



Suit advances

Judge won't dismiss litigation over Preakness video tape. **11A**

Daily Record podcast

Columnist C. Fraser Smith says the tone in the General Assembly this year is different. Log on to our website.

THE DAILY RECORD

Tuesday, February 14, 2012

Volume 123 | Number 90

Online at TheDailyRecord.com

\$3.6M verdict is upheld

Prior heroics no bar to med-mal liability, appeals court says

By **STEVE LASH**

Steve.Lash@TheDailyRecord.com

An appeals court has upheld a \$3.6 million verdict for a 9-year-old boy who suffered brain damage because doctors were too slow to perform a Caesarean section when his mother suffered complications 26 weeks into her pregnancy.

The Court of Special Appeals rejected the hospital's argument that it should be absolved of liability because it had saved the baby's life by stopping his mother's preterm labor and putting her on bed rest three weeks earlier.

The jury, having found the University of Maryland Medical System Corp. negligent on the day of Darryl Gholston Jr.'s birth, was free to disregard his earlier life-saving care, the appellate court held.

"It is often the situation in medical malpractice cases ... that the reason the patient comes under the care of a health care provider is because the patient is suffering a serious, if not life-threatening,

See **BABY 2A**



JON SHAM

Among the nostalgic candies sold at the Annapolis Sweet Shoppe are candy cigarettes, candy buttons, licorice pipes, Zagnuts, Pop Rocks and wax lips. The store also carries the usual confectionery suspects: Hershey's, Milky Way, Mr. Goodbar, Kit Kat, Snickers, Reese's, Junior Mints.

Confection connection

Annapolis Sweet Shoppe goes for the personal touch

By **JON SHAM**

Jon.Sham@TheDailyRecord.com

ANNAPOLIS — When 4-year-old Johnny Criswell skipped into the Annapolis Sweet Shoppe with his mother, his eyes were wide with wonder.

He went up to the back wall lined with shelves of candy, towering over him, and pulled a Starburst out of one of the few jars he could reach. He then managed to knock over a neighboring jar of Airheads, spilling them all over the floor. But proprietor and shop owner Susan Leonard didn't mind.

"People are missing the connection," said Leonard, 45, who cut the ribbon at her candy shop on Annapolis Street on Feb. 4, just in time for Valentine's Day. "We miss the relationship of a store owner. We miss being able to connect when we walk into a store."

She hopes that small-shop personal connection, the nostalgic, fine artisan and international candies, and the "Willy Wonka imagination" will draw in customers of all ages. The Sweet Shoppe also pro-



JON SHAM

Owner Susan Leonard knows she needs to sell more than just candy bars to make the Annapolis Sweet Shoppe profitable.

SWEAT EQUITY

Starting a business after the Great Recession

A multimedia series by

DAILY RECORD

vides a venue for children's birthday parties, and Leonard already has several lined up.

Among the nostalgic candies she sells are candy cigarettes — which had already sold out Friday — candy buttons, licorice pipes, Zagnuts, Pop Rocks and wax lips. She is also

fully stocked with the usual confectionery suspects: Hershey's, Milky Way, Mr. Goodbar, Kit Kat, Snickers, Reese's, Junior Mints and many more.

For Valentine's Day, the Sweet Shoppe is selling the Love & Kisses Collection heart-shaped box and other offerings from renowned chocolatier Norman Love Confections, a Valentine's

See **CANDY 8A**

To watch a video from the Annapolis Sweet Shoppe, log on to our website.

TheDailyRecord.com

TDR ONLINE

Exelon's tax break to expire?

Enterprise Zones in Baltimore to be redone after June 14

By **MELODY SIMMONS**

Melody.Simmons@TheDailyRecord.com

As plans move forward for construction of a \$120 million office tower for Exelon Corp. at Harbor Point, one of the tax breaks at the 27-acre site is set to expire in mid-June — setting up a possible faceoff between city officials and the developer over its renewal.

The city's Enterprise Zones expire on June 14, said Mark Vulcan, director of tax incentives for the Maryland Department of Business and Economic Development, which sets the zones based on income and poverty data from the census every 10 years.

New zones are being drawn up by the mayor and the Baltimore Development Corp. and are subject to public hearings, Todd Dolbin, director for the enterprise zones at BDC, said Monday.

