



Legal Aid Society
OF THE DISTRICT OF COLUMBIA

MAKING JUSTICE REAL

D.C. Court of Appeals Developments for Legal Services Providers 2019-2020

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Barbara McDowell Appellate Advocacy Program at Legal Aid

- Full-time appellate project with Director and Sidley Austin Appellate Advocacy Fellow
- Oversee Legal Aid's appellate litigation
- Appellate resource for D.C. legal services community
 - Consultation and brief advice
 - Referrals
 - Co-counselling

Programmatic Updates:

- COVID-19 Operations at DCCA and OAH
 - Oral Arguments and Hearings All Virtual
 - Automatic Tolling at OAH but not at DCCA
 - DCCA Filing by email (with problems)
 - OAH Service by email without consent (with problems)
- Legal Aid's docket mining and pro bono referrals
- DC Bar Pro Bono Task Force Appellate Working Group

2020

Access to Justice

Facts

- Notices of appeal filed years after final orders.

Holding

- Appeal deadline is a judge-made mandatory but non-jurisdictional claims-processing rule.
- Deadline can be raised sua sponte by the Court but also can be waived by an appellee.

Significance

- Always raise timeliness if you represent appellee.
- Continues trend of treating very few deadlines as jurisdictional.
- Early decision by newest judge: Joshua Deahl.



DeLoatch v. Sessoms- DeLoatch

229 A.3d 486
(D.C. 2020)

Facts

- Employer moved to compel arbitration five months after employment discrimination complaint.

Holding

- Employer waived right to arbitrate by actively participating in litigation for five months and failing to explain its delay in requesting arbitration.

Significance

- Draws a line against employers denying employees day in court through forced arbitration.



TRG Customer Solutions, Inc. v. Smith

226 A.3d 751 (D.C. 2020)

Facts

- Pro se petitioner filed his petition for review of an OAH adjudication that his dog was dangerous in DCCA rather than Superior Court.

Holding

- Dangerous dog determinations reviewed in Superior Court.
- Review is deferential, not *de novo*.

Significance

- Pro se case filed in the wrong place is transferred to the right place, not dismissed.
- Evidence taken in administrative forum, not court.

Escobar v. D.C. Department of Health

No. 19-AA-319,
2020 D.C. App.
LEXIS 119
(D.C. April 2,
2020) (to be
published)

Housing Law



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Facts

- Tenant did not demand a jury trial until after the return date, once she had secured counsel.

Holding

- Tenant showed good cause for untimely request for jury trial: she had trouble finding counsel, jury trial wouldn't have caused significant additional delay, and landlord wasn't prejudiced.

Significance

- “need to be flexible in addressing the continuing problem of indigent civil litigants’ inadequate access to legal representation.”
- Good cause not limited to “uncontrollable” circumstances, a fact that could help us alter the standard for “good cause” currently employed by OAH.

Williamson v. St. Martin’s Apartments

No. 18-CV-380, 2020 D.C. App. LEXIS 301 (D.C. Aug. 6, 2020) (to be published)



Facts

- In TOPA case, landlord contested agency order registering a tenant association in his building and the requirement that he offer to sell to tenants when he decided to discontinue use of property for housing

Holding

- Landlord lacked standing to challenge registration of tenant association.
- Despite previous TOPA offer, landlord remained obligated to make an offer of sale to tenants when he decided to discontinue use of property for housing.
- Sale enjoined

Significance

- Pro-tenant ruling regarding landlords' TOPA obligations

***Holmes v.
Department of
Housing and
Community
Development***

231 A.3d
416 (D.C.
2020)

Facts

- Eviction case. Landlord appealed after trial court entered but later indefinitely suspended a protective order.

Holding

- DCCA has jurisdiction over landlord's interlocutory appeal from protective order.
- Indefinite suspension of protective order is abuse of discretion.

Significance

- Landlord-friendly case.
- Protective orders are immediately appealable.



Brown v. Pearson

No. 18-CV-540,
2020 D.C. App.
LEXIS 120
(D.C. April 2,
2020) (to be
published)

Facts

- Landlord issued notice to vacate 5 months after tenant sued her. Later, landlord sued for possession three months after tenant asked for repairs.

Holding

- It is not enough to rebut presumption for landlord “merely to articulate a legitimate, non-retaliatory reason.” Reason must be corroborated.

Significance

- First case to clarify clear-and-convincing standard in the landlord-tenant context
- Retaliation defense to eviction action is often strong and easy to prove
- Motion to publish summarily denied



Brown v. Raines

No. 17-CV-
1338

(unpublished)
(D.C. May 29,
2020)

Family Law

Facts

- Appeal from denial of 3rd request for extension of CPO, 4 years after original offense.

Holding

- To meet statutory “good cause” standard for CPO extension, must show “cognizable danger that the respondent will commit or threaten to commit a criminal offense against the petitioner in the coming year.”

Significance

- Makes it much more difficult for CPO petitioner to secure extension of CPO.
- Petition for Rehearing Pending.



Ramirez v. Salvatera

232 A.3d 169

(D.C. 2020);

motion for
rehearing filed,
with support
from amici brief



Facts

- Contested adoption proceeding. Court chose adoption based on “weighty consideration” to parent’s choice, rather than Court’s assessment of child’s best interest.

