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RECENT DEVELOPMENT

BEAN V. DEP'T OF HEALTH & MENTAL HYGIENE: A COMMITTED PERSON PETITIONING FOR RELEASE FROM CONFINEMENT IS NOT REQUIRED TO PRODUCE EXPERT MEDICAL TESTIMONY TO MEET THE EVIDENTIARY BURDEN.

By: Megan Ellenson

The Court of Appeals of Maryland held that when a committed person petitions for release, he or she does not have to produce expert medical testimony to satisfy the evidentiary burden that he or she would not pose a danger if released. *Bean v. Dep't of Health & Mental Hygiene*, 406 Md. 419, 959 A.2d 778 (2008). Rather, the court found that the requirement of expert testimony depends on the facts and circumstances in dispute and will be looked at on a case-by-case basis. *Id.* at 440-41, 959 A.2d at 791.

On December 3, 1985, Linwood Bean ("Bean") was committed to the Department of Health and Mental Hygiene ("Department") for inpatient treatment after being found not criminally responsible for assault with intent to murder. Bean was conditionally released from his commitment on three separate occasions. On October 15, 2001, his most recent release was revoked due to allegations of assault.

On December 23, 2004, Bean filed a petition for release in the Circuit Court for Baltimore City pursuant to Section 3-119 of the Maryland Code's Criminal Procedure Article. A jury trial was held to determine if Bean was eligible for release. During the trial, Bean's only two witnesses were himself and his friend, Andrew Conwell ("Conwell"), neither of whom were offered as experts. During testimony, both Bean and Conwell acknowledged that Bean had schizophrenia; however, both noted that Bean would not be a danger to himself or others if he was released. Specifically, Bean testified that he would continue to take his required medication upon release.

The Department produced expert testimony from Lisa Sloat, M.D., explaining that due to Bean's schizophrenia, he would pose a danger to himself and others if released. The case was submitted to the jury, who returned a verdict in favor of Bean's conditional release. The

Department filed a Motion to Stay Pending Appeal and an Application for Leave to Appeal with the Court of Special Appeals of Maryland. The Court of Special Appeals of Maryland granted the Department's motion and reversed the circuit court's decision, holding that a defendant who is committed must produce expert medical testimony to meet his burden of proof in proceedings determining eligibility for release. The Court of Appeals of Maryland granted Bean's petition for a writ of certiorari.

The Court of Appeals of Maryland began its analysis with an examination of the language of Title 3 of the Criminal Procedure Article of the Maryland Code. *Bean*, 406 Md. at 429, 959 A.2d at 784. The Court focused on Sections 3-101 through 3-123, which concern a person's mental capacity. *Id.* at 431, 959 A.2d at 785. The court found that Title 3 does not require courts to receive and consider expert testimony when determining a person's mental capacity. *Id.* at 431-32, 959 A.2d at 785. This includes release eligibility determinations. *Id.*

The burden is on the committed person to prove by a preponderance of the evidence that he is eligible for release. *Id.* at 429, 959 A.2d at 784 (citing MD. CODE ANN., CRIM. PROC. § 3-114(d) (West 2006)). This entails providing evidence to show that he will not be a danger to himself or others if released. *Bean*, 406 Md. at 429, 959 A.2d at 784 (citing MD. CODE ANN., CRIM. PROC. § 3-114(c) (West 2006)). The court found that based on the statute's language, the legislature left the necessity for expert testimony to be determined on a case-by-case basis. *Bean*, 406 Md. at 432, 959 A.2d at 785.

