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Blackburn Limited Partnership v. Paul: The Birth of Maryland's Statute or Ordinance Rule and Its Ill-Defined "Targeted Class" Requirement

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BLACKBURN LIMITED PARTNERSHIP v. PAUL: THE BIRTH OF MARYLAND'S STATUTE OR ORDINANCE RULE AND ITS ILL-DEFINED "TARGETED CLASS" REQUIREMENT

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In *Blackburn Limited Partnership v. Paul*,[1] the Maryland Court of Appeals considered a premises liability case in which a young boy nearly drowned in an apartment complex's pool.[2] The court applied a rule unique to Maryland, the Statute or Ordinance Rule, largely as a result of their reluctance to change the common law.[3] Though ultimately arriving at the right result, the court's misreading of Maryland's traditional rule governing negligence claims arising from statutory violations[4] led it to erroneously maintain two conflicting rules.[5] The court failed to consider that maintaining contradictory rules governing the effects of the violation of a statute or ordinance could lead to inconsistent and unpredictable results.[6] The court also erred in failing to provide clear guidelines for when a statute, ordinance, or regulation protects a more "targeted class" of persons, one of the Statute or Ordinance Rule's requirements.[7] The Court of Appeals should have provided clear guidelines for the Statute or Ordinance Rule's "targeted class" requirement.[8] The court should also have expressly acknowledged that it was changing its handling of negligence claims arising from statutory violations.[9] Taking these two steps would have allowed Maryland's Gen-

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1. 438 Md. 100, 90 A.3d 464 (2014).

2. *Id.* at 104, 90 A.3d at 466.

3. *Id.* at 125–26, 90 A.3d at 478–79. A Westlaw search for "Statute or Ordinance Rule" returns two Maryland cases using the term: *Blackburn Limited. Partnership v. Paul*, *id.*, and *Polakoff v. Turner*, 385 Md. 467, 476, 869 A.2d 837, 843 (2005).

4. When this Note uses the term "statutory violation" it encompasses violations of statutes, ordinances, and regulations.

5. *See infra* Part IV.A.

6. *See infra* Part IV.C.1.

7. *See infra* Part IV.B. In the interest of brevity, this Note will refer to the Statute or Ordinance Rule's requirement that a statute, ordinance or regulation "aims to protect a more targeted class of persons" as the "targeted class" requirement. *Blackburn*, 438 Md. at 114, 90 A.3d at 472.

8. *See infra* Part IV.B.2.

9. *See infra* Part IV.C.

eral Assembly to draft legislation accordingly and would have allowed plaintiffs and defendants to better predict when a statute will be used to impose civil liability.[10]

I. THE CASE

On June 11, 2010, three-year-old Christopher Paul and his ten-year-old brother, Andre, were playing outdoors at Country Place Apartments.[11] The brothers had gone in and out of the apartment three times when Andre noticed that his younger brother was missing.[12] Andre told his mother, Alicia Paul, and they went to look for Christopher.[13] After searching around the apartment complex and the cars in the parking lot, they made their way towards the apartment complex's swimming pool.[14]

Although the pool was not yet open, when Ms. Paul approached the gate, she saw Christopher's discarded shoes and clothing through the fence.[15] The pool's manager and a lifeguard arrived just moments before to open the pool for the day.[16] After opening the pool's gate, Ms. Paul and the pool employees found Christopher floating in the water.[17] The lifeguard pulled Christopher from the water and, upon checking his vital signs, discovered that he was "not breathing and did not have a pulse."[18] After calling for an ambulance, the pool's manager and lifeguard attempted to resuscitate Christopher.[19] Paramedics eventually arrived and took over the rescue efforts.[20] They transported Christopher to Howard County General Hospital and he was subsequently transferred to Children's National Medical Center in Washington, D.C. for acute care.[21] Doctors determined that Christopher had "suffered a severe anoxic brain injury."[22]

10. *See infra* Part IV.C.

11. *Blackburn*, 438 Md. at 104, 90 A.3d at 466. Country Place Apartments is the apartment complex where Christopher and Andre's parents resided in Burtonsville, Maryland. *Id.*

12. *Id.*

13. *Id.*

14. Paul v. Blackburn Ltd. P'ship, 211 Md. App. 52, 59, 63 A.3d 1107, 1112 (2013), *aff'd*, 438 Md. 100, 90 A.3d 464 (2014).

15. *Id.* at 59–60, 63 A.3d at 1112.

16. *Id.* at 60, 63 A.3d at 1112.

17. *Id.*

18. *Id.*

19. *Id.* There is a discrepancy between the Court of Special Appeals decision and the Court of Appeals decision regarding who called 911. The Court of Appeals states: "The lifeguards began CPR while Respondent spoke to a 911 operator." Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 104, 90 A.3d 464, 466 (2014). The Court of Special Appeals states: "[The pool manager] called 911." *Paul*, 211 Md. App. at 60, 63 A.3d at 1112.

20. *Blackburn*, 438 Md. at 104, 90 A.3d at 466.

21. *Paul*, 211 Md. App. at 60, 63 A.3d at 1112.

22. *Id.* Christopher now has impaired vision and motor skills and requires near constant medical care. *Id.*

On December 17, 2010, Alicia Paul filed a complaint on behalf of Christopher against Blackburn Limited Partnership ("Blackburn"), Berkshire Property Advisors, LLC, and Community Pool Services in Baltimore City Circuit Court.[23] The complaint alleged negligence, negligence per se for the violation of Maryland's pool safety regulations, and requested compensation for Christopher's $15,000,000 in medical expenses.[24]

Blackburn filed a motion for summary judgment with regard to all of the claims.[25] Blackburn argued that it owed no affirmative duty of care to Christopher because he was a trespasser.[26] Therefore, Maryland's pool safety regulations did not create a duty of care above the limited common-law duty owed to trespassers.[27] The trial court agreed with Blackburn's argument and granted its motion for summary judgment.[28] As to the negligence per se claim,[29] a negligence claim in which the court adopts a statute, ordinance, or regulation as the standard of care, the trial court concluded that the regulations did not apply to Blackburn's pool.[30] The court reasoned that the pool was constructed before February 10, 1997, the date the regulations came into force, and therefore the regulations did not impose a statutory duty on Blackburn.[31] The trial court also concluded that there was no evidence showing how Christopher gained access to the pool;[32] therefore, the case was dismissed.[33]

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23. *Blackburn*, 438 Md. at 105, 90 A.3d at 466–67. Blackburn owns Country Place Apartments. *Id.* The lawsuit initially named "Second Blackburn Limited Partnership" as the owners of Country Place Apartments. *Id.* Second Blackburn was the owner at the time of Christopher's accident. *Id.* at 105 n.1, 90 A.3d at 466 n.1. On November 8, 2011, the parties stipulated to the fact that Blackburn Limited Partnership was the owner of the apartment complex, and that it should be substituted for Second Blackburn. *Id.* at 105 n.4, 90 A.3d at 467 n.4. Berkshire Property Advisers ("Berkshire") managed the apartment complex and Community Pool Services managed the pool. *Id.* at 105 nn.2–3, 90 A.3d at 466 nn.2–3.

24. *Id.* at 105, 90 A.3d at 467. On March 18, 2011, the case was moved to the Circuit Court of Montgomery County. *Paul*, 211 Md. App. at 62 n.8, 63 A.3d at 1113 n.8.

25. *Blackburn*, 438 Md. at 105, 90 A.3d at 467. Berkshire was a party to Blackburn's summary judgment motion. *Id.* Community Pool Services also filed a motion for summary judgment, arguing that by virtue of being Blackburn's agent, it could only be held to the same duty of care as Blackburn. *Id.*

26. *Id.* at 105–06, 90 A.3d at 467.

27. *Id.*

28. *Id.* at 106, 90 A.3d at 467. The trial court found that Christopher was no longer an invitee when he entered the pool area, but a trespasser, and the defendants owed no affirmative duty of care to him under Maryland law. *Id.*

29. *See infra* note 70 and accompanying text.

30. *Blackburn*, 438 Md. at 106, 90 A.3d at 467.

31. *Id.* The Maryland public swimming pool regulations went into effect on February 10, 1997. *Id.* at 117, 90 A.3d at 474. Ms. Paul called the claim against Blackburn for its alleged violation of the pool safety regulations "negligence per se," *id.* at 105, 90 A.3d at 467, which is an imprecise use of the term. *See infra* note 74.

32. *Blackburn*, 438 Md. at 106, 90 A.3d at 467.

33. *Id.*

On appeal, the Maryland Court of Special Appeals reversed the circuit court's ruling.[34] The court held that the defendants owed Christopher a duty of care even though he was a trespasser.[35] With respect to the 1997 pool safety regulations, the appellate court also reversed the trial court's holding that the regulations did not apply to the Country Place Apartments' pool.[36] The Court of Special Appeals applied the four-part test for when a standard of conduct may be determined by legislation or regulation from the Restatement (Second) of Torts § 286.[37] The court determined that the pool safety regulations satisfied all four parts; therefore, it adopted the standard of care set forth in the regulations.[38] The court concluded that the regulations created an action in tort for the pool-going public.[39] The court then determined that a violation of the pool safety regulations may constitute evidence of negligence despite Christopher's status as a trespasser.[40] The Court of Special Appeals also found that the trial court erred when it concluded that Alicia Paul had to present direct evidence of proximate cause; rather, circumstantial evidence is sufficient to establish proximate cause in order make out a prima facie case of negligence.[41]

34. Paul v. Blackburn Ltd. P'ship, 211 Md. App. 52, 55, 63 A.3d 1107, 1110 (2013), *aff'd*, 438 Md. 100, 90 A.3d 464 (2014).

35. *Id.* at 98, 63 A.3d at 1134.

36. *Id.* at 105–06, 63 A.3d at 1139. Interpreting the intent of COMAR 10.17.01–.54, the appellate court found that the regulations were enacted to protect the health and safety of the pool-going public and the barrier provisions were enacted specifically to prevent children from accessing pools, thus minimizing potential accidental drownings and near drownings. *Id.* at 103, 63 A.3d at 1137.

37. *Id.* at 106–07, 63 A.3d at 1139.

38. *Id.* Applying the criteria from Restatement (Second) of Torts § 286, the Court of Special Appeals found that the Maryland pool safety regulations are meant to protect: (1) a class of persons including the one whose interest was invaded—the swimming public; (2) the particular interest invaded—that is, the health and safety of the swimming public; (3) the interest against the kind of harm which resulted—drownings and near drownings; and (4) the interest against the particular hazard from which the harm results—the construction of suitable barriers to protect against drownings and near drownings. *Id.*

39. *Id.* at 108, 63 A.3d at 1140. The Court of Special Appeals decided the case more broadly than the Court of Appeals. It based its finding that COMAR 10.17.01.21 (the barrier provisions of the pool safety regulations) created a standard of care on the Restatement (Second) of Torts §§ 286 and 288. *Id.* at 106–07, 63 A.3d at 1139.

40. *Id.* at 109, 63 A.3d at 1141. The Court of Special Appeals applied the two-part test from *Joseph v. Bozzuto Management Co.*: (1) the injury is of the type that the statute or regulation is designed to prevent, and (2) the plaintiff must be a member of the class the statute or regulation was designed to protect. 173 Md. App. 305, 321–22, 918 A.2d 1230, 1239 (2007). The court determined that Blackburn potentially violated the regulation requiring a no greater than four-inch opening in a pool barrier when its gate was closed, that Christopher's near drowning was the type of injury that the regulation was enacted to prevent, and that Christopher was a member of the class of persons that the regulation was designed to protect. *Paul*, 211 Md. App. at 108–09, 63 A.3d at 1140–41.

