Circuit Court for Baltimore City
Case No. 24C17006619

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0127

September Term, 2019

DARRYL E. MONTAGUE

v.

MAYOR AND CITY COUNCIL OF BALTIMORE

Meredith,
Wells,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: March 10, 2020

This appeal follows a judgment entered by the Circuit Court for Baltimore City granting a motion for summary judgment in favor of the Mayor and City Council of Baltimore.

Following the fatal car accident of Dr. Idoreyin Montague, her father, Darryl E. Montague, filed suit against the Mayor and City Council, alleging fault in the construction and maintenance of that section of West Cold Spring Lane where Dr. Montague lost her life. The Mayor and City Council filed a motion to dismiss the charges, and an initial hearing was held before the Honorable Yvette Bryant. The singular point of contention in this initial hearing was whether Dr. Montague's father had failed to provide timely notice of his claim. Potential claimants were obligated by statute to submit notice of their claim within six months of injury; Dr. Montague's father, however, had not consulted an attorney or submitted notice of the claim until nearly a year after the accident. Judge Bryant ultimately determined that good cause had been shown so as to excuse the failure to strictly supply timely notice and denied the motion to dismiss.

The Mayor and City Council subsequently filed a motion for summary judgment. A second hearing was held, this time before the Honorable Lawrence Fletcher-Hill. Judge Fletcher-Hill revisited the issue of good cause and found, to the contrary, that good cause could not be established under the circumstances. On that basis, he granted the motion for summary judgment.

Taking issue with the contrary judgment, Dr. Montague's father filed this timely appeal presenting two questions for our review,[1] which we have rephrased and condensed for clarity as follows:

> Did the circuit court err in granting the Mayor and City Council's Motion for Summary Judgment?

Finding the circuit court's analysis to be inadequate on the issue of good cause, we vacate its judgment and remand the case for further proceedings.

BACKGROUND

I. UNDERLYING INCIDENT

At about 7:25 p.m. on the evening of December 24, 2014, Dr. Idoreyin Montague ("Decedent") was traveling westbound in the 2300 block of West Cold Spring Lane in Baltimore City. The road conditions were rainy and wet. As Decedent attempted to negotiate a sweeping turn to the right, she lost control of her vehicle and slid across the center line, exposing the passenger side of her vehicle to oncoming traffic in the eastbound lanes. A driver in the eastbound lane, unable to stop, struck Decedent's vehicle on the passenger side. Decedent's vehicle completed almost a full rotation, coming to rest facing

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[1] The questions presented, as stated in the appellant's brief, read as follows:

> 1. Did the circuit court err by granting appellee's motion for summary judgment thereby reversing a previous motion to dismiss ruling which found that there was good cause for the untimely filing of a claim under the Local Government Tort Claims Act?
>
> 2. Did the circuit court abuse its discretion by granting appellee's motion for summary judgment thereby reversing a previous motion to dismiss ruling which found that there was good cause for the untimely filing of a claim under the Local Government Tort Claims Act?

northbound while still in the eastbound lanes. Decedent was transported from the scene of the accident to the emergency room at Sinai Hospital with serious injuries and in critical condition. At or about 11:54 p.m., she succumbed to her injuries and was pronounced dead. Decedent was the only fatality resulting from the accident.

Shortly after, a detective with the Baltimore Police Department responded to the scene. He, in turn, notified Decedent's mother, Barbara Montague-Nicholls ("Mother"), about the incident. Mother was contacted by the attending doctor at Sinai hospital when Decedent was pronounced dead. Decedent's father and appellant Darryl E. Montague ("Father") was notified shortly thereafter. Notably, both Mother and Father reside out-of-state; Mother is a resident of New Jersey, while Father lives in North Carolina.

In December of 2015, Father contacted an attorney, who proceeded, via December 16, 2015 mailing, to place the City on notice of a potential claim. On December 22, 2017, Father, both individually and as personal representative of Decedent's estate, filed his Complaint and Election for Jury Trial in the Baltimore City Circuit Court. The Complaint named the Mayor and City Council of Baltimore, the State of Maryland, and the