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INTRODUCTION: LEGAL DEVELOPMENTS IN THE LAW IN THE DISTRICT OF COLUMBIA

Katherine S. Broderick*

The *University of the District of Columbia Law Review*[1] (the *Review*), since its beginning, has published articles on developments of law in the District, usually about law affecting low-income residents. The Law School's student-run *Review* reflects the dual statutory mission of the University of the District of Columbia David A. Clarke School of Law (UDC-DCSL or the School), the District's public law school, to provide a diverse student body with a high quality legal education and to serve the legal needs of the District's low-income residents.[2] The School of Law accomplishes its mandate with an extensive clinical education program.[3] In the last year alone, UDC-DCSL faculty and students provided more than 70,000 hours of free legal services to some of the District's most vulnerable residents, including men, women and children with HIV or AIDS; children with special education needs; children who have been abused or neglected; tenants fighting illegal rent increases; tenants seeking to purchase and renovate their buildings; immigrants; seniors; government whistle blowers; and small business owners, among others.[4]

With this issue, the *Review* reinforces its mission to publish articles devoted to analysis and development of law of the District. This issue is compiled of articles by a UDC-DCSL faculty member and two D.C. attorneys addressing D.C. Court

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1 For more information about the *Review*, see the *Review* website at http://www.law.udc.edu/students/law_review.html.

2 D.C. CODE § 31-1546(b) (1981) (recodified at D.C. CODE § 38-1205.06 (2007)), the original statute directing the Board of Governors in the operation of the School of Law, reads:

> The Board of Governors shall, to the degree feasible, operate the School of Law as a clinical law school committed to representing the legal needs of low-income persons, particularly those who reside in the District of Columbia. The Board of Governors shall also, to the degree feasible, recruit and enroll students from racial, ethnic, or other population groups that in the past have been underrepresented among persons admitted to the bar in the several states and in the District of Columbia.

See also UDC-DCSL, *Facts About the School of Law*, www.law.udc.edu/advocate/facts.html (2007) (describing the mission of the School of Law and related facts).

3 Each UDC-DCSL student must earn fourteen clinic credits as graduation requirements, which requires 350 hours in the second year and 350 hours in the third year of law school. UDC-DCSL also operates a first-year Community Service Program, in which each student must provide a minimum of forty hours; an Internship Program, in which students may earn up to ten credits; and a Summer Public Interest Fellowship Program, in which students work at least 400 hours.

4 The School's clinics include: HIV/AIDS; Juvenile and Special Education Law; Landlord-Tenant and Consumer Law; Low-Income Taxpayer; Community Development and Small Business; Legislation; and the Government Accountability Project.

of Appeals opinions in the areas of family law, employment law, and landlord-tenant law.

I. FAMILY LAW: JUNE 2004 TO JUNE 2005

The first article in this series is by UDC-DCSL's Professor Matthew Fraidin,[5] who examines family law developments, as reflected in D.C. Court of Appeals decisions, in *Recent Developments in Family Law in the District of Columbia June 2004-June 2005*. Each of the cases examined relate to parental issues, ranging from paternity to child support, neglect, and adoption. Professor Fraidin further provides an in-depth commentary describing the D.C. Court of Appeals' decision to limit procedural protections in two adoption cases, the first in 2001 and the second in 2004.

The paternity cases include one in which the Court of Appeals determined that the D.C. Superior Court was better suited to determine paternity than the Police and Firefighter's Retirement and Relief Board.[6] In the second paternity case, *Simms v. United States*,[7] the Court held that a nonresidential boyfriend who had only rarely cared for a child was not acting *in loco parentis* when he assaulted the child because he had neither assumed nor discharged the duties of a parent.[8]

The D.C. Court of Appeals reviewed one case involving common law marriage, *Mesa v. United States*.[9] The Court upheld the conviction of Mr. Mesa in a notorious murder case the *Washington Post* carried on its front page. The Court decided that the defendant, Mr. Mesa, was not entitled to claim the marital privilege with respect to his fiancee and, therefore, her testimony, his letters to her, and their conversations were admissible at trial.

The first of the two child support cases reported deal with calculation of income and with punishment for failure to pay child support. In the first, *Slaughter v. Slaughter*,[10] the Court upheld the trial court's calculation of the mother's income for purposes of determining her child support obligation. The Court ruled that the trial court correctly included funds received in a lawsuit settlement as falling within the "income from any source" provision of the statute.[11]

In the second case, *Rogers v. Johnson*,[12] the Court of Appeals also upheld the trial court's decision, finding criminal contempt for failure to pay child support in this instance. The Court of Appeals concluded that the defendant had failed to

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5 Professor Fraidin co-directs the School of Law's HIV/AIDS Legal Clinic and teaches Professional Responsibility.

