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# Recent Developments: King v. St. Vincent's Hospital: Members of the Armed Forces Retain the Right to Civilian Reemployment under 38 U.S.C. § 2024(d) Regardless of the Duration of Active Duty

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convincing evidence standard in civil cases when “fraud, dishonesty, or criminal conduct [was] imputed . . .” *Id.* at 655-56 (citing *First Nat’l Bank v. U.S.F. & G. Co.*, 340 A.2d 275 (Md. 1975)). The court concluded that in order to further the purposes inherent in punitive damages and because of their penal nature the “[u]se of a clear and convincing standard of proof [would] help to insure that punitive damages [were] properly awarded.” *Id.* at 657.

In *Owens-Illinois v. Zenobia*, the court of appeals clearly attempted to “fix” Maryland law regarding jury awards of punitive damages. However, in adjusting the scales of justice, the court simply tilted the scales in the opposite direction. While the elimination of the “arising out of contract” distinction was appropriate in light of the arbitrariness of the rule, and the use of clear and convincing evidence standard was justified by the penal implication of punitive damages, the court tilted the scales in favor of the defendant when it adopted the “actual malice” standard of conduct. As a result, plaintiffs who clearly have been the victims of a grossly negligent defendant will find little redress in the Maryland courts.

- Laurie Ann Garey

***King v. St. Vincent’s Hospital*: MEMBERS OF THE ARMED FORCES RETAIN THE RIGHT TO CIVILIAN REEMPLOYMENT UNDER 38 U.S.C. § 2024(d) REGARDLESS OF THE DURATION OF ACTIVE DUTY.**

Justice Souter, writing for a unanimous court, authored *King v. St. Vincent’s Hosp.*, 112 S. Ct. 570 (1991), which resolved the conflict surrounding the interpretation of 38 U.S.C. section 2024(d) (1981 & Supp. 1992), which is known as the Veterans’ Reemployment Rights Act. The Court held that section 2024(d) does not implicitly limit the length of military service after which a member of the armed forces retains the right to civil-

ian reemployment.

William “Sky” King, a member of the Alabama National Guard, applied to become a Command Sergeant Major in the Active Guard/Reserve (“AGR”) program. A three year tour of duty was required by army regulations of the person holding that position. Upon learning of his appointment, King notified his employer, St. Vincent’s Hospital, of his acceptance, requested a three year leave of absence, and reported for duty as ordered. Several weeks later, St. Vincent’s notified him that his request was unreasonable and was therefore beyond the Act’s guarantee of reemployment. St. Vincent’s then brought an action for a declaratory judgment in the United States District Court for the District of Northern Alabama to settle the question of whether the applicable terms of the Act provide reemployment rights after tours of duty as long as King’s.

The district court held that service in the AGR program was protected under section 2024(d), but that a three year leave of absence was *per se* unreasonable. *King*, 112 S. Ct. at 572. The court’s reasoning paralleled the opinions of the third, fifth and eleventh circuits which had held that leave requests under section 2024(d) must meet a test of reasonableness. A panel of the eleventh circuit affirmed the district court’s decision. Due in part to the fact that the fourth circuit had declined to accept a reasonableness standard, the Supreme Court granted certiorari to resolve the conflict among the circuits.

The Supreme Court began its analysis by recognizing the importance of the wording of section 2024(d), which contains no express time limitations. The Court noted that the fourth circuit had found that the words appear to guarantee that leave and reemployment be “unequivocal and unqualified,” whereas the eleventh circuit had acknowledged that the subsection “does not address the ‘reasonableness’ of a reservist’s leave request”. *King*, 112 S. Ct. at 573 (quoting *Kolkhorst v. Tilghman*, 897 F.2d 1282, 1286 (4th

Cir. 1990), *cert. denied*, 112 S. Ct. 865 (1992)); *Gulf States Paper Corp. v. Ingraham*, 811 F.2d 1464, 1468 (11th Cir. 1987)). St. Vincent’s argued that “leave,” as used in subsection (d), applies to an “employee,” implying that the employment relationship continues during the employee’s absence and that this relationship is incompatible with a leave as long as King’s. St. Vincent’s further argued that a leave of this duration would create a burden on the hospital to temporarily fill King’s position for three years until he returned to resume his job.

The Court responded by first recognizing that there is a burden placed on employers by this section, however, the Court found that it was not “free to tinker with the statutory scheme.” *King*, 112 S. Ct. at 573. The Court further stated that it could not render the statute “susceptible to interpretive choice” no matter how great the burden. *Id.* In analyzing the statutory scheme, the Court noted that while “subsection (d) is utterly silent about any durational limit on the protection it provides, other subsections of section 2024, protecting other classes of full-time service personnel, expressly limit the periods of their protection.” *King*, 112 S. Ct. at 573-74. From this, the Court concluded that the simplicity of subsection (d) was deliberate and intended to provide its benefit without imposing conditions on the length of service. The Court also explained that it followed the “cardinal rule that a statute is to be read as a whole,” and “the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries favor.” *Id.* at 574.