Holding

- Overruled judge-made “weighty consideration” doctrine. Court’s assessment of child’s best interest trumps the view of a parent found unfit (even before parental rights are terminated).

Significance

- Restricts parental rights in a manner that may be used with racial, cultural, and economic insensitivity.

In re J.B.S.

Nos. 16-FS-1244 & 16-FS-1245, 2020 D.C. App. LEXIS 363 (D.C. Sept. 10, 2020) (en banc) (to be published)

Public Benefits Law



Facts

- Unemployment benefits claimant learned that her employer, a homeless shelter, would be closing shop imminently. She quit to take another job.

Holding

- Even though homeless shelter didn't tell claimant she would be laid off, she had good cause connected with work for her voluntary quit because she rightfully perceived her job was at risk. She was therefore eligible for UI.

Significance

- Supports notion that UI statute should not penalize employees for jumping ship when employer is sinking

Evans v. Department of Employment Services

No. 19-AA-52,
2020 D.C. App.
LEXIS 299
(D.C. Aug. 6,
2020) (to be
published)

Facts

- Public sector employee applying for permanent partial disability benefits was denied review of agency decision by OAH.

Holding

- No equal protection violation for some (though not all) public sector workers' comp. claimants to be denied trial-type hearings at OAH, even though private sector claimants can request such a hearing.

*Frazier v.
Department of
Employment
Services*

229 A.3d 131
(D.C. 2020)

Significance

- Upholds legislative and regulatory distinctions between private and public sector workers' comp. claimants



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***Bemah v.
Department
of Human
Services***

No. 17-AA-
731 (D.C.
Sept. 11,
2020)
(unpublished)

Facts

- Food stamps beneficiary was entitled to increased benefit when daughter lost her job, but could not obtain proof of job loss for almost one year. Agency refused to provide retroactive benefits once job loss was proven.

Holding

- Retroactive benefits awarded because Agency erred in failing to document the report of job loss, which would have resulted in (1) notice to recipient (2) causing recipient to seek help in obtaining documentation, and (3) obtaining documentation right away.

Significance

- Beneficiaries (and advocates) should expressly request government assistance in obtaining documentation.

Consumer Law



***Frankeny
v. District
Hospital
Partners***

225 A.3d
999 (D.C.
2020)

Facts

- Hospital failed to inform patient that a first-year resident would perform her operation rather than a seasoned surgeon she'd selected.

Holding

- Defendant violated the District's Consumer Protection Procedures Act regardless of "entrepreneurial motive" (i.e., that misrepresentation was intentional and motivated by financial gain). See D.C. Code § 28-3904(a), (d).
- Burden of proof is not higher for CPPA claims against medical providers.

Significance

- Pro-consumer ruling that declines to read intent requirement into CPPA.

Criminal Law

Facts

- The Department of Youth Rehabilitation Services decides whether children adjudicated delinquent will be housed in a secure facility or the community and what services they will receive.



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Holding

- Criminal Justice Act requires compensation for court-appointed counsel for proceedings at DYRS.

In re N.H.M.
224 A.3d 581
(D.C. 2020)

Significance

- Children are entitled to free counsel at meetings where DYRS decides whether to change the child's placement or services and whether to revoke a child's community placement.



Facts

- Mr. Kornegay was pulled over for tinted windows in SE. The cop found a bag containing 1.73 ounces of cannabis. Mr. Kornegay was convicted of possession with intent to distribute a controlled substance.

Holding

- Conviction reversed because D.C. law now permits possession of ≤ 2 oz. of cannabis regardless of intent, as long as the possessor did not make it “available” for sale

Significance

- Pro-defendant ruling in case about drug possession (and possibly racial profiling). Majority took an interest in disproportionate impact of cannabis enforcement for African-Americans.
- Important case for record-sealing efforts.

Kornegay v. United States

No. 18-CM-370, 2020 D.C. App. LEXIS 355 (D.C. Sept. 3, 2020) (to be published)



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Facts

- Off-duty cop working as security officer at apartment building issued verbal barring notice to Mr. Odumn for “loitering nonstop.” Another off-duty cop working as a security officer arrested him.

Holding

- Conviction reversed due to insufficient proof that Mr. Odumn entered property against will of lawful occupant
- Common law principles control: Landlord may not prohibit tenant from inviting 3rd party onto tenant’s property for lawful purpose or prohibit tenant and her guests from using common space for entry/exit.

Significance

- Pro-defendant ruling in case about crime of poverty (“loitering”) (and possibly racial profiling)

***Odumn v.
United
States***

**227 A.3d
1099 (D.C.
2020)**



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Facts

- After a bench trial, Mr. Wicks was convicted of unlawful entry after allegedly reselling Nationals' tickets on Nationals' private property after receiving a barring notice.

***Wicks v.
United
States***

226 A.3d 743
(D.C. 2020)

Holding

- Conviction reversed due to insufficient proof that sidewalk was private property and that Mr. Wicks knew or should have known his presence was unauthorized

Significance

- Pro-defendant ruling in case about ticket scalping (and possibly racial profiling)

Questions?