6 Matthews v. District of Columbia, 875 A.2d 650 (D.C. 2005).

7 867 A.2d 200 (D.C. 2005).

8 *Id.*

9 875 A.2d 79 (D.C. 2005).

10 867 A.2d 976 (D.C. 2005).

11 *Id.* at 977.

12 862 A.2d 934 (D.C. 2004).

rebut the presumption of willful failure to pay with any evidence of his inability to do so in accordance with his child support order.

In the three neglect cases, the Court of Appeals emphasized the trial court's role in fact finding, remanding for further fact finding in each. In the first, *In re T.L.*,[13] the Court remanded for further fact finding the trial court's order that ended a mother's visitation rights with her two children. Even though the mother had declined the trial court's offer of a hearing on the issue, the Court of Appeals required the trial court to conduct a hearing. The Court ruled that visitation rights may not be barred based on a therapist's "conclusory" report based on "skimpy analysis."[14] In the second neglect case, *In re Kya. B.*,[15] the Court of Appeals upheld a neglect finding with regard to two siblings but remanded for further findings regarding whether a third sibling had been neglected. The Court decided that the two-part test for neglect had not been met for the third child because the trial court had not made a separate "individualized" finding that this child was in imminent danger of harm.[16] The third case of *In re T.T.C.*[17] addressed the duties parents that are incarcerated have to their children. The Court of Appeals held that the children were neglected because their father did not make proper arrangements – not putting them in the care of a legally authorized individual – when he became incarcerated.[18]

Finally, the Court of Appeals reviewed three adoption cases that Professor Fraidin views as greatly inhibiting the ability of birth parents to contest adoption proceedings of their children.[19] In *In re J.L.*,[20] the Court affirmed that the trial court need not ascertain a child's wishes from only the child's testimony but, rather, may do so from testimony of a social worker and the guardian *ad litem*. In this case, Professor Fraidin discusses whether the Court of Appeal's use of the guardian *ad litem*'s opinion is appropriate within the statutory scheme.

In a same-sex-female-couple adoption of a child of a different race, *In re F.W.*,[21] the Court of Appeals deferred to the trial court's factual findings regarding the credibility of witnesses supporting the adoption based on the "best interests of the child" standard. In upholding the trial court's findings, the Court of Appeals also concluded that the trial court had appropriately considered factors of "race, culture and gender."[22]

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13 859 A.2d 1087 (D.C. 2004).

14 *Id.* at 1092.

15 857 A.2d 465 (D.C. 2004).

16 *Id.* at 473.

17 855 A.2d 1117 (D.C. 2004).

18 *Id.* at 1121.

19 See *The D.C. Court of Appeals Limits Birth Parents' Procedural Protections in Adoption Cases* in Professor Fraidin's article for discussion of these cases.

20 884 A.2d 1072 (D.C. 2005).

21 870 A.2d 82 (D.C. 2005).

22 *Id.* at 86.

In contrast, in *In re H.B.*,[23] based on new evidence of the parent's "fitness as a parent," the Court of Appeals approved the trial court's grant of adoption nearly six months after the hearing. In this case, Professor Fraidin questions whether the trial court improperly shifted the burden of proof from the petitioners to the parent by considering evidence occurring after the hearing.

Professor Fraidin detects a strong trend to limit traditional procedural safeguards for parents in the Court's decisions in adoption cases. To fully explore the trend, he reaches back to *In re A.W.K.*,[24] and evaluates the case together with *In re H.B.*, a more recent case.[25] Professor Fraidin concludes that these cases limit birth parents' ability to prevail in adoption cases in five ways: (1) by allowing subject matter jurisdiction to be asserted, absent satisfaction of the statutory requirements of such jurisdiction; (2) by preventing parents from using discovery regarding the adoption petitioners' fitness to parent and relationship with the child; (3) by permitting petitioners' fitness to be evaluated on the basis of an *in camera* review of a social worker's report; (4) by eliminating both the finality and predictability of adoption trials; and (5) by requiring parents to prove their fitness affirmatively, as opposed to being proven unfit by evidence propounded by others.

Taken together, these decisions by the Court, in Professor Fraidin's view, limit essential safeguards for birth parents and make their ability to prevail in adoption cases noticeably difficult.