Based on the facts at issue in this case, the court determined that the material issue for the jury to decide was the factual dispute over whether Bean would continue to take the required medications if he was granted a conditional release. *Id.* at 432, 959 A.2d at 786. The court further stated that according to Maryland case law, expert testimony is required in a jury trial only when the issue to be determined is so intricately related to a certain profession that it is beyond the scope of knowledge that an average lay person possesses. *Id.* (citing *CIGNA Prop. & Cas. Cos. v. Zeitler*, 126 Md. App. 444, 463, 703 A.2d 248, 259-60 (1999)). The court found that Bean did not need to present expert medical testimony on his behalf because the facts in dispute did not involve a complex medical issue. *Bean*, 406 Md. at 432-33, 959 A.2d at 786. Instead, the issue involved disputed

facts that were dependent on assessing the credibility of Bean, and this was something an average lay person was capable of determining. *Id.*

The Department argued that determining whether a person with a mental disorder is dangerous always involves complex medical issues. *Id.* at 434, 959 A.2d at 787. Therefore, expert testimony is required. *Id.* The court quickly dismissed this argument, noting that the dangerousness issue does not always present itself as a complex medical question requiring expert testimony. *Id.* Instead, the necessity of expert testimony depends “on the nature of the disputed issues.” *Id.*

The intermediate appellate court, in holding that a person must provide expert medical testimony to prevail in a release proceeding, relied on a previous opinion from the Court of Appeals of Maryland. *Id.* at 434-35, 959 A.2d at 787 (citing *Jewel Tea Co. v. Blamble*, 227 Md. 1, 174 A.2d 764 (1961)). The Court of Appeals of Maryland noted, however, that the intermediate court erred in two aspects. *Bean*, 406 Md. at 435, 959 A.2d at 787. First, the proposition relied on by the Court of Special Appeals of Maryland to support its holding was not applied to the issue in the case from which the proposition was taken. *Id.* (citing *Jewel Tea Co.*, 227 Md. at 7, 174 A.2d at 767). Second, numerous jurisdictions, including Maryland, have found that the dangerousness a committed person may pose if released does not fall into the category of complex medical questions that can only be resolved by “dueling” expert testimony. *Bean*, 406 Md. at 435, 959 A.2d at 787. The court further explained that its holding in *Jewel Tea Co.* was not based on the fact that the expert and lay opinions conflicted, but, rather, on the fact that the plaintiff’s testimony was grounded in speculation and possibilities. *Id.* at 436, 959 A.2d at 788 (citing *Jewel Tea Co.*, 227 Md. at 8, 174 A.2d at 768). Therefore, the court, here, refused to hold that the dangerousness posed by a committed person always constitutes a complex medical issue requiring expert testimony because such a holding would contradict Maryland and federal case law. *Bean*, 406 Md. at 437, 959 A.2d at 788.

Finally, the court addressed a United States Supreme Court case introduced by both parties’ briefs. *Bean*, 406 Md. at 438-39, 959 A.2d at 789-90 (citing *Barefoot v. Estelle*, 463 U.S. 880 (1983)). In *Barefoot*, the petitioner argued that psychiatrists, in a capital sentencing proceeding, could not reliably predict the dangers posed by a person. *Bean*, 406 Md. at 438-39, 959 A.2d at 789-90 (citing

Barefoot, 463 U.S. at 896). The Supreme Court found that while expert testimony was not required, it could be helpful and relevant to the disputed issue. *Bean*, 406 Md. at 439, 959 A.2d at 790 (citing *Barefoot*, 463 U.S. at 897-99). The Court of Appeals of Maryland determined that *Barefoot* supported its holding that expert testimony was not required in *Bean*'s proceeding. *Bean*, 406 Md. at 440-41, 959 A.2d at 791. However, the court stressed that expert testimony could be helpful in release proceedings when used on a case-by-case basis. *Id.*

In *Bean*, the Court of Appeals of Maryland plainly stated that while expert medical testimony is not required, it can play an important role in release eligibility proceedings. As a result, the court gives a strong indicator to those involved in these proceedings that while it is not necessary for either party to retain the services of an expert, doing so could be quite helpful to their case. The use of expert testimony will strengthen a party's argument by providing supporting medical expertise. It will also be helpful because the expert medical testimony will more than likely be used by the jury to determine whether a person poses a danger to himself and others if released.