Applications for tax credits in the existing zones must be submitted to DBED by April 15 — which could be before all approvals are secured for Exelon's proposed \$7.9 billion acquisition of Constellation Energy Group Inc. Maryland's Public Service Commission is expected to make its ruling Friday. Approvals are also needed from the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission.

If the application is received before the deadline, the tax credits can be issued for up to five years afterwards — even if the enterprise zones change because of new census data, said M.J. "Jay" Brodie, president of the BDC.

"We will select the areas of Baltimore under the newest data," Dolbin said.

Among the criteria for establishing new zones is data from the American Community Survey that includes median income, employment status and housing information based on census answers.

Michael S. Beatty, president of Harbor East Development Group

See **ENTERPRISE 5A**

IN THIS ISSUE

PUBLIC NOTICE

Page 22A

BUSINESS

Grand Prix manager announcement due

Baltimore officials say they will name a company Wednesday that will be awarded a five-year contract to run the downtown race. **3A**

LAW

Death penalty looms for Lee Stephens

Anne Arundel jury determines DNA evidence links inmate to killing of corrections officer at now-closed Maryland prison in 2006. **11A**

INDEX

Auction sales **28AB**
Calendar **6A**
Classifieds **13A**

Employment **21A**
Lawyer to lawyer **20A**
Public notice **22A**

A publication of
THE DOLAN COMPANY

\$220 per year
\$2 per copy

For subscriptions
call 1-800-451-9998 or email
subscriptions@TheDolanCompany.com



ONLINE TODAY



READ US

Eye On Annapolis
Maryland Business
On The Record
Generation JD
Movers & Shakers



FOLLOW US

@mddailyrecord
@edwaldman1958
@bgrz
@theshamwow
@steve_lash
@mariazilberman
@TDRDanny



LIKE US

facebook.com/
mddailyrecord



LINK TO US

Maryland Business
The Daily Record



JOIN OUR CIRCLE
The Daily Record



LISTEN TO US
WBAL 1090 AM
Monday-Friday
6:50 a.m.

Spare some time
outside of the office

SARAH D. MANN

I attended the Baltimore County Bar Association's Bowling Bash at Hillendale Bowling Center over the weekend. The event featured duckpin bowling, beer and food. Participants included judges, assistant state's attorneys, lawyers in private practice, court reporters and family and friends of the legal community. Laughter and excited shouts echoed throughout the lanes; it was a welcome diversion from the daily legal grind for most of us. My firm encourages its associates to join committees and associations and to take on leadership roles in local and state bar associations. We are encouraged to attend the events put on by the bar associations — for instance, we had 18 lawyers and family members signed up to bowl.

TDR VIDEO REPORTS



Susan Leonard, owner of The Annapolis Sweet Shoppe, is trying to invoke some of the 'Willy Wonka imagination' at her new store. For those who care where their chocolate comes from, she offers fine artisan and locally made chocolate. For those with a nostalgic sweet tooth, she offers candy cigarettes and Pop Rocks. And she hopes everyone who walks through the door has a sweet experience.

TDR
News Quiz

1. From our Maryland Business blog, what grocery store chain has never laid off an employee?

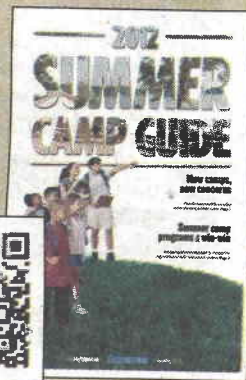
- Shoppers
- Wegmans
- Mars
- Giant

2012 SUMMER CAMP GUIDE

Didn't get a chance to take a peek at our latest special publication?

Don't worry, there's still time.

TheDailyRecord.com/
Special-Publications



MOST VIEWED

ONLINE STORIES

- Arguments end in black colleges' lawsuit
- Come November, Dream Act to take spotlight
- Baltimore Police: Public can record officers
- Military flight attendants take care of the nation's VIPs
- ACLU suit over Preakness video survives police department's challenge

WANT TO BE

FIRST TO KNOW?

Sign up to be a TDR Insider and receive our daily email news blasts. Scan this barcode with your phone or visit

TheDailyRecord.com



Baby >> Case presented a 'classic battle' of medical experts, CSA says

Continued from 1A

condition or illness; and that the health care provider is successful in much of the treatment rendered, even to the point of saving the patient's life," Judge Deborah S. Eyler wrote for the 3-0 court Friday.