II. EMPLOYMENT LAW: JUNE 2004 TO JUNE 2005

Judith M. Conti, Director of the Employment Justice Center, reviewed a wide range of employment law issues in *The Employment Law Year in Review: June 2004-June 2005*. This review focuses on D.C. Court of Appeals cases arising out of the D.C. Human Rights Act, workers' compensation actions, D.C. Office of Employee Appeals cases, and police and firefighter pension and arbitration cases.

The D.C. Human Rights Act cases include the Court's review of the quantity and quality of medical and factual evidence required to sustain a substantial award of damages;[26] remitter requirements;[27] First Amendment Free Exercise and Establishment Clause actions in discrimination claims;[28] and the high threshold requirements for establishing direct evidence of discrimination.[29]

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23 855 A.2d 1091 (D.C. 2004).

24 778 A.2d 314 (D.C. 2001).

25 855 A.2d 1091 (D.C. 2004).

26 Psychiatric Inst. v. District of Columbia Comm'n on Human Rights, 871 A.2d 1146, 1148 (D.C. 2005).

27 *Id.*

28 Pardue v. Ctr. City Consortium of Schools of Washington, Inc., 875 A.2d 669 (D.C. 2005).

29 Jung v. George Washington Univ., 875 A.2d 95 (D.C. 2005).

The D.C. Court of Appeals review of workers' compensation cases is similarly wide-ranging. *Washington Post v. District of Columbia Department of Employment Services*[30] involved the standard of sufficiency of medical evidence required for an employer to rebut the statutory presumption of causation of a worker's disability by an injury suffered at work. In two other cases, the Court of Appeals ruled that the director of the D.C. Department of Employment Services had failed to give sufficient deference to the administrative law judge's (ALJ) reviews of factual and medical evidence. The Court concluded that the director may reverse only ALJ decisions not supported by substantial evidence.[31] The Court also considered the circumstances under which temporary partial disability benefits may be awarded.[32] Finally, the Court addressed several procedural issues, such as: circumstances where an employee is entitled to receive a late payment penalty;[33] statute of limitations requirements affecting a request for modification of a benefits award;[34] notice requirements when an employee learns of the connection between an injury or illness and work;[35] and circumstances where attorneys' fees are not available.[36]

The D.C. Court of Appeals also decided four cases arising out of the D.C. Office of Employee Appeals. Three cases provide guidance for claimants, including the necessity to exhaust administrative remedies;[37] the impossibility of requesting a new hearing when the relevant evidence is undisputed and the decision is supported by substantial evidence;[38] and the requirement of a non-frivolous claim in order to secure a hearing to challenge elimination of a position.[39] The fourth case determined that the Office of Employment Appeals exceeded the proper scope of review when it considered a supplemental record not presented to the ALJ.[40]

In an additional category, Ms. Conti reviewed two disability cases. In the first, the D.C. Court of Appeals held that a class of police officers retired on disability with fewer than twenty years of service was not entitled to a pension increase

30 852 A.2d 909 (D.C. 2004).

31 Young v. District of Columbia Dep't of Employment Serv., 865 A.2d 535 (D.C. 2005).

32 Georgetown Univ. v. District of Columbia Dep't of Employment Serv., 862 A.2d 387 (D.C. 2004).

33 Orius Telecomm., Inc. v. District of Columbia Dep't of Employment Serv., 857 A.2d 1061 (D.C. 2004).

34 Sodexho Marriott Corp. v. District of Columbia Dep't of Employment Serv., 858 A.2d 452 (D.C. 2004).

35 Washington Hosp. Ctr. v. District of Columbia Dep't of Employment Serv., 859 A.2d 1058 (D.C. 2004).

36 Providence Hosp. v. District of Columbia Dep't of Employment Serv., 855 A.2d 1108 (D.C. 2004).

37 White v. District of Columbia, 852 A.2d 922 (D.C. 2004).

38 District of Columbia v. Fremeau, 869 A.2d 711 (D.C. 2005).

39 Levitt v. District Office of Employment Appeals, 869 A.2d 364 (D.C. 2005).

40 District of Columbia Dep't of Pub. Works v. Colbert, 874 A.2d 353 (D.C. 2005).

available only to retirees with twenty years service.[41] The Court also ruled that the D.C. Police and Firefighters' Retirement and Relief Board must have substantial evidence to support a disability award calculation that includes both the petitioner's ability to perform particular jobs and the availability of such jobs.[42]

Finally, the D.C. Court of Appeals focused on narrow procedural issues in considering two cases stemming from arbitration. The Court ruled on the statute of limitations and the choice of law clause in an employment contract,[43] and announced the very limited grounds on which the Court may modify an arbitration order.[44] Such grounds are available when "clearly specified by statue" and when the "arbitration panel is found to have ruled on matters beyond the scope of authority" or when the panel "manifestly disregarded the law."[45] Finally, the Court affirmed dismissal of claims involving statutory distinctions between District and federal employees.[46] Ms. Conti's review of the Court of Appeals' recent employment law cases provides an invaluable overview for employers and employees alike.