41. *Id.* at 110, 63 A.3d at 1141. Circumstantial evidence that Christopher gained access to the pool through the allegedly faulty gate would be sufficient to establish proximate causation and thus survive a motion for summary judgment. *Id.* at 111–12, 63 A.3d at 1142. While acknowl-

Blackburn appealed the ruling to the Court of Appeals.[42] The court granted certiorari[43] to consider whether the Court of Special Appeals: (1) abrogated Maryland common law that property owners owe no duty of care to trespassers, (2) erred in concluding that evidence of violation of a regulation may create a duty from a property owner to a trespasser, and (3) improperly concluded that the 1997 Maryland Pool Safety Regulations apply to Blackburn's pool.[44]

II. LEGAL BACKGROUND

In some negligence cases, a court adopts the standard of care set forth in a statute such that the violation of a statute is considered negligence, absent an excuse.[45] This is formally known as negligence per se.[46] Maryland has consistently declined to adopt negligence per se, instead regarding the violation of a statute or ordinance as only evidence of negligence.[47] Recent jurisprudence, however, shows that the Maryland Court of Appeals has moved away from its long-held position.[48] Maryland now has two inconsistent but overlapping rules governing negligence claims arising out of the violation of a statute, ordinance, or regulation.[49] The first, which declines to impose a statutory duty unless there is a pre-existing common-law duty, originated in a 1932 Maryland Court of Appeals decision, *State v. Longeley*.[50] Under the *Longeley* rule, if a duty exists at common law, a statute can set the standard of care; if no common-law duty exists, the case is dismissed.[51] The other rule, known as the Statute or Ordinance Rule, emerged over seventy years later in *Brooks v. Lewin Realty III, Inc*.[52] It uses a statute to impose a duty when no duty exists at common law.[53]

The Statute or Ordinance Rule examines the statute to determine whether it was intended to protect a specific class of persons from a particu-

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edging that there was no direct evidence of causation, the Court of Special Appeals found that sufficient evidence existed for the trier of fact to conclude that Christopher had gained access to the pool through a faulty gate. *Id.* See *infra* note 61 for Maryland's definition of proximate causation.

42. Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 107, 90 A.3d 464, 468 (2014).
43. Blackburn Ltd. P'ship v. Paul, 432 Md. 466, 69 A.3d 474 (2013).
44. *Blackburn*, 438 Md. at 107, 90 A.3d at 468.
45. *See infra* note 71 and accompanying text.
46. *See infra* note 70 and accompanying text.
47. *See infra* Part II.A.
48. *See infra* Part II.C.
49. *See infra* Parts II.B–C.
50. 161 Md. 563, 569, 158 A. 6, 8 (1932).
51. *See infra* Part II.B.
52. 378 Md. 70, 835 A.2d 616 (2003).
53. *See infra* Part II.C.

lar type of injury.[54] If the statute in question meets these requirements, then the statute operates to impose a duty and set a standard of care in a negligence action.[55] Typically, if the defendant does not owe the plaintiff a duty at common law, the defendant cannot be held liable for negligence and the plaintiff's case is dismissed.[56] If the Statute or Ordinance Rule applies, however, the statute imposes a duty on the defendant,[57] and the plaintiff's case, which would otherwise fail, may proceed to trial.[58] In addition, the Statute or Ordinance Rule differs from Maryland's traditional rule governing the violation of a statute or ordinance in one crucial respect: it provides that the defendant's violation of a statute is prima facie evidence of negligence, not mere evidence of negligence.[59] Therefore, if the statute satisfies the Statute or Ordinance Rule, the burden is then on the defendant to provide evidence that she was not negligent.[60] These rules provide the basis for the court's decision in *Blackburn*.

A. Negligence Claims Arising out of a Statutory Violation

Negligence is the failure to exercise reasonable care under the circumstances.[61] Reasonable care is measured by what a reasonably prudent per-

54. *See, e.g.*, *Brooks*, 378 Md. at 81–84, 835 A.2d at 622–24 (interpreting Baltimore City Housing Code provisions).

55. *Id.* at 78, 835 A.2d at 620–21 (citing Brown v. Dermer 357 Md. 344, 358, 744 A.2d 47, 55 (2000), *overruled in part on other grounds by* Brooks v. Lewin Realty III, Inc., 378 Md. 70, 72, 835 A.2d 616, 617 (2003)).

56. *See* State v. Longeley, 161 Md. 563, 570, 158 A. 6, 8 (1932) (dismissing case, in part, because landowner only owed a duty to refrain from willfully injuring a trespassing child who had drowned on his property).

57. *See Brooks*, 378 Md. at 81, 835 A.2d at 622 (holding that the Baltimore City Housing Code "imposes numerous duties and obligations upon landlords who rent residential property to tenants").

58. *See id.* at 89, 835 A.2d at 627 (remanding case for new trial of negligence claim based on landlord's alleged violation of housing code).

59. *Compare id.* at 79, 835 A.2d at 621 (discussing how a plaintiff establishes a prima facie case of negligence based on a statutory violation), *with* Brown v. Dermer, 357 Md. 344, 358, 744 A.2d 47, 55 (2000) ("It is well-settled that the violation of a statute may furnish evidence of negligence.").

60. *See* Polakoff v. Turner, 385 Md. 467, 484, 869 A.2d 837, 847 (2005) (noting that plaintiff had met her burden of production by establishing that defendant landlord had violated the housing code); *see also Brooks*, 378 Md. at 85, 835 A.2d at 624 (noting that whether defendant is held liable for a statutory violation "will depend on the jury's evaluation of the reasonableness of [defendant]'s actions under all the circumstances").

61. *E.g.*, Blyth v. Birmingham Waterworks Co., (1856) 156 Eng. Rep. 1047, 1049; 11 Ex. Rep. 781, 784 (Alderson, B.); *see also* RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 3 (2010) (defining negligence). The Maryland Civil Pattern Jury Instructions define negligence as "doing something that a person using reasonable care would not do, or not doing something that a person using reasonable care would do." MPJI-Cv 19:1. In Maryland, in order to establish a negligence claim, the plaintiff must plead and prove: (a) A duty "requiring conformance to a certain standard of conduct for the protection of others against unreasonable risks"; (b) breach of duty, that is, "[f]ailure to conform to that standard"; (c) proximate cause, that is, "[r]easonably close

son would have done under the same or similar circumstances.[62] Under certain circumstances, a court may adopt a standard of conduct set forth in a statute, ordinance, or regulation.[63] This is true even if the legislative enactment does not expressly or impliedly provide for civil liability.[64] These circumstances typically involve a statute, ordinance, or regulation designed to protect a specific class of persons from a particular type of injury.[65]

Depending on the jurisdiction, the violation of a statute, ordinance, or regulation may have different procedural effects and create different roles for the judge and the jury.[66] In a substantial majority of jurisdictions, when the court adopts a statutory standard of care, the violation of the statute is considered negligence as a matter of law (negligence per se) or it creates a rebuttable presumption of negligence.[67] In a minority of jurisdictions, the violation of a statute is merely evidence of negligence.[68] Regardless of the procedural effects, the judge always decides the duty question just like in any other case of negligence.[69]

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casual connection and resulting injury"; and (d) damages or loss. B.N. v. K.K., 312 Md. 135, 141, 538 A.2d 1175, 1178 (1988) (citing W.P. KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS, 164–65 (5th ed. 1984)).

62. *E.g.*, Gossett v. Jackson, 457 S.E.2d 97, 100 (Va. 1995).

63. *See* Ferrell v. Baxter, 484 P.2d 250, 257–58 (Alaska 1971) (administrative regulation); Stephens v. Stearns, 678 P.2d 41, 49 (Idaho 1984) (city ordinance); Martin v. Herzog, 126 N.E. 814, 815 (N.Y. 1920) (statute).

64. *Martin*, 126 N.E. at 815 (adopting statutory standard of conduct in negligence action that required drivers to have functioning headlights on their vehicles); *see also* RESTATEMENT (SECOND) OF TORTS § 285 cmt. c (1965) (discussing fact that a court may adopt a statutory standard of conduct "[e]ven where a legislative enactment contains no express provision that its violation shall result in tort liability, and no implication to that effect").

65. *See, e.g.*, *Ferrell*, 484 P.2d at 261 (concluding that regulation that required drivers to stay within their lanes was "at least partly designed to protect oncoming motorists against head-on collisions").

66. *Compare Martin*, 126 N.E. 814 at 815 (discussing procedural effects of negligence per se), *with* Bacon v. Lascelles, 678 A.2d 902, 907 (Vt. 1996) (noting procedural effects of rebuttable presumption of negligence based on violation of statute), *and* Braitman v. Overlook Terrace Corp., 346 A.2d 76, 85 (N.J. 1975) (noting that the violation of a statute "is a circumstance which the trier of fact should consider in assessing liability").

67. RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 14, Reporter's Note, cmt. c (2010). The only substantial difference between the negligence per se and the rebuttable presumption forms is that negligence per se confines the defendant's potential excuses to those enumerated in *Restatement (Second) of Torts* § 288A or *Restatement (Third) of Torts: Liability for Physical & Emotional Harm* § 15, whereas the rebuttable presumption version does not confine the defendant to these excuses. *See* Zeni v. Anderson, 243 N.W.2d 270, 283 (Mich. 1976) (explaining the difference between procedural effects of negligence per se and rebuttable presumption forms).

68. *E.g.*, Absolon v. Dollahite, 376 Md. 547, 553, 831 A.2d 6, 9 (2003); *Braitman*, 346 A.2d at 85; Dixon v. Stewart, 658 P.2d 591, 600–01 (Utah 1982).

69. *Compare* Tafoya v. Rael, 193 P.3d 551, 554 (N.M. 2008) ("[T]he existence of a tort duty . . . is a question of law for the courts."), *with* Schlimmer v. Poverty Hunt Club, 597 S.E.2d 43, 46 (Va. 2004) ("The first two elements of negligence per se, whether the statute was enacted for public safety and whether the injured party was a member of the class of people for whose benefit

Negligence per se provides that a statute sets the standard of conduct of a reasonable person such that violation of the statute satisfies the breach element of a negligence claim.[70] Absent an excuse for the violation, the defendant is liable for the plaintiff's injuries.[71] Negligence per se, however, does not constitute duty per se.[72] Thus, in jurisdictions that have adopted negligence per se, a negligence claim based on the violation of a statute or ordinance can still fail if the defendant did not owe the plaintiff a duty.[73] When a court adopts a statutory standard of care and concurrently creates a duty it is called a "statutory duty action."[74]

Before a court adopts a standard of care set forth in a statute or regulation, it must make additional determinations. First, it must determine whether the plaintiff is a member of the class that the statute or regulation was designed to protect.[75] Second, it must also determine whether the injury suffered is the type of injury that the statute or regulation was enacted to

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the statute was enacted and suffered an injury of the type against which the statute protects, are issues of law to be decided by a trial court.").

