states. Opponents also argued that the General Assembly, rather than the courts, is the appropriate venue for a change to comparative fault.

A decision in the *Coleman* case is pending.

Additional Information

Prior Introductions: HB 12 of the 2012 second special session, a similar bill, was referred to the House Rules and Executive Nominations Committee. No further action was taken. HB 1129 of 2011, a similar bill, received a hearing in the House Judiciary Committee. No further action was taken.

Cross File: HB 1156 (Delegate Kramer, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2013
mc/kdm

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