III. LANDLORD-TENANT LAW: JUNE 2004 TO JUNE 2005 & JUNE 2005-2006

Finally, Barbara McDowell, Director of the Appellate Advocacy Project of the Legal Aid Society of the District of Columbia, completes this issue with *Developments in Landlord-Tenant Law: June 2004-June 2005*. This article describes D.C. Court of Appeals cases initiated both in the D.C. Superior Court and the D.C. Rental Housing Commission.

Two cases clarify when default judgments may be entered against tenants who fail to appear in court.[47] Three wrongful eviction cases address questions of adequate notice,[48] invasion of privacy,[49] and whether a landlord is prohibited from using self-help to evict lease assignees after the landlord has accepted rent from them.[50] Finally, two cases address issues of court registry deposits. In *Arthur v. District of Columbia*,[51] the Court of Appeals considered whether the prevailing

41 District of Columbia v. Gould, 852 A.2d 50 (D.C. 2004).

42 Bausch v. District of Columbia Police & Firefighters' Retirement Relief Bd., 855 A.2d 1121 (D.C. 2004).

43 Olivarious v. Stanley J. Sarnoff Endowment for Cardiovascular Science, Inc., 858 A.2d 457 (D.C. 2004).

44 Shore v. Groom Law Group, 877 A.2d 86 (D.C. 2005).

45 *Id.* at 91.

46 Newsome v. District of Columbia, 859 A.2d 630 (D.C. 2004).

47 Jones v. Hersh, 845 A.2d 541 (D.C. 2004); Pelkey v. Endowment for Cmty. Leadership, 841 A.2d 757 (D.C. 2004).

48 Hill v. G.E. Capital Mortgage Serv., 859 A.2d 1055 (D.C. 2004).

49 Danai v. Canal Square Assocs., 862 A.2d 395 (D.C. 2004).

50 Sarete, Inc. v. 1344 U St. Ltd. P'ship, 871 A.2d 480 (D.C. 2005). The *Sarete* case is complicated and described in some depth.

51 857 A.2d 473 (D.C. 2004).

party or the court system should be entitled to interest.[52] In *Pinzon v. A&G Properties*,[53] the Court of Appeals considered the basis on which a commercial tenant may secure a refund of protective order payments.[54]

Ms. McDowell also reports on the Court of Appeals' review of several important Rental Housing Commission decisions regarding administrative challenges brought by tenants protesting adverse actions by landlords. These cases include, for example, rent increases[55] and fines imposed as retaliation measures.[56] Finally, in a tenant opportunity to purchase case, the Court considered whether a limited partner should receive an option to purchase in the absence of a master lease.[57]

Following the 2004-2005 article, Ms. McDowell provides a second review for the 2005-2006 year in landlord-tenant law in the District. The Court of Appeals considered the right of a tenant to reasonable consideration, as required under the federal Fair Housing Act, where the tenant has a physical or mental disability in the decision of *Douglas v. Kriegsfeld Corp.*[58] In a series of cases, the Court addressed situations where illegal activity provided the landlord with cause for eviction,[59] including discussion of the application of the District's Residential Drug Related Evictions Act.[60] All in all, both of Ms. McDowell's articles guide the reader through important recent developments in landlord tenant law in the District of Columbia.

Enjoy this survey of recent developments in the District of Columbia law!

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52 *Id.*

53 874 A.2d 347 (D.C. 2005).

54 *Id.*

55 Sawyer Property Mgmt. v. District of Columbia Hous. Comm'n, 877 A.2d 96, 101 (D.C. 2005).

56 Miller v. District of Columbia Rental Hous. Comm'n, 870 A.2d 556 (D.C. 2005).

57 Columbia Plaza Tenants' Ass'n v. Columbia Plaza Ltd. P'ship, 869 A.2d 329 (D.C. 2005).

58 884 A.2d 1109 (D.C. 2005) (en banc).

59 Scarborough v. Winn Residential L.L.P./Atlantic Terrace Apartments, 890 A.2d 249 (D.C. 2006) (examining relationship of federal "one strike" law to District of Columbia Rental Housing Act).

60 Crescent Properties v. Inabet, 897 A.2d 782 (D.C. 2006); Ball v. Arthur Winn General P'ship/ Southern Hills Apartments, 905 A.2d 147 (D.C. 2006).