70. Steward *ex rel.* Steward v. Holland Family Properties, LLC, 726 S.E.2d 251, 254 (Va. 2012) (citing Schlimmer v. Poverty Hunt Club, 597 S.E.2d 43, 46 (Va. 2004)) ("When the standard of care is set by statute, an act which violates the statute is a per se violation of the standard of care."); *see also* RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 14 (2010) (defining negligence per se). "Negligence per se" may also be used to describe any negligence claim arising out of the violation of a statute, ordinance, or regulation, which is not the strict legal definition of the term. *See* Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 105, 90 A.3d 464, 467 (2014) (describing claim as a "negligence per se action," even though Maryland has not adopted negligence per se).

71. *E.g.*, *Martin*, 126 N.E. at 815 ("We think the unexcused omission of the statutory signals is more than some evidence of negligence. It *is* negligence in itself."). *Martin v. Herzog* is a classic decision written by Judge Benjamin N. Cardozo that is often used to illustrate the concept of negligence per se. *See* RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 14 cmt. c (2010) (noting *Martin v. Herzog*'s "famous holding").

72. *See* Perry v. S.N., 973 S.W.2d 301, 306 (Tex. 1998) (noting that "there is generally no duty to protect another from the criminal acts of a third party or to come to the aid of another in distress" and that if the court authorized a negligence per se action, duty would be derived from the statute at issue).

73. *See id.* ("[T]he defendant in most negligence per se cases already owes the plaintiff a preexisting common law duty to act as a reasonably prudent person, so that the statute's role is merely to define more precisely what conduct breaches that duty."); *see also* RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 14 cmt. i (2010) (noting that a court should consider defendant's statutory violation as part of duty analysis in cases where defendant owes plaintiff no duty).

74. *See, e.g.*, Altz v. Leiberson, 134 N.E. 703, 704 (N.Y. 1922) (Cardozo, J.) (holding that New York's Tenement House Law imposed a duty on landlords to keep rental premises in good repair even though provisions did not expressly impose a duty and landlords owe no duty to tenants to keep rental premises in good repair at common law). Many jurisdictions call statutory duty actions "negligence per se" even though negligence per se only involves the adoption of a statutorily defined standard of care, not the creation of a duty. *See* Bob Godfrey Pontiac, Inc. v. Roloff, 630 P.2d 840, 844–45 (Or. 1981) (discussing the difference between negligence per se and statutory duty actions).

75. *E.g.*, Schlimmer v. Poverty Hunt Club, 597 S.E.2d 43, 46 (Va. 2004) (finding that hunter shot by fellow hunter was a member of the class of persons intended to be protected by statute making reckless handling of a firearm unlawful).

prevent.[76] The class-of-persons analysis takes the place of the duty analysis in a traditional negligence claim.[77] The type-of-injury analysis takes the place of the proximate cause (scope of risk) analysis.[78]

Negligence per se takes much of the power out of the hands of the jury and puts it in the hands of the judge.[79] In a negligence per se jurisdiction, the judge makes the type-of-injury and class-of-persons determinations.[80] The judge examines the statute at issue and determines whether it was intended to protect a specific class of persons from a particular type of injury.[81] If so, the judge considers whether the person bringing the claim is a member of this class and whether the injury suffered is of the type the statute was designed to prevent.[82] If these requirements are met, the burden of proof shifts to the defendant to show that his violation is excused.[83] The jury decides whether the defendant violated the statute, whether that violation was the cause in fact of the plaintiff's injury, and the amount of damages.[84] The jury, however, does not get to decide the standard of conduct of the reasonably prudent person—the statute, ordinance, or regulation sets the standard of conduct for them.[85]

Maryland is in the small minority of jurisdictions that have not adopted negligence per se.[86] Instead, Maryland courts consider the violation of a statute or ordinance evidence of negligence.[87] The judge makes preliminary determinations about the type-of-injury and class-of-persons.[88] The jury

76. *E.g.*, *id.* (concluding that accidental shooting of hunter in hunting party was type of injury statute making unlawful reckless handling of a firearm was intended to prevent).

77. *Id.*

78. Thomas C. Galligan, Jr., *A Primer on the Patterns of Negligence*, 53 LA. L. REV. 1509, 1515–16 (1993).

79. *See* Martin v. Herzog, 126 N.E. 814, 815 (N.Y. 1920) (noting that the jury has "no dispensing power" in a negligence per se action).

80. *Schlimmer*, 597 S.E.2d at 46.

81. *See, e.g.*, Ferrell v. Baxter, 484 P.2d 250, 261 (Alaska 1971) (concluding that "regulation requiring drivers to remain within their lanes was at least partly designed to protect oncoming motorists against head-on collisions").

82. *See, e.g.*, *id.* (noting that before plaintiff is entitled to a jury instruction on negligence per se he must establish that he was of the class the regulation was designed to protect and his injuries were those the statute was designed to prevent).

83. *See, e.g.*, *id.* at 266 (discussing policy considerations for shifting burden of proof to defendant in negligence per se action).

84. Galligan, *supra* note 78, at 1518.

85. Martin v. Herzog, 126 N.E. 814, 815 (N.Y. 1920).

86. RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 14, Reporter's Note, cmt. c (2010).

87. *E.g.*, Absolon v. Dollahite, 376 Md. 547, 553–54, 831 A.2d 6, 9–10 (2003) ("[T]he long established general rule in Maryland [is] that the violation of a statutory duty is only evidence of negligence, but does not establish negligence *per se*.") (citing a string of Maryland cases dating back to 1932).

88. *See, e.g.*, Remsburg v. Montgomery, 376 Md. 568, 585–87, 831 A.2d 18, 28–29 (2003) (interpreting hunting regulations and concluding that while landowner was arguably within class

ultimately makes many determinations of its own: whether the defendant's violation of the statute was the cause-in-fact of the plaintiff's injuries;[89] whether the defendant's behavior was reasonable under the circumstances despite the statutory violation;[90] and, if the defendant is liable, the amount in damages the plaintiff should be awarded.[91]

In Maryland, a negligence claim based on a statutory violation will go to the jury only if the plaintiff can produce enough evidence that the defendant's alleged violation was a proximate cause of the plaintiff's injury.[92] The defendant's statutory violation is then merely a fact among many that the jury considers when determining whether the defendant was negligent.[93] This allows the jury to conclude that the defendant acted reasonably under the circumstances despite violating a statute.[94] Thus, even if the plaintiff proves that the defendant has violated a statute, she may still not prevail.[95] The burden of proof remains with the plaintiff throughout the trial.[96]

B. State v. Longeley *and Its Progeny Decline to Impose a Statutory Duty in Negligence Claims Arising out of the Violation of a Statute or Ordinance*

State v. Longeley[97] and its progeny illustrate the operation of a Maryland common-law rule governing claims arising out of the violation of a statute or ordinance.[98] These cases typically involve child trespassers who, absent a statutorily imposed duty, are not able to state a negligence claim because Maryland landowners owe a limited common-law duty to trespassers.[99] The rule provides that if no duty exists at common law, then a statute

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of persons to be protected by the regulations, an accidental shooting was not the type of injury regulations were intended to protect against).

89. *See* Brooks v. Lewin Realty III, Inc., 378 Md. 70, 79, 835 A.2d 616, 621 (2003) (noting that proximate cause is established when a plaintiff satisfies the elements of the Statute or Ordinance Rule).

90. *Id.* at 85, 835 A.2d at 624.

91. Galligan, *supra* note 78, at 1518.

92. *See, e.g.*, Austin v. Buettner, 211 Md. 61, 70, 124 A.2d 793, 798 (1956) (holding that evidence of building code violation proximately caused plaintiff's fall and resulting injuries was sufficient to warrant submitting case to jury). Circumstantial evidence is sufficient to create a genuine dispute of material fact; direct evidence is not required. Dow v. L & R Props., Inc., 144 Md. App. 67, 75, 796 A.2d 139, 143–44 (2002).

93. *Brooks*, 378 Md. at 79, 835 A.2d at 621.

94. *See id.* ("The trier of fact must then evaluate whether the actions taken by the defendant were reasonable under all the circumstances.").

95. If a jury concludes that the defendant acted reasonably under the circumstances, then the defendant was not negligent and the plaintiff will not recover.

96. Galligan, *supra* note 78, at 1516.

97. 161 Md. 563, 158 A. 6 (1932).

98. *Id.* at 569–70, 158 A. at 8.

99. *E.g.*, *id.* (finding that regulations requiring fence around quarry did not impose a duty and holding that quarry owner not liable in negligence for drowning death of twelve year old); Murphy

cannot operate to impose a statutory duty.[100] This is because the court views the statute at issue as merely setting a standard of care as opposed to setting a standard of care and imposing a duty.[101]

Maryland's rule that declines to impose a statutory duty can be traced back to *Longeley*. In *Longeley*, a twelve-year-old boy drowned in an abandoned quarry that had become filled with water.[102] The boy's parents brought a negligence suit against the owners of the quarry.[103] The parents alleged, inter alia, that the quarry owners failed to enclose the quarry with a fence at least six feet high as required by the Baltimore City Code.[104]

The court denied the boy's parents the ability to bring a negligence action against the quarry owners.[105] In doing so, the *Longeley* court articulated a two-part rule to determine whether a statute (or code provision, as was the case here) can provide a cause of action in tort.[106] First, the violation of the ordinance must be a proximate cause of the plaintiff's injury.[107] Second, the injured person must have had a right to be on the property at the time the injury occurred and must not be a trespasser.[108] The court noted that the ordinance at issue was passed for the benefit of the public, but did not engage in any statutory interpretation.[109] Then, applying the rule, the court reasoned that because the boy was a trespasser, the Baltimore City Code provision could not provide a cause of action in negligence.[110]

Nearly forty years later, in *Osterman v. Peters*,[111] the Maryland Court of Appeals used the *Longeley* rule to deny the father of a child trespasser a

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v. Baltimore Gas & Elec. Co., 290 Md. 186, 193–95, 428 A.2d 459, 464–65 (1981), *overruled on other grounds by* Baltimore Gas & Elec. Co. v. Flippo, 348 Md. 680, 693-95, 705 A.2d 1144, 1151 (1998) (applying *Longeley* rule and denying recovery to parents of trespassing four-and-a-half-year-old boy who drowned in a funeral home's pond); Osterman v. Peters, 260 Md. 313, 316–17, 272 A.2d 21, 23 (1971) (applying *Longeley* rule and holding that father whose son had drowned in neighbor's pool could not bring cause of action in tort); Kirby v. Hylton, 51 Md. App. 365, 367, 377, 443 A.2d 640, 641, 646 (1982) (finding that Public Service Commission regulations did not impose a duty on contractor and developer of housing subdivision and denying parents of trespassing nine-year-old boy from bringing negligence case based on statutory violation).

100. *Longeley*, 161 Md. at 569, 158 A. at 8.

101. *Id.* at 570, 158 A. at 8.

102. *Id.* at 565, 158 A. at 6. *Longeley* is the consolidation of two cases against an abandoned quarry owner in which "[t]he two records are substantially identical." *Id.* at 564, 158 A. at 6.

103. *Id.* at 565, 158 A. at 7.

104. *Id.* at 566, 158 A. at 7. The code provision required "each and every owner of abandoned or not actively operated quarries within the city limits to inclose by a fence, not less than six feet in heighth [sic], constructed in such manner and of such materials as will prevent any person from entering upon said quarry." *Id.*

105. *Id.* at 570, 158 A. at 8.