"Nevertheless, if within the course of treatment, even life-saving treatment, the health care provider commits a breach in the standard of care that is the cause in fact of an injury to the patient, the health care provider will be liable in damages for negligence," the court held.

Darryl's appellate attorney, Andrew H. Baida, praised the court's decision as affirming the principle that a heroic act does not protect the hero from liability for his or her subsequent negligence.

"The jury probably appreciated what the university did ... in getting the mom another three weeks," said Baida, of Rosenberg|MartiniGreenberg LLP in Baltimore. "But it was also of the view that it [UMMS] failed to comply with the standard of care at the 26-week mark."

The system's appellate counsel, Scott R. Haiber, referred all questions to UMMS. Haiber is with Hogan Lovells in Baltimore.

"We are deeply disappointed in the court's decision, and will be taking the unusual step of considering an appeal to the Maryland Court of Appeals due to the circumstances in this case," UMMS spokeswoman Mary Lynn Carver said in an email.

"As the court noted in its opinion, this was a child who almost certainly would have died if the University of Maryland Medical Center had not managed to successfully extend the mother's pregnancy from 23 to 26



JUDGE DEBORAH S. EYLER

WHAT THE COURT HELD

Case: University of Maryland Medical System Corp. v. Gholston, CSA Nos. 2505, Sept. Term 2010. Reported. Opinion by Eyler, D., J. Argued Jan. 10, 2012. Filed Feb. 10, 2012.

Issue: Can a jury find medical-malpractice liability at delivery when the baby would have died but for the hospital's treatment of the mother three weeks earlier?

Holding: Yes; a hospital can be found liable for breaching the standard of care regardless of its previous excellent treatment.

Counsel: Scott R. Haiber for appellant; Andrew H. Baida for appellee.

RecordFax # 12-0210-00 (22 pages)

weeks," Carver added. "Despite saving the child's life, we now find ourselves saddled with a multimillion-dollar judgment for a child who by all accounts has not suffered cognitive injuries and is performing well in school."

Competing testimony

The appeals court also rejected the hospital's claim that the boy's premature birth, rather than the delayed C-section, caused his learning disabilities. The testimony on that point presented a "classic battle of the experts," Eyler wrote.

Carver, though, warned that if courts don't "begin to look more critically" at plaintiffs' evidence in medical malpractice cases, "medical providers will find themselves being sued for outcomes that are medically expected, but with which patients are not 100 percent satisfied," and that it will drive up the cost

of health care for everyone.

Darryl's mother, Nicole Player, alleged that doctors negligently waited 40 minutes to deliver her boy after noticing the umbilical cord had dropped below his body. The potentially life-threatening position known as acute cord prolapse can interfere with the flow of blood and oxygen to the baby.

By the time Darryl was delivered at 11:42 p.m. on Sept. 19, 2002, he had suffered brain damage from oxygen deprivation, according to the suit.

Darryl's developmental delays have included not learning to walk until age 3½, and only with the use of braces; and not speaking in full sentences until age 4½, according to his mother. At age 9, he is in second grade and has a classroom aide, according to the Court of Special Appeals' opinion.

At trial, the hospital countered that Darryl's brain damage did not result

from negligence but as a consequence of having been born three months prematurely and weighing less than 2 pounds. UMMS also said its doctors had appropriately ordered the mother to bed rest three weeks earlier when a sonogram had shown signs of a weakened cervix.

After a six-day trial of dueling medical testimony, a Baltimore jury found UMMS liable for medical malpractice and awarded Darryl \$4.1 million in damages in November 2010. The award was reduced to \$3.6 million due to Maryland's statutory cap on non-economic damages.

On appeal, UMMS argued that the jury could not have found the system liable because the hospital had saved Darryl's life by extending the pregnancy from 23 to 26 weeks; his disability was typical of a child born so prematurely and weighing less than two pounds; and he had received excellent newborn pediatric care.

But the Court of Special Appeals said the jury had evidence to the contrary, and was free to reject the hospital's explanations and accept that of the plaintiffs.

"[It] was for the jury to decide, based on the conflicting expert witness evidence presented at trial, whether Darryl's deficits were caused by negligent delay in delivering him or by the mere fact of prematurity and associated low birth weight..." Eyler wrote. "Whether other reasonable jurors could have reached the contrary decision, or whether any of the members of this panel of judges would reach a contrary decision is irrelevant. The question was for the jury to decide and it did."