

COURT OF APPEALS OF MARYLAND

Jackson v. Dackman Co., 422 Md. 357

30 A.3d 854 (2011) · No. No. 131, September Term, 2008 · Decided October 24, 2011

SUMMARY

The Maryland Court of Appeals held that provisions of the Reduction of Lead Risk in Housing Act granting certain rental-property owners immunity from personal-injury suits involving lead ingestion violated Article 19 of the Maryland Declaration of Rights. The court concluded that the immunity was not a traditional or well-established immunity and unreasonably restricted the plaintiffs' recognized tort remedy. The court therefore invalidated the immunity provisions and did not reach the parties' other issues.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	John C. Eldridge; Robert M. Bell, Chief Judge; Glenn L. Harrell, Jr., Judge; Mary Ellen Barbera Battaglia, Judge; Kathleen G. Murphy, Judge; Sally D. Adkins, Judge; John C. Eldridge, Judge, specially assigned
JURISDICTION	Maryland
DECIDED	October 24, 2011
DOCKET	No. 131, September Term, 2008
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiffs sought review of a Court of Special Appeals decision concerning landlord immunity under Maryland's Reduction of Lead Risk in Housing Act. The Court of Appeals granted the plaintiffs' petition for certiorari and the defendants' cross-petition, reversed the intermediate appellate judgment, and remanded.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, with the facts and all reasonable inferences viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Zi'Tashia Jackson, a minor, Tameka Jackson v. The Dackman Company, Jacob Dackman & Sons, L.L.C., Elliot Dackman, Charles A. Skirven, Trustee

TOPICS

constitutional law remedies statutory interpretation environmental law negligence

PRACTICE AREAS

constitutional law torts environmental law remedies statutory interpretation

QUESTIONS PRESENTED

1. Whether the Reduction of Lead Risk in Housing Act's immunity provisions violated Article 19 of the Maryland Declaration of Rights by eliminating or severely restricting a child's traditional personal-injury remedy without providing an adequate substitute.
2. Whether the invalid immunity provisions were severable from the remaining provisions of the Reduction of Lead Risk in Housing Act.
3. Whether the defendants timely complied with the Act's property-registration renewal requirements.
4. Whether the Act's immunity provisions were constitutional under the Fourteenth Amendment, Article 24 of the Maryland Declaration of Rights, the right to jury trial, and separation-of-powers principles.

HOLDINGS

1. The immunity provisions of the Reduction of Lead Risk in Housing Act, including §§ 6-828, 6-835, 6-836, and 6-836.1, are invalid under Article 19 because they eliminate a traditional personal-injury remedy for negligently injured children while providing no remedy or only a drastically inadequate qualified-offer remedy.
2. The Act's invalid immunity provisions are severable from the remaining provisions of the Reduction of Lead Risk in Housing Act.

KEY QUOTATIONS

“Unlike the substituted remedy in the Robinson case, however, the substituted remedy under the Reduction of Lead Risk in Housing Act for a permanently brain damaged child is totally inadequate and unreasonable.”
(868)

“We hold, therefore, that the immunity provisions of the Reduction of Lead Risk in Housing Act are invalid under Article 19 of the Maryland Declaration of Rights.” (869)

“Accordingly, the dominant purpose of the Act can be given effect without the invalid immunity provisions.”
(870)

FACTUAL BACKGROUND

ZiTashia Jackson, a child, lived with her mother in two Baltimore City rental properties owned or controlled by the defendants. The plaintiffs alleged that both properties contained chipping or flaking paint and that ZiTashia ingested lead-based paint, causing severe and permanent brain injuries. Although the properties had received risk-reduction certifications, the plaintiffs alleged that the defendants failed to remedy reported paint hazards.

ZiTashia's blood-lead levels during the relevant period did not reach the threshold specified in the Act's notice provision, and the defendants did not make a qualified offer.

PROCEDURAL HISTORY

The plaintiffs filed negligence and Maryland Consumer Protection Act claims in the Circuit Court for Baltimore City based on a child's alleged lead poisoning from rental properties. The circuit court ultimately granted the defendants summary judgment, holding that the statutory immunity provisions were constitutional and that the defendants timely registered the properties. The Court of Special Appeals held that the defendants had not fully complied with the registration statute but agreed that the immunity provisions were constitutional. The Court of Appeals granted review and resolved the case on the Article 19 issue, declining to reach the remaining issues.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the judgment of the Court of Special Appeals, direct that court to reverse the judgment of the Circuit Court for Baltimore City, and remand the case to the circuit court for further proceedings consistent with the opinion.

CASES CITED

- Bednar v. Provident, 402 Md. 532, 937 A.2d 210 (2007)
- Lovelace v. Anderson, 366 Md. 690, 785 A.2d 726 (2001)
- Reiter v. Pneumo Abex, 417 Md. 57, 8 A.3d 725 (2010)
- Jackson v. Dackman, 181 Md. App. 546, 956 A.2d 861 (2008)
- Piselli v. 75th Street Medical, 371 Md. 188, 808 A.2d 508 (2002)
- Dua v. Comcast Cable, 370 Md. 604, 805 A.2d 1061 (2002)
- Ashton v. Brown, 339 Md. 70, 660 A.2d 447 (1995)
- Robinson v. Bunch, 367 Md. 432, 788 A.2d 636 (2002)
- Rios v. Montgomery County, 386 Md. 104, 872 A.2d 1 (2005)
- Renko v. McLean, 346 Md. 464, 697 A.2d 468 (1997)
- Johnson v. Maryland State Police, 331 Md. 285, 628 A.2d 162 (1993)
- Polakoff v. Turner, 385 Md. 467, 869 A.2d 837 (2005)
- Brooks v. Lewin Realty, 378 Md. 70, 835 A.2d 616 (2003)
- Johns Hopkins Hospital v. Pepper, 346 Md. 679, 697 A.2d 1358 (1997)
- Migdal v. State, 358 Md. 308, 747 A.2d 1225 (2000)
- Board v. Smallwood, 327 Md. 220, 608 A.2d 1222 (1992)
- O.C. Taxpayers v. Ocean City, 280 Md. 585, 375 A.2d 541 (1977)
- Walker v. State, 343 Md. 629, 684 A.2d 429 (1996)

- **Houghton v. County Commissioners of Kent County**, 307 Md. 216, 513 A.2d 291 (1986)

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