The Court next addressed St. Vincent’s misapplication of the principle that a statute is to be read as a whole. Although the hospital read the statutory scheme to show a hierarchy of reemployment rights, the Court held that the differences in treatment among the various sections of the Act do not necessarily amount to a hierarchy. *Id.* at 574. Instead, the Court stated that

the differences of treatment should be “respected by limiting protection where the text contains a limit and leaving textually unlimited protection just where the Congress apparently chose to leave it.” *Id.* at 575.

This decision had immediate ramifications in Maryland because it implicitly affirmed the fourth circuit’s holding in *Kolkhorst v. Tilghman*, 897 F.2d 1282, *cert. denied*, 112 S. Ct. 865 (1992). In that case, the fourth circuit held that the Baltimore City Police Department could not limit the number of police officers, other than new hires, who are allowed to join active military reserve units. In so doing, the fourth circuit construed section 2024(d), as the Supreme Court did in *King*, as placing no limit on reservists covered under the section.

With the decreasing need for a fully staffed and active military in modern political climates, this decision also has major implications for military policy. It ensures a fully trained and prepared defense structure while enabling cuts in military spending. This would increase the amount of money which would be available to the private sector for things such as loans for small businesses. The burdens placed on employers by the Act could, therefore, be compensated by more government spending in the private sector.

- Shawn Gritz

*Presley v. Etowah County Commission*: **ONLY PROCEDURAL CHANGES DIRECTLY RELATED TO VOTING AND ELECTION PROCESSES MAY OFFEND SECTION 5 OF THE VOTING RIGHTS ACT.**

After consolidating two Alabama cases, the United States Supreme Court held that changes in an elected official’s authority did not require preclearance under the Voting Rights Act, 42 U.S.C. § 1973c (1975). In *Presley v. Etowah County Commission*, 112 S. Ct. 820 (1992), the Court ruled that such a change must be directly related to vot-

ing and the election process in order to come within the Act’s province.

Before engaging in its analysis, the Court ventured into the history and pertinent parts of the Voting Rights Act (“Act”). The Act was created to remove race discrimination from voting. Section 5 of the Act requires that any changes in voting procedure with respect to “voting qualification or prerequisite to voting, or standard, practice, or procedure” must receive administrative or judicial preclearance. The Act defines voting to include “all action necessary to make a vote effective.” For the purpose of evaluating changes made to a covered district’s voting practices, the Act states that such changes should be compared against the practices that were in use in that jurisdiction on November 1, 1964.

When the Act was created, Etowah County in Alabama employed the Etowah County Commission (“Etowah Commission”) to oversee the maintenance, repair, and construction of the county roads. The county was divided into four districts. A five-member commission was elected at large under a residency district system. Four members would each receive an allotment of funds for discretionary spending on the roads in their respective districts. The Etowah Commission voted as a collective body to determine the initial allotments each of the four members would receive. The fifth member was the chairman who oversaw the solid waste authority, prepared the budget, and managed the courthouse buildings and grounds.

In 1986, the Etowah Commission was restructured and increased to six members, with each member elected by the voters in a specific district. Four members of the new commission were holdovers from the previous commission. The newly-formed fifth district, which was designed to create a black majority district, elected a black man, Lawrence Presley. A black citizen had not previously held a seat on the Etowah Commission in the modern era. Shortly after the new members took office, the

Etowah Commission passed the “Common Fund Resolution.” This resolution effectively removed the individual authority from the commissioners. Instead of allocating monies to each commissioner, road funds were to be kept in common accounts. This allowed a simple majority, such as the holdover members, to decide how to spend the funds.

In the companion case from Russell County, Alabama, the Russell County Commission (“Russell Commission”) originally comprised three commissioners elected at large. The commissioners were responsible for the road shops, crew, and equipment, as well as routine road maintenance, in their respective districts. After one of the commissioners was indicted for corruption, the Russell Commission adopted the “Unit System” which relegated control over road construction to a County Engineer appointed by the Commission. The Unit System was not submitted for preclearance under section 5 of the Act.

The United States District Court for the Middle District of Alabama issued a consent decree in 1985 which increased the Russell Commission to seven members and changed the election system to district-by-district voting. The Department of Justice precleared the decree, but did not mention the Unit System, which effectively denied the commissioners control of the road funds and equipment. Ed Mack and Nathaniel Gosha were elected to the new seats and became the first black commissioners in modern times.

The appellants, Presley, Mack, and Gosha, filed a single complaint in district court which alleged that the county commissions had violated section 5 of the Act by not obtaining preclearance for either the Common Fund Resolution or the Unit System. A three-judge panel convened by the district court found that neither the Common Fund Resolution nor the Unit System required preclearance under the Act.

In reviewing the history of case law