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Maryland Contributory Negligence

Maryland's Court of Appeals, as recently as July 2013, once more refused to tackle the agreed upon inequity of Maryland's Tort Law Doctrine of Contributory Negligence. Although a scathing dissent suggested that "the fossilized doctrine of contributory negligence" should be relegated to a "judicial tar pit", the unwary or unprepared can still be totally immobilized by the doctrine's tar. In short, the slightest touch of the contributory negligence tar no matter how blatant and overwhelming that of the tortfeasor, is a total bar to recovery. The child on the bike in the wrong lane, the elderly pedestrian just outside the cross-lane can easily have their cases succumb to this injustice. Since the jury is the ultimate arbiter of both negligence and contributory negligence, the practitioner may sometimes be able to free a plaintiff from this tar by arguments as to what is reasonable and prudent under the circumstances, but that is a two-edged sword that the defendant may just as successfully employ. At the same time, of course, a pro active judge may decide that it is contributory negligence as a matter of law, so that situation always has to be anticipated.



In medical malpractice in Maryland, there is something of a saving grace in that any alleged contributory negligence that occurs prior to that of the tortfeasor is no bar from recovery and no defense. Thus if a plaintiff engages in somewhat questionable behavior in the use of a ladder which results in his or her fall prior to medical malpractice in treating the injuries from the fall, the alleged contributory negligence is no defense to the malpractice. If, however, another tortfeasor caused the fall from the ladder prior to the malpractice in treatment, both are jointly and severally liable to the plaintiff.

Having dealt with this issue or contributory negligence over the course of forty plus years, it is my opinion that in fact most juries do take into account the issue of contributory negligence by reducing the size of the verdict unless they believe that the contributory negligence was of critical importance in which case they will find for the defendant based upon the doctrine and the Court's instructions. What you end up with, consequently, is the jury de facto applying comparative negligence! Ultimately, juries try to be fair even in the face of a clearly inequitable doctrine.

Nota bene: A tortfeasor is an individual who, intentionally or unintentionally, inflicts injury on another individual.