106. *Id.* at 569, 158 A. at 8.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* at 569–70, 158 A. at 8.

111. 260 Md. 313, 272 A.2d 21 (1971).

cause of action.[112] In *Osterman*, a four-and-a-half-year-old boy drowned in a swimming pool when he went to retrieve a lost ball in the backyard of his neighbor's vacant house.[113] The boy's father brought a negligence action against the pool owner.[114] He alleged, inter alia, negligence based on the neighbor's violation of the Montgomery County Code pool barrier provisions.[115] The court first reaffirmed the Maryland rule that a landowner owes no duty to trespassers, even children.[116] Citing the *Longeley* rule, the court then held that because the boy was a trespasser, an alleged violation of the pool barrier regulations could not provide a cause of action in negligence.[117] Like in *Longeley*, the *Osterman* court did not engage in any statutory interpretation.[118] The court went on to characterize the case as a "distressing situation," but nevertheless held fast to precedent because adhering to established rules of law promotes consistency and certainty in the administration of the law.[119]

In 1981, the Maryland Court of Appeals had the opportunity to revisit its jurisprudence governing the violation of a statute or ordinance in *Murphy v. Baltimore Gas and Electric Company*.[120] In *Murphy*, a three-and-a-half-year-old boy drowned in a pond on the property of a funeral home.[121] His parents, Douglas and Pamela Smith, brought suit against the funeral home alleging negligence for failure to maintain a fence around the pond in violation of the Baltimore County Code.[122] The court found the facts of *Osterman* and *Longeley* so similar as to control the outcome of the Smiths' case.[123] Relying on *Osterman* and *Longeley*, and without examining the

112. *Id.* at 316–17, 272 A.2d at 23 (citing State v. Longeley, 161 Md. 563, 569–70, 158 A. 6, 8 (1932)).

113. *Id.* at 314, 272 A.2d at 22.

114. *Id.* The boy's father brought suit in his own name and on behalf of his deceased son. *Id.*

115. *Id.* at 316, 272 A.2d at 23. The Montgomery County Code provision required that "private pools be fenced or surrounded with impenetrable planting, and that gates be equipped with self-closing and self-latching devices." *Id.*

116. *Id.* at 314, 272 A.2d at 22 ("[T]he owner of land owes no duty to a trespasser or licensee, even one of tender years, except to abstain from willful or wanton misconduct . . . .").

117. *Id.* at 317, 272 A.2d at 23.

118. *Id.* at 316–17, 272 A.2d at 23.

119. *Id.* at 317–18, 272 A.2d at 23–24 (citing Demuth v. Old Town Bank of Baltimore, 85 Md. 315, 320, 37 A. 266, 266 (1897)).

120. 290 Md. 186, 428 A.2d 459 (1981), *overruled on other grounds by* Baltimore Gas & Elec. Co. v. Flippo, 348 Md. 680, 695, 705 A.2d 1144, 1151 (1998). *Murphy* is the consolidation of two cases. *Id.* at 187–88, 428 A.2d at 461. Only the second case is relevant to the legal background of *Blackburn*. The first case involved a man who brought suit against Baltimore Gas and Electric to recover for injuries he sustained when he placed his hand on an electrical transformer owned by the company. *Id.* at 188, 428 A.2d at 461.

121. *Id.* at 189, 428 A.2d at 462.

122. *Id.*

123. *Id.* at 194, 428 A.2d at 464.

code provision at issue, the court denied the boy's parents a cause of action in negligence for the violation of the ordinance.[124]

C. The Statute or Ordinance Rule Operates to Impose a Duty When None Exists at Common Law

The Statute or Ordinance Rule imposes a statutory duty when there is no pre-existing common law duty.[125] This means a case that would normally be dismissed for lack of duty may proceed to trial if the plaintiff can produce evidence that the defendant violated the statute.[126] Unlike the *Longeley* line of cases, courts applying the Statute or Ordinance Rule examine the language of the statute, ordinance, or regulation at issue.[127] Indeed, such an analysis is necessary in order to determine whether the statute protects a specific class of persons from a particular type of injury.[128]

The Court of Appeals provided elements of the rule for the first time in *Brooks v. Lewin Realty III, Inc.*,[129] a negligence case involving a landlord's alleged violation of Baltimore City Housing Code provisions.[130] The Housing Code provisions required landlords to keep rental premises free of flaking, peeling, or chipping paint.[131] A tenant, Shirley Parker, brought suit against her landlord individually and on behalf of her minor son, Sean, alleging, inter alia, negligence for the violation of this Housing Code provision.[132] Ms. Parker alleged that her son suffered from lead poisoning due to his consumption of lead-based paint on the rental premises.[133] Ms. Parker argued that Lewin Realty's failure to keep the rental premises "free of any

124. *Id.* at 193–95, 428 A.2d at 464–65.

125. *See infra* note 136 and accompanying text.

126. *See infra* note 140.

127. *See infra* notes 143–146 and accompanying text.

128. *See, e.g.*, Gourdine v. Crews, 405 Md. 722, 757–58, 955 A.2d 769, 790–91 (2008) (interpreting Federal Food, Drug and Cosmetic Act); Remsburg v. Montgomery, 376 Md. 568, 585–87, 831 A.2d 18, 27–29 (2003) (interpreting hunting regulations); Muthukumarana v. Montgomery Cnty., 370 Md. 447, 499, 805 A.2d 372, 403 (2002) (interpreting Maryland Annotated Code provision which requires counties to have a 911 and emergency response system); Moore v. Myers, 161 Md. App. 349, 365–66, 868 A.2d 954, 963 (2005) (interpreting Prince George's County animal control law).

129. 378 Md. 70, 79, 835 A.2d 616, 621 (2003). Although the Court of Appeals provided the elements of the rule in *Brooks*, it was first referred to as the "'statute or ordinance' rule" in *Polakoff v. Turner*, 385 Md. 467, 476, 869 A.2d 837, 843 (2005). The court formally named "the two-part *Brooks* test ('the Statute or Ordinance Rule')" in *Blackburn Limited Partnership v. Paul*, 438 Md. 100, 111–12 n.6, 90 A.3d 464, 470 n.6 (2014).

130. *Brooks*, 378 Md. at 73, 835 A.2d at 618.

131. *Id.* at 83, 835 A.2d at 623–24.

132. *Id.* at 73, 835 A.2d at 618.

133. *Id.*, 835 A.2d at 617–18.

flaking, loose, or peeling paint," in violation of the Housing Code, caused her son's lead poisoning.[134]

Although the *Brooks* court acknowledged that at common law a landlord owes no duty to a tenant to keep a rental premises in good repair, it found that another common-law rule applied.[135] The rule provides that where the defendant's duty is "prescribed by statute," a violation of that statute is evidence of negligence.[136] The *Brooks* court supplied the elements of this rule and explained its operation. In order to make out a prima facie case of negligence, the plaintiff must first establish the violation of a statute or ordinance designed to protect a specific class of persons, including the plaintiff.[137] Then the plaintiff must show that the violation of the statute or ordinance was a proximate cause of her injury.[138] The statutory violation was a proximate cause of the plaintiff's injury if the plaintiff is a member of the class of persons the statute was intended to protect, and the injury suffered was one the statute was designed to prevent.[139] If there is evidence that the defendant's violation proximately caused the plaintiff's injury, the case to proceeds to trial.[140] At trial, the burden is on the defendant to produce evidence that she was not negligent.[141] The jury must then determine whether the defendant acted reasonably under all of the circumstances.[142]

After articulating this rule, the *Brooks* court considered whether the rule applied to the ordinance at issue. Examining the Baltimore City Housing Code, the court noted that it "imposes numerous duties and obligations upon landlords who rent residential property to tenants."[143] Applying the rule, the *Brooks* court determined that element (a) of the rule was satisfied because, as tenants, Ms. Parker and her son were within the class of persons the Housing Code is designed to protect.[144] The court also found that ele-

134. *Id.* at 73, 83, 835 A.2d at 618, 624. Ms. Parker also argued that she should not have the burden of pleading and proving that Lewin Realty had notice of a violation of the Housing Code provision. *Id.* at 77, 835 A.2d at 620.

135. *Id.* at 78, 835 A.2d at 620.

136. *Id.* (quoting Brown v. Dermer, 357 Md. 344, 358–59, 744 A.2d 47, 55 (2000), *overruled in part on other grounds by Brooks*, 378 Md. at 72, 835 A.2d at 617). The *Brooks* court traced the origins of the rule to a case from 1916, *Flaccomio v. Eysink*. *Id.*, 835 A.2d at 621. In *Flaccomio*, the plaintiff purchased and consumed whiskey that contained wood alcohol. Flaccomio v. Eysink, 129 Md. 367, 371–72, 100 A. 510, 512 (1916). After consuming the whiskey, he became blind. *Id.* at 372, 100 A. at 512. Although the court cited a rule similar to the one articulated in *Brooks*, it concluded that the rule did not apply. *Id.* at 380–81, 100 A. at 515.

137. *Brooks*, 378 Md. at 79, 835 A.2d at 621.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* at 81, 835 A.2d at 622.

144. *Id.*

ment (b) was satisfied because Sean was within the class of persons the statute was designed to protect and his injury, lead paint poisoning, was the type of injury the drafters intended to prevent.[145] Based on the plain language of the statute, the court concluded that Baltimore's Mayor and City Council intended to imposed a "continuing duty" on landlords to keep the rental premises "free of flaking, loose, or peeling paint."[146] Therefore, Ms. Parker had established a prima facie case of negligence, which allowed her case to go to the jury.[147]

Nine years later, the Court of Appeals decided *Allen v. Dackman*,[148] another lead paint case involving the same Baltimore City Housing Code provisions as in *Brooks*.[149] *Allen* extended the *Brooks* holding, ruling that the Housing Code imposed upon landlords a duty to inspect and maintain rental property even when the occupants of the premises had no legal right of possession.[150] In *Allen*, Monica Allen brought suit against her landlord on behalf of her two minor children for injuries arising from their alleged exposure to lead-based paint on her rental premises.[151] Unlike the *Brooks* tenants, however, Ms. Allen was in wrongful possession of the rental property.[152]

The *Allen* court held that the Housing Code imposed a duty on the landlord to keep the rental property free of flaking, loose, and peeling paint, notwithstanding the fact that Ms. Allen and her children were trespassers.[153] In so holding, the court reasoned that the Housing Code was intended to "protect occupants of dwellings," and that Ms. Allen and her children fit the definition of "occupants" under the Housing Code.[154] The court thus concluded that Ms. Allen and her children were part of the class of persons the statute was designed to protect even though they were trespassers on the rental property.[155]

145. *Id.*

146. *Id.* at 84, 835 A.2d at 624.

147. *Id.* at 89, 835 A.2d at 627.

148. 413 Md. 132, 991 A.2d 1216 (2010).

149. *Id.* at 143–45, 991 A.2d at 1222–23 (citing BALT. CITY CODE, Art. 13, §§ 103(a), 103(b), 310(a), 702(a), and 703(c)(3) (2000)); *Brooks*, 378 Md. at 81–83, 835 A.2d at 622–24 (same).

150. *Allen*, 413 Md. at 158, 991 A.2d at 1231.

151. *Id.* at 137, 991 A.2d at 1219.

152. *Id.* at 139, 991 A.2d at 1220. During Ms. Allen's occupancy of the rental premises the title to the property transferred from her original landlord to a new landlord. *Id.* The new landlord subsequently informed Ms. Allen that she had thirty days to vacate the premises. *Id.* Ms. Allen failed to do so and remained in possession of the rental property even after the District Court for Baltimore City determined that she was in wrongful possession of the property. *Id.* After several months, Ms. Allen was eventually evicted from the property. *Id.*

153. *Id.* at 157–58, 991 A.2d at 1231.

154. *Id.* at 157, 991 A.2d at 1230.

155. *Id.* at 158, 991 A.2d at 1231.

Maryland courts have also applied the Statute or Ordinance Rule in non-lead paint cases. In some of these cases the court has imposed a statutory duty,[156] while declining to do so in others.[157] For example, in *Warr v. JMGM Group*,[158] the Court of Appeals declined to impose civil liability for the violation of a criminal statute prohibiting the sale of liquor to intoxicated persons.[159] The court reasoned that because the statute "does not identify a particular class of protectees," it did not meet the requirements of the Statute or Ordinance Rule.[160] By contrast, in *Wietzke v. Chesapeake Conference Ass'n*,[161] the court found that a Montgomery County Code sediment control permitting scheme imposed a duty on property owners to refrain from "land-disturbing activity" that would cause damage to others' private property.[162] The court concluded, "the ordinance clearly encompasses the type of harm the Wietzkes complain of, the washing of certain 'materials' onto their property, and protects a class of persons encompassing the Wietzkes, private landowners in Montgomery County."[163] The Statute or Ordinance Rule has now expanded beyond its original application in Baltimore City Housing Code lead paint cases.

III. THE COURT'S REASONING

In *Blackburn Limited Partnership v. Paul*, the Maryland Court of Appeals affirmed the judgment of the Court of Special Appeals.[164] The court held that the Statute or Ordinance Rule can operate to create a duty of care despite a property owner's limited common-law duty to trespassers.[165] The court also held that the Code of Maryland Regulations concerning pool safety applied to the apartment complex's pool.[166] Additionally, at the time of his accident, Christopher, as a three-year-old, was a member of the class

156. *See, e.g.*, Wietzke v. Chesapeake Conference Ass'n, 421 Md. 355, 395, 26 A.3d 931, 955 (2011); *see also* Moore v. Myers, 161 Md. App. 349, 365–66, 868 A.2d 954, 964 (2005) (finding that Prince George's County animal control law satisfied the Statute or Ordinance Rule).

157. *See, e.g.*, Gourdine v. Crews, 405 Md. 722, 757–58, 955 A.2d 769, 790–91 (2008) (holding that the Federal Food, Drug, and Cosmetic Act were enacted to protect the public health, not a particular class); Remsburg v. Montgomery, 376 Md. 568, 586, 831 A.2d 18, 28–29 (2003) (declining to impose a duty where the hunting regulations at issue were not intended to protect against the type of injury the plaintiff suffered); Muthukumarana v. Montgomery Cnty., 370 Md. 447, 499, 805 A.2d 372, 403 (2002) (holding that Maryland Code provision requiring counties to have an emergency response system in place does not "benefit a discrete group of persons").

158. 433 Md. 170, 70 A.3d 347 (2013).

159. *Id.* at 199, 70 A.3d at 364.

160. *Id.*

161. 421 Md. 355, 26 A.3d 931 (2011).

162. *Id.* at 392–93, 26 A.3d at 954.

163. *Id.* at 393, 26 A.3d at 954.

164. Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 107, 90 A.3d 464, 468 (2014).

165. *Id.* at 117, 90 A.3d at 474.

166. *Id.* at 124, 90 A.3d at 478.

of persons the regulations were enacted to protect.[167] Finally, there was sufficient evidence that Christopher's injuries were the result of a violation of the pool safety regulations such that the case should be submitted to the jury.[168]

The *Blackburn* court also determined whether a statutory duty could supersede a common-law duty. The court acknowledged that, under Maryland law, property owners owe no affirmative duty to trespassers, even children.[169] The court then considered two recent cases applying the Statute or Ordinance Rule, *Brooks v. Lewin Realty III* and *Allen v. Dackman*.[170] *Brooks* and *Allen* concerned a Baltimore City Housing Code provision that required landlords to ensure that their rental premises did not contain any flaking or peeling paint.[171] Despite the rule's initial application being limited to the landlord-tenant context, the court found that the reasoning in these cases applied broadly.[172] The court thus concluded that the Statute or Ordinance Rule could operate to create a duty above and beyond a common-law duty, even to a trespasser, when the statute at issue was designed to protect a particular class of persons.[173] The court emphasized that in order for the Statute or Ordinance Rule to apply, the statute at issue must "aim[] to protect a more targeted class of persons," not just the general public.[174] Based on *Warr v. JMGM Group*, Blackburn also argued that the statute at issue must expressly impose a duty for the Statute or Ordinance Rule to apply.[175] The court rejected Blackburn's argument, noting that the statute at issue in *Warr* "failed to define a particular class to be protected," which was not the case with the pool safety regulations.[176]

167. *Id.* at 126, 90 A.3d at 479.

168. *Id.* at 128, 90 A.3d at 480.

169. *Id.* at 110–11, 90 A.3d at 470.

170. *Id.* at 111–13, 90 A.3d at 470–71.

171. *See supra* Part II.C.

172. *Blackburn*, 438 Md. at 115, 90 A.3d at 473.

173. *Id.* at 114, 90 A.3d at 472. The court also considered the cases on which Blackburn based their argument that they owed no affirmative duty to trespasser: *Osterman*, *Longeley*, and *Murphy*. *Id.* at 113–14, 90 A.3d at 471–72. Here, the court distinguished the *Longeley* line of cases from the *Brooks* line. *Id*. at 114, 90 A.3d 472. The court pointed to the fact that the statutes in the *Longeley* line of cases were "passed for the benefit of the public," and not a specific class of persons like the ordinances in the *Brooks* line, which is why the Statute or Ordinance Rule did not apply in the *Longeley* line. *Id.* (internal quotation marks omitted). The court also rejected Blackburn's argument that *Allen* should be narrowly confined to the Baltimore City Housing Code's lead paint abatement provisions. *Id.* at 115, 90 A.3d at 472. Instead, the court concluded that its holding in *Allen* should be read broadly, reiterating its earlier point that the Statute or Ordinance Rule is meant to apply in any case where the statute or ordinance is meant to protect a specific class of persons. *Id*. at 115–16, 90 A.3d at 472–73. The court interpreted the COMAR provisions in effect at the time of Christopher's near-drowning on June 13, 2010. *Id.* at 105 n.5, 90 A.3d at 467 n.5.

174. *Id.* at 114, 90 A.3d at 472.

175. *Id.* at 116, 90 A.3d at 473.

176. *Id.* at 117, 90 A.3d at 474.

The Court of Appeals found that the defendants owed Christopher a statutory duty under COMAR 10.17.01.01–.54.[177] The court first determined that Blackburn's pool meets the definition of a "recreational pool" as set forth in COMAR 10.17.01.05(B)(19)(f)(v), and that under COMAR 10.17.01.13 existing recreational pools must comply with the regulations enacted in 1997.[178] The court then examined COMAR 10.17.01.21, which sets forth the requirements for pool barriers.[179] The court also examined the exemptions from the regulations set forth in COMAR 10.17.01.03.[180] In finding that Blackburn was required to comply with the 1997 COMAR regulations, the court relied on COMAR 10.17.01.03(D)(1).[181] The court rejected Blackburn's argument that subsection .03(D)(1) only applies to the pool, and not its appurtenant structures, that is, barriers, because the section omits mention of such structures.[182] Instead, the court read the provision broadly, concluding that the phrase "the requirements of this chapter" is meant to include the barrier provisions, not just the regulations governing pools themselves.[183]

In determining the scope of the pool safety regulations, the Court of Appeals also examined their intended purpose.[184] Here, Appendix E of the National Spa and Pool Institute's ("NSPI") Model Barrier Code for Residential Swimming Pools, Spas, and Hot Tubs, which is incorporated by reference into the pool regulations, informed the court's analysis.[185] The court found significance in the Preamble to the NSPI's Model Barrier Code when it stated that it is intended to prevent drownings and near-drownings of

177. *Id.* at 125–26, 90 A.3d at 479 ("[U]nder COMAR 10.17.01.21, Petitioners were required to provide a barrier that did not allow passage of a sphere 4 inches in diameter, except when the entrance gate was open. This language sets forth mandatory acts for the protection of a particular class identified in the Model Barrier Code—namely, children under the age of five. Christopher, three years old at the time of the accident, was clearly a member of this protected class." (citations omitted)).

178. *Id.* at 118, 90 A.3d at 474.

179. *Id.* at 118–19, 90 A.3d at 474–75. COMAR provides: "Except when the entrance gate is open, an opening in the barrier and in the gate does not allow passage of a sphere 4 inches in diameter . . . ." COMAR 10.17.01.21(3) (2014).

180. *Blackburn*, 438 Md. at 119–20, 90 A.3d at 475–76.

181. *Id.* at 121–22, 90 A.3d at 476–77. COMAR 10.17.01.03 exempts pools constructed prior to the implementation of the February 10, 1997 regulations from specific subsections of the newly enacted regulations. COMAR 10.17.01.03 (2014). The code section states that the exemptions do not apply where "[t]he previously approved pool or spa has a condition that jeopardizes the health or safety of the public, in which case the owner shall ensure that the condition is corrected to meet the requirements of this chapter . . . ." 26 Md. Reg. 1258 (July 30, 1999).

182. *Blackburn*, 438 Md. at 121–22, 90 A.3d at 476–77.

183. *Id.* at 122, 90 A.3d at 477.

184. *Id.* at 122–24, 90 A.3d at 477–78.

185. *Id.* The NSPI's Model Barrier Code states that its intended purpose is "[p]rotecting young children from accidental drownings and near-drownings in all aquatic environments." *Id.* at 123, 90 A.3d at 477.

those under five years of age.[186] Reading COMAR 10.17.01.03D(1) in conjunction with Appendix E, the court concluded that the exception to the regulation's grandfathering provisions applied to both pools and barriers.[187]

The Court of Appeals found that the pool safety regulation's barrier provisions met the requirements of the Statute or Ordinance Rule, and therefore could provide the basis for Blackburn's liability in negligence.[188] In so holding, the court relied on its earlier finding that the pool safety regulations incorporated by reference the Model Barrier Code which is intended to protect a particular class of people, specifically, children under five years of age.[189] Examining the regulation at issue, the court reasoned that in setting forth a specific measurement, the statute provides pool owners with "mandatory acts for the protection of a particular class identified in the Model Barrier Code—namely, children under the age of five."[190] Thus, the court concluded that when the accident occurred, three-year-old Christopher was a member of the class that the statute was intended to protect.[191] Affirming the Court of Special Appeals ruling, the Court of Appeals found that there was sufficient evidence of Blackburn's possible violation of the pool safety regulations to survive a motion for summary judgment.[192]

IV. ANALYSIS

In *Blackburn Limited Partnership v. Paul*, the Maryland Court of Appeals held that the Statute or Ordinance Rule can operate to impose a duty on landowners despite their limited duty to trespassers under the common law.[193] The court further held that Maryland's pool safety regulations satisfied the requirements of the Statute or Ordinance Rule, therefore Blackburn could be held liable for its violation of the regulations.[194] The *Blackburn* court arrived at these holdings by first distinguishing the *Brooks v. Lewin Realty III, Inc.* and *State v. Longeley* lines of cases.[195] The court distinguished these cases based on a false distinction between the statutes at is-

186. *Id.* at 122–23, 90 A.3d at 477.

187. *Id.* at 124, 90 A.3d at 478.

188. *Id.* at 126, 90 A.3d at 479.

189. *Id.*

190. *Id.* at 125, 90 A.3d at 479.

191. *Id.* at 126, 90 A.3d at 479.

192. *Id.* at 127, 90 A.3d at 479. In determining whether there was sufficient evidence for Alicia Paul's case against Blackburn to survive summary judgment, the court examined the evidentiary record from the Court of Special Appeals. *Id.*, 90 A.3d at 480. Although it noted that under Maryland law a violation of the regulations only constitutes evidence of negligence because the statute does not expressly provide for a negligence per se action, the court nonetheless agreed with the Court of Special Appeals that there was sufficient evidence for the jury to conclude that Christopher entered the pool through a faulty gate. *Id.* at 126–27, 90 A.3d at 479.

193. *Id.* at 117, 90 A.3d at 474.

194. *Id.* at 126, 90 A.3d at 479.

195. *Id.* at 114, 90 A.3d at 472.

sue—statutes that are enacted for the benefit of the general public as opposed to statutes that aim to protect a more "targeted class."[196] This led the court to maintain two conflicting rules governing negligence claims arising out of the violation of a statute or ordinance.[197]

Next, the court examined the Maryland pool safety regulations and concluded that they were intended to protect a "targeted class"—children under five years of age.[198] Here, the court further erred in failing to provide clear guidelines for when a statute or ordinance meets the Statute or Ordinance Rule's "targeted class" requirement.[199] The court should have considered that an analytical framework for the "targeted class" requirement would foster the consistent and predictable application of the Statute or Ordinance Rule.[200] To further aid these goals, the court should have also acknowledged that it is changing its handling of negligence claims arising from a statutory violation by overruling *Longeley* and its progeny.[201]

A. The Court's Misreading of Longeley Led It to Erroneously Maintain Two Conflicting Rules Governing Negligence Claims Arising out of a Statutory Violation

The court's misreading of *Longeley* led it to erroneously maintain two conflicting rules governing negligence claims arising out of the violation of a statute, ordinance, or regulation. The *Blackburn* court distinguished the *Longeley* line from the *Brooks* line based on a false distinction between the statutes at issue in the cases.[202] The court reasoned that the statutes in the *Longeley* line of cases were "passed for the benefit of the public," therefore because they did not define a "targeted class," they could not impose a duty.[203] The statutes in the *Brooks* line of cases, on the other hand, "aim[] to protect a more targeted class of persons," therefore they define a class of persons to which a duty is owed.[204] This means a person can be held liable for the violation of such statutes.[205]

As the *Blackburn* court explained, *Longeley*, *Osterman*, and *Murphy* "did not engage in a careful application of the Statute or Ordinance Rule" because the statues in those cases were passed for the benefit of the pub-

196. *See infra* Part IV.A.
197. *See infra* Part IV.A.
198. *Blackburn*, 438 Md. at 125, 90 A.3d at 479.
199. *See infra* Part IV.B.
200. *See infra* Part IV.B.2.
201. *See infra* Part IV.C.
202. *Blackburn*, 438 Md. at 114, 90 A.3d at 472.
203. *Id.* (internal quotation marks omitted).
204. *Id.*
205. *See id.* at 113, 90 A.3d at 471 (noting that "the tort action in [*Allen v. Dackman*] survived summary judgment, despite the plaintiffs' status as trespassers under the common law").

lic.[206] The court's logic does not hold for two reasons. First, in order for a court to determine whether a statute was passed for the benefit of the public it needs to examine the statutory language.[207] Yet the *Longeley*, *Osterman*, and *Murphy* courts did not engage in any statutory analysis.[208] Second, if the *Longeley*, *Osterman*, and *Murphy* courts had examined the statutes at issue in these cases, it is possible that the statutes might have satisfied the requirements of the Statute or Ordinance Rule.[209]

The Court of Appeals failed to see a more plausible reading of the *Longeley* line of cases. The courts did not examine the statutory language because they did not even reach the question of whether the defendant was negligent or not. *Longeley* and its progeny were all dismissed because the defendants did not owe the plaintiffs a duty.[210] Therefore, the statutes and regulations in those cases could not set the defendants' standard of conduct, which is why the court did not need to examine their language.[211] Moreover, the *Longeley* rule, unlike the Statute or Ordinance Rule, does not operate to impose a statutory duty.[212] This means if there is no pre-existing common law duty, then there is no reason for the court to consider whether the statute can set the standard or care.[213]

The *Blackburn* court's discussion of *Osterman* and *Longeley* reveals its misunderstanding of the *Longeley* rule.[214] Quoting *Longeley*, the court emphasizes the fact that "[t]he ordinance in this case was passed for the benefit of the public."[215] The *Longeley* passage quoted by the court immediately goes on to clarify that a landowner cannot be held liable for the violation of an ordinance unless the landlord owed a duty to the injured person.[216] The Court of Appeals, however, relies on the first part of the *Longeley* rule, interpreting it to mean that if a statute is passed for the benefit of the public, it cannot impose a duty on a defendant.[217] This is a misreading of the *Longeley* rule. The *Longeley* court is merely characterizing

206. *Id.* at 114, 90 A.3d at 472.

207. *See, e.g.*, Warr v. JMGM Grp., LLC, 433 Md. 170, 198–99, 70 A.3d 347, 364 (2013) (applying Statute or Ordinance Rule, interpreting MD. CODE ANN., ALCOHOLIC BEVERAGES § 1-101(a)(3) (LexisNexis 1957 & 2011 Repl. Vol.), and declining to impose dram shop liability because "the statute does not identify a particular class of protectees").

208. *See supra* notes 109, 118 & 124 and accompanying text.

209. *See infra* Part IV.C.1.

210. *See supra* note 99.

211. *See supra* note 101 and accompanying text.

212. *See supra* Part II.B.

213. *See* State v. Longeley, 161 Md. 563, 570–69, 158 A. 6, 8 (1932) (noting that before the court will allow an action in negligence to proceed, the defendant must owe the plaintiff a duty).

214. Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 113–14, 90 A.3d 464, 471–72 (2014).

215. *Id.* at 113, 90 A.3d at 472 (emphasis omitted).

216. *Id.* at 113–114, 90 A.3d at 472 (quoting State v. Longeley, 161 Md. 563, 569–70, 158 A. 6, 8 (1932)) (internal quotation marks omitted).

217. *Id.* at 114, 90 A.3d at 472.

the type of statute at issue. The *Blackburn* court's misreading overlooks the fact that after characterizing the statute the *Longeley* court immediately goes on to state "[b]ut, before an individual can hold such owner liable for an injury alleged to have resulted from such violation, there must be . . . a duty on the part of the defendant," which imposes a pre-existing duty requirement.[218] The *Longeley* court had no reason to consider whether the ordinance could set the standard of care because the quarry owner owed no duty to the trespassing child.

The Court of Appeals made the same error with the *Osterman* case. While acknowledging that the *Osterman* court did not engage in any statutory analysis, the *Blackburn* court concluded that the reason the *Osterman* court did not analyze the ordinance was because it was designed to benefit the general public.[219] The court did not explain, however, how the *Osterman* court could have drawn such a conclusion without examining the language of the ordinance.[220] Like with *Longeley*, the *Blackburn* court failed to recognize that the *Osterman* court did not engage in any statutory analysis because there was no pre-existing duty between the landowner and the trespassing child.[221] Therefore, the fact that the statutes were passed for the benefit of the public would not have precluded the *Longeley* or *Osterman* courts from using them to set the standard of care.[222] These faulty analyses led the *Blackburn* court to maintain two conflicting rules governing negligence claims arising out of statutory violations.

B. The Blackburn *Court Erred in Failing to Provide Clear Guidelines for the Statute or Ordinance Rule's "Targeted Class" Requirement*

In *Blackburn*, the court began by examining the plain language of the pool safety regulations, which is consistent with precedent.[223] Then, it departed from the analysis it used in previous cases by examining the regulations' Documents Incorporated by Reference.[224] In the wake of the *Blackburn* court's analysis, it is now difficult to discern when a statute "aims to protect a more targeted class of persons" and when it was merely "passed

218. *Longeley*, 161 Md. at 569, 158 A. at 8.

219. *Blackburn*, 438 Md. at 114 n.8, 90 A.3d at 472 n.8.

220. *See id.* at 114, 90 A.3d at 472 (noting that the *Longeley*, *Osterman*, and *Murphy* courts "did not engage in a careful application of the Statute or Ordinance Rule").

221. *See id.* (noting that the *Longeley*, *Osterman*, and *Murphy* courts "relied on the plaintiff's status as trespasser to deny relief").

222. *See Longeley*, 161 Md. at 569–70, 158 A. at 8 (noting that the two requirements for a plaintiff to bring a negligence action based on statutory violation—(1) the violation was the proximate cause of the person's injury; and (2) at the time of the injury the person had the right to be on the property—do not apply unless the plaintiff owes the defendant a duty of care).

223. *Blackburn*, 438 Md. at 117–22, 90 A.3d at 474–77.

224. *See infra* note 230.

for the benefit of the public."[225] This makes it hard to determine when the Statute or Ordinance Rule applies to a particular legislative enactment, and, as a result, makes it difficult to predict when the court will impose civil liability for an alleged statutory violation.[226] A clear analytical framework for the "targeted class" requirement is necessary in order to ensure consistent and predictable application of the Statute or Ordinance Rule.[227]

1. Previous Cases Applying the Statute or Ordinance Rule Suggest That the Blackburn *Court Should Have Relied on the Plain Language of the Regulation in Its "Targeted Class" Analysis*

The *Blackburn* court's "targeted class" analysis is inconsistent with precedent because it goes beyond examining the plain language of the pool safety regulations and considers their Documents Incorporated by Reference.[228] This is where the court found the pool safety regulations' "targeted class"—in the Model Barrier Code for Residential Swimming Pools, Spas, and Hot Tubs.[229] In previous cases applying the Statute or Ordinance Rule, the court typically considered only the plain language of the legislative enactment at issue.[230] The *Blackburn* court's departure from precedential analysis makes it hard for plaintiffs and defendants alike to predict when the Statute or Ordinance Rule will apply to a particular statute, ordinance, or regulation.[231]

A comparison of the "targeted class" analysis in a previous case, *Allen v. Dackman*, with the *Blackburn* court's analysis reveals how the *Blackburn* court's approach is inconsistent with precedent. The *Allen* case involved a landlord's alleged violation of the Baltimore City Housing Code's lead-paint abatement provisions.[232] The *Allen* court examined the Housing Code and concluded that the City Council enacted it with the express purpose of protecting "occupants of dwellings"[233]—a term also explicitly defined in the "Definitions" section of the Housing Code and used in its provisions.[234]

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225. *See infra* Part IV.B.1.

226. *See infra* Part IV.B.1.

227. *See infra* Part IV.B.2.

228. *See infra* note 230.

229. Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 125, 90 A.3d 464, 479 (2014).

230. *Compare id.* at 122–25, 122 90 A.3d at 477–78, 477 ("[W]e draw support from the purposes and context of the [pool safety regulations] chapter as a whole."), *with* Allen v. Dackman, 413 Md. 132, 142, 156–58, 991 A.2d 1216, 1222, 1231 (2010) ("[W]e begin our inquiry with the words of the statute and, ordinarily, when the words of the statute are clear and unambiguous, according to their commonly understood meaning, we end our inquiry there also." (quoting Dyer v. Otis Warren Real Estate Co., 371 Md. 576, 581, 810 A.2d 938, 941 (2002)) (internal quotation marks omitted)).

231. *See infra* note 245 and accompanying text.

232. *Allen*, 413 Md. at 158, 991 A.2d at 1231.

233. *Id.* at 157, 991 A.2d at 1231.

234. *Id.* at 157–58, 991 A.2d at 1231.

By contrast, the pool safety regulations in *Blackburn* do not expressly define a class to be protected, at least not in the "Definitions" section of the regulations, as does the Housing Code.[235] In fact, Blackburn argued that neither the Maryland Register's "Notice of Proposed Action" nor the pool safety regulations identify a class of persons to be protected.[236] Thus, it would seem that the pool safety regulations fail to satisfy the "targeted class" requirement. The Court of Appeals acknowledged as much.[237]

If the *Blackburn* court had stopped its "targeted class" analysis after examining the plain language of the regulations, then Blackburn would not have been held liable for Christopher's near-drowning.[238] But the court did not stop its inquiry there. Instead, it turned to the Documents Incorporated by Reference into the pool safety regulations.[239] One of the Documents Incorporated by Reference is the Model Barrier Code for Residential Swimming Pools, Spas, and Hot Tubs, which identifies five-year-olds as the most at-risk group for accidental drowning.[240] This is where the Court of Appeals found the pool safety regulations' "targeted class"—children under five years of age.[241]

The Court of Appeals did not engage in this type of analysis in other cases involving the Statute or Ordinance Rule. In other cases, like *Allen*, the court stopped after looking at the plain language of the statute, and sometimes the legislative record.[242] It never searched for a "targeted class" in the Documents Incorporated by Reference as the *Blackburn* court did.[243]

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235. *Compare* 22 Md. Reg. 1469–70 (July 7, 1995), *and* 32 Md. Reg. 1468 (Aug. 19, 2005) ("Definitions" section of the pool safety regulations), *with Allen*, 413 Md. at 143, 991 A.2d at 1222 (noting that an "occupant" is defined by the Baltimore City Housing Code as "the person who actually uses or has possession of the premises" (quoting BALT. CITY CODE, Art. 13, § 105(gg) (2000) (internal quotation marks omitted)).

236. Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 125, 90 A.3d 464, 478 (2014). The Notice of Proposed Action arguably defines a protected class: "individuals at public and semipublic swimming pools in spas, and limited-use public pools in Maryland." *Id.* at n.16, 90 A.3d at n.16.

237. *Id.* at 125, 90 A.3d at 478.

238. *See id*. at 116, 90 A.3d at 473 (citing precedent for proposition that, in order for the Statute or Ordinance Rule to apply, the statute at issue must aim to protect a particular class of persons).

239. *Id.* at 122–25, 90 A.3d at 477–78.

240. *Id.* at 124, 90 A.3d at 478.

241. *Id.* at 125, 90 A.3d at 479. The irony here is that the Preamble to the Model Barrier Code emphasizes *supervision* of children as key to preventing drownings and near-drownings. *Id*. at 123, 90 A.3d at 477. The Model Barrier Code "establishes layers of protection to supplement and complement the requirement for constant adult supervision of young children around aquatic environments." *Id*.

242. *E.g.*, Brooks v. Lewin Realty III, Inc., 378 Md. 70, 81, 835 A.2d 616, 622 (2003) (relying on previous interpretation from *Brown v. Dermer*, 357 Md. 344, 367, 744 A.2d 47, 60 (2000), that Baltimore City Code provision was enacted to protect children from lead paint poisoning); Muthukumarana v. Montgomery Cnty., 370 Md. 447, 499, 805 A.2d 372, 403 (2002) (interpreting Maryland Code provision requiring all counties to have a 911 and emergency response system and concluding that it "does not create an emergency system to benefit a discrete group of persons").

243. *See supra* note 230.

The Court of Appeals' departure from its previous "targeted class" analysis appears to limit the circumstances under which the Statute or Ordinance Rule will apply. Here, the Court of Appeals narrowed the Court of Special Appeals' holding that the pool-going public is the regulation's "targeted class," a holding based on the plain language of the regulation.[244] Going beyond the plain language of the statute creates uncertainty as to when it applies to a particular statute, ordinance, or regulation.[245] This makes it difficult for litigators to determine when a defendant may be held liable for a negligence claim based on a statutory violation.[246] But this all depends on which "targeted class" analysis the court employs—the analysis from *Brooks* and its progeny or the analysis from *Blackburn*.

2. The Court of Appeals Should Have Provided Clear Guidelines for the "Targeted Class" Requirement

In *Blackburn*, the Court of Appeals emphasized the fact that the "targeted class" requirement puts a "needed check" on the Statute or Ordinance Rule's application,[247] yet it failed to provide an analytical framework for this requirement. In the case below, the Court of Special Appeals used the Restatement (Second) of Torts Section 286 to inform its Statute or Ordinance Rule analysis.[248] The Court of Special Appeals found that the pool safety regulations protected a broader class of persons—"the general public, those who use swimming pools."[249] The Court of Appeals narrowed the lower court's holding when it restricted the "targeted class" to children under five years of age.[250] The court's narrower "targeted class" conclusion begs the question: What if Christopher Paul had been six years old? Fifteen years old? An adult? There is no clear answer.

The *Blackburn* decision leaves Maryland courts without clear guidelines for determining when a statute defines a "targeted class," which makes it difficult to predict when the Statute or Ordinance Rule will apply to a particular legislative enactment.[251] The court should have analyzed the statutes

244. *See infra* notes 249–250 and accompanying text.

245. *Blackburn*, 438 Md. at 116, 90 A.3d at 473 (noting that "part (a) of the Statute or Ordinance Rule already sets a meaningful limitation on a court's ability to apply it"). Part (a) of the Statute or Ordinance Rule requires that the plaintiff show "the violation of a statute or ordinance designed to protect a specific class of persons which includes the plaintiff"—that is, the "targeted class" requirement. *Id.* at 112, 90 A.3d at 471 (quoting *Brooks*, 378 Md. at 79, 835 A.2d at 621).

246. *Cf.* RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 38 (2012) cmt. d (noting that if a statute is used to impose tort liability where previously there was none the court essentially "creates a new basis for liability not previously recognized by tort law").

247. *Blackburn*, 438 Md. at 116 n.11, 90 A.3d at 473 n.11.

248. *See supra* notes 37–38 and accompanying text.

249. Paul v. Blackburn Ltd. P'ship, 211 Md. App. 52, 107, 63 A.3d 1107, 1139, *aff'd*, 438 Md. 100, 90 A.3d 464 (2014).

250. *Blackburn*, 438 Md. at 125, 90 A.3d at 479.

251. *See infra* Part IV.C.1.

at issue using settled principles of statutory interpretation because it would allow litigants to better predict when a statutory violation may impose civil liability.[252] Providing clear principles of statutory interpretation for determining when a statute "aims to protect a more targeted class" would thus foster consistency and predictability.[253]

C. The Court of Appeals Should Have Expressly Acknowledged That It Is Changing Its Handling of Negligence Claims Arising out of the Violation of a Statute, Ordinance, or Regulation

In *Blackburn*, the Court of Appeals failed to expressly acknowledge that it is changing the handling of negligence claims arising out of the violation of a statute or ordinance when it relied on the heretofore obscure and unlabeled Statute or Ordinance Rule.[254] Ironically, the *Blackburn* court's adherence to the principles of stare decisis[255] do not foster consistency and predictability—the very reason courts usually invoke the doctrine.[256] Having two separate and conflicting rules governing negligence claims arising from statutory violation leads to inconsistent and unpredictable results.[257] Although the Statute or Ordinance Rule may have initially been intended to apply only to lead-paint cases, its application has since expanded and the Court of Appeals should have acknowledged that it is now the only rule that governs negligence claims arising out of a statutory violation.[258]

252. *Cf.* Sydney Foster, *Should Courts Give Stare Decisis Effect to Statutory Interpretation Methodology?*, 96 GEO. L.J. 1863, 1887 (2008) (arguing that, in the federal context, "interpretive regimes" for statutory interpretation would "make the law more predictable to citizens and help to limit judicial discretion"). When employing principles of statutory interpretation, a Maryland court's analysis begins with the plain language of the statute. Dyer v. Otis Warren Real Estate Co., 371 Md. 576, 581, 810 A.2d 938, 941 (2002). If the statute is unambiguous, then the court ends its inquiry. *Id.* In addition, the court should not construe a statute so as to "limit or extend its application." *Id.* (quoting Mayor & City Council of Baltimore v. Chase, 360 Md. 121, 128, 756 A.2d 987, 991 (2000)) (internal quotation marks omitted).

253. *See infra* notes 267–269 and accompanying text.

254. *See supra* note 129.

255. *Blackburn*, 438 Md. at 111, 90 A.3d at 470 ("The *Brooks* court observed that this rule was first announced in *Flaccomio v. Eysink*, nearly one hundred years before the dispute here."). "Stare decisis" is Latin for "to stand by things decided"; it is a legal doctrine whereby courts are bound to follow precedent in order to resolve subsequent cases in which similar issues are litigated. BLACK'S LAW DICTIONARY 1626 (10th ed. 2009).

256. *See* Coleman v. Soccer Ass'n of Columbia, 432 Md. 679, 703, 69 A.3d 1149, 1163 (2013) (Harrell, J., dissenting) (discussing policy reasons for stare decisis).

257. *See infra* Part IV.C.1.

258. *See infra* Part IV.C.2.

1. The Blackburn Court Should Have Considered That Maintaining Two Inconsistent Rules Governing Claims Arising out of the Violation of a Statute, Ordinance, or Regulation Would Produce Unpredictable Results

A hypothetical application of the Statute or Ordinance Rule and the *Longeley* rule illustrates how the Statute or Ordinance Rule can produce unpredictable results. This hypothetical uses the facts and ordinance from *Longeley*. In *Longeley*, a twelve-year-old boy drowned in an abandoned quarry that had become filled with water.[259] The Baltimore City Code provision at issue in *Longeley* "requires each and every owner of abandoned or not actively operated quarries within the city limits to inclose [sic] by a fence, not less than six feet in heighth [sic], constructed in such manner and of such materials as will prevent any person from entering upon said quarry."[260]

If the court applies the pre-*Blackburn* Statute or Ordinance Rule analysis, it would first look at the plain language of the ordinance.[261] The code provision was enacted to "prevent any person from entering upon said quarry," which, in the wake of *Blackburn*, appears to be too broad to satisfy the Statute or Ordinance Rule's "targeted class" requirement.[262] If the court stops its inquiry here, the *Longeley* rule will apply because even though the ordinance sets forth mandatory acts, it does not target a particular class of persons. Without a pre-existing common law duty, the *Longeley* rule will not adopt the statute as the standard of care.

If, however, the court inquires beyond the plain language of the statute, it may find that Baltimore City, in setting the six-foot height requirement, intended to keep *children* from easily climbing over the fence.[263] If this is the case, then the ordinance would satisfy part (a) of the Statute or Ordinance Rule—the "targeted class" requirement.[264] The boy's drowning would meet the requirements of part (b) because the defendant's failure to properly enclose the quarry was a proximate cause of the boy's drowning.[265] Thus, the Statute or Ordinance Rule would operate to impose a duty on the quarry owner, which would make the owner potentially liable for the boy's drowning.[266]

These disparate analyses show that there are conflicting principles guiding how the court should determine whether a statute protects a "target-

259. State v. Longeley, 161 Md. 563, 565, 158 A. 6, 6 (1932).
260. *Id.* at 566, 158 A. at 7.
261. *See supra* Part IV.B.1.
262. *See supra* notes 249–250 and accompanying text.
263. *See supra* note 177.
264. *See supra* notes 137 & 174 and accompanying text.
265. *See supra* note 138 and accompanying text.
266. *See supra* text accompanying note 173.

ed class," triggering the application of the Statute or Ordinance Rule. A single rule with clear guidelines is necessary for two reasons. First, without such guidance a court's own policy considerations and value judgments may guide its interpretation of a statute, ordinance, or regulation as opposed to the legislature's intent.[267] Second, the General Assembly and state and local agencies can take the court's rule into account when drafting legislation.[268] The legislature and agencies can then craft legislation that is clearly intended to impose a statutory duty.[269] A single rule with clear guidelines would thus provide for more consistent and predictable application of the Statute or Ordinance Rule.

2. The Court of Appeals Should Have Expressly Acknowledged That It Is Eliminating the Pre-Existing Duty Requirement for Negligence Claims Arising Out of a Statutory Violation By Overruling State v. Longeley

The Court of Appeals erred in failing to expressly acknowledge that it is changing its handling of negligence claims arising out of the violation of a statute, ordinance, or regulation. For all intents and purposes, the Statute or Ordinance Rule operates just like the rebuttable presumption form of negligence per se. Both rules provide that an alleged statutory violation establishes a prima facie case of negligence, which shifts the burden of production to the defendant to show that she was not negligent despite violating a statute.[270] However, the Statute or Ordinance Rule differs from negligence per se in one crucial respect—it creates a duty.[271] It is this as-

267. *Cf.* William N. Eskridge, Jr. & Philip P. Frickey, *Foreword: Law As Equilibrium*, 108 Harv. L. Rev. 26, 66 (1994) (noting that, in the federal context, "[t]he integrity of an interpretive regime provides some degree of insulation against judicial arbitrariness"). *But see* Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, THE LAW OF TORTS § 150 (2d ed.) ("A court's acceptance or rejection of a statutory standard necessarily reflects its attitudes about justice and policy.").

268. *See* RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 14 cmt. c (2010) (noting that in negligence per se jurisdictions the legislature can take the doctrine into account when enacting safety statutes and draft a provision which directs the court that the statute should not be used as a basis for liability in negligence); *cf. also* Eskridge & Frickey, *supra* note 267, at 67 (discussing how, in the federal context, set rules of statutory interpretation allow legislators to better predict what effect courts will give statutory language).

269. *See* Caroline Forell, *Statutory Torts, Statutory Duty Actions, and Negligence Per Se: What's the Difference?*, 77 OR. L. REV. 497, 532–33 (1998) (discussing how the Oregon Legislature could specify when criminal statutes and regulations should provide for civil liability).

270. *Compare* Brooks v. Lewin Realty III, Inc., 378 Md. 79, 835 A.2d 621 (2003) (providing elements Statute or Ordinance Rule which establish a "*prima facie* case in negligence" after which "[t]he trier of fact must then evaluate whether the actions taken by the defendant were reasonable under all the circumstances"), *with* Bacon v. Lascelles, 678 A.2d 902, 907 (1996) ("A prima facie case raises a rebuttable presumption of negligence and shifts the burden of production to the party against whom the presumption operates.").

271. *Compare* Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 125, 90 A.3d 464, 478–79 (2014) (applying Statute or Ordinance Rule to determine whether Maryland pool safety regulations create

pect of the rule that makes it so unpredictable. Cases where a plaintiff's claim would be dismissed because the defendant did not owe her a duty are now viable if the Statute or Ordinance Rule applies.[272] This makes it difficult to predict when a defendant may be liable for a plaintiff's injuries.

There is evidence that the *Brooks* decision was initially intended to apply only to lead-paint cases. Specifically, the Maryland Court of Special Appeals in *Joseph v. Bozzuto Management*, considered *Brooks* sui generis at least with regard to eliminating the requirement that tenants demonstrate that their landlord had notice of housing code violations.[273] *Brooks* was also decided when there was increasing awareness of the damaging effects of lead-based paint in children.[274] In the 1990s and early 2000s, the General Assembly enacted several measures designed to detect lead paint poisoning in children and reduce risk of exposure.[275] Thus, a rule that was probably originally intended to be a novel, judicial solution to landlord liability in lead-paint cases has since expanded to encompass other areas of the law.

That being said, one of the ways that courts change the common law is through incremental modification.[276] Courts create a precedent based on a particular set of facts—an exception to the rule.[277] As new and different cases come before the court, it applies the precedent to different sets of facts.[278] Slowly, the case that was once the exception becomes the rule.[279] This is the case with *Brooks* and its Statute or Ordinance Rule. A rule that was born out of lead-paint cases is now applied more broadly—from a federal statute[280] to Maryland's sediment control regulations.[281] Since *Brooks* was decided, the Court of Appeals has applied the Statute or Ordinance

a statutory duty), *with* RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 14 cmt. i (2010) (noting that negligence per se is not duty per se).

272. *See, e.g.*, *Blackburn*, 438 Md. at 117, 90 A.3d at 474 (holding that the Statute or Ordinance Rule applies "irrespective of a property owner's duty to trespassers under the common law").

273. Joseph v. Bozzuto Mgmt. Co., 173 Md. App. 305, 341, 918 A.2d 1230, 1250 (2007).

274. Cori S. Annapolen, *The Court of Appeals Paints a New Canvas: Imposing Stricter Standards on Landlords to Abate Lead Paint Poisoning in Children*, 64 MD. L. REV. 1268, 1275–77 (2005).

275. *Id.* at 1275–76.

276. G. ALLAN TARR, JUDICIAL PROCESS AND JUDICIAL POLICYMAKING 295 (2d ed. 2012).

277. *Id.* at 294.

278. *Id.* at 294–95.

279. *Id.* at 295; *see also* Jerold H. Israel, *Gideon v. Wainwright: The Art of Overruling*, 1963 SUP. CT. REV. 211, 223 (1963) (discussing how the Supreme Court overrules cases based on the fact that later decisions are inconsistent with prior precedent).

280. Gourdine v. Crews, 405 Md. 722, 754–55, 955 A.2d 769, 789 (2008) (Federal Food, Drug & Cosmetic Act).

281. *See supra* notes 162–163 and accompanying text. The Court of Appeals even stated that "the Statute or Ordinance Rule has broad applicability." Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 115, 90 A.3d 464, 473 (2014).

Rule to resolve at least eight different cases, including *Blackburn*.[282] By contrast, the *Longeley* rule was last applied to resolve a case in 1981.[283] It appears that over time the *Longeley* rule has naturally become "unsound in the circumstances of modern life, a vestige of the past, no longer suitable to our people."[284] The exception has become the rule. The Court of Appeals should have expressly acknowledged that it is eliminating the pre-existing duty requirement[285] for claims arising out of a statutory violation by overruling the conflicting *Longeley* rule.[286] Doing so would have fostered more consistent and predictable application of the Statute or Ordinance Rule.[287]

V. CONCLUSION

In *Blackburn Limited Partnership v. Paul*, the Maryland Court of Appeals concluded that the Statute or Ordinance Rule can operate to impose a statutory duty regardless of a landowner's limited common-law duty to trespassers.[288] The court's conclusion was based on a misreading of the *Longeley* rule, which led it to erroneously maintain two conflicting rules governing negligence claims arising out of statutory violations.[289] The court further held that the pool safety regulations at issue in *Blackburn* met the Statute or Ordinance Rule's "targeted class" requirement, and thus imposed a duty on Blackburn.[290] In so holding, the court departed from previ-

282. Hamilton v. Kirson, 439 Md. 501, 524–25, 96 A.3d 714, 728 (2014); Hous. Auth. of Baltimore City v. Woodland, 438 Md. 415, 441–42, 92 A.3d 379, 394–95 (2014); *Blackburn*, 438 Md. at 125–26, 90 A.3d at 478–79; Warr v. JMGM Grp., LLC, 433 Md. 170, 198–99, 70 A.3d 347, 364 (2013); Wietzke v. Chesapeake Conference Ass'n, 421 Md. 355, 388, 26 A.3d 931, 951 (2011); Allen v. Dackman, 413 Md. 132, 143–45, 991 A.2d 1216, 1222–23 (2010); *Gourdine*, 405 Md. 722 at 755, 955 A.2d 769 at 789; Polakoff v. Turner, 385 Md. 467, 483, 869 A.2d 837, 843 (2005).

283. Murphy v. Baltimore Gas & Elec. Co., 290 Md. 186, 193–95, 428 A.2d 459, 464–65 (1981), *overruled on other grounds by* Baltimore Gas & Elec. Co. v. Flippo, 348 Md. 680, 695, 705 A.2d 1144, 1151 (1998).

284. Harrison v. Montgomery Cnty. Bd. of Educ., 295 Md. 442, 459, 456 A.2d 894, 903 (1983).

285. In the case below, the Court of Special Appeals rejected the pre-existing duty requirement: "We reject the premise that where a plaintiff pursues a negligence action alleging a violation of a statutory or regulatory duty, the plaintiff must first demonstrate the existence of a common law duty." Paul v. Blackburn Ltd. P'ship, 211 Md. App. 52, 98, 63 A.3d 1107, 1134 (2013), *aff'd*, 438 Md. 100, 90 A.3d 464 (2014).

286. In Maryland, the court can change the common law under two circumstances: "(1) when a prior decision was 'clearly wrong and contrary to established principles,' or (2) 'when precedent has been superseded by significant changes in the law or facts.'" Coleman v. Soccer Ass'n of Columbia, 432 Md. 679, 704, 69 A.3d 1149, 1164 (2013) (quoting Tracey v. Solesky, 427 Md. 627, 659, 50 A.3d 1075, 1093 (2011)). In light of the court's repeated extension of the Statute or Ordinance Rule, *Longeley* and its progeny have been "superseded by significant changes in the law." *See supra* notes 282–283 and accompanying text.

287. *See supra* notes 267–269 and accompanying text.

288. *Blackburn*, 438 Md. at 117, 90 A.3d at 474.

289. *See supra* Part IV.A.

290. *Blackburn*, 438 at 125, 90 A.3d at 479.

ous "targeted class" analyses, which makes it difficult to determine when a defendant will be civilly liable for a statutory violation.[291] The court should have considered that clear guidelines for determining whether a statute aims to protect a more "targeted class" would ensure more consistent and predictable application of the Statute or Ordinance Rule.[292] To further foster these goals, the court also should have expressly acknowledged that it is changing its handling negligence claims arising out of statutory violations.[293]

291. *See supra* Part IV.B.1.
292. *See supra* Part IV.B.2.
293. *See supra* Part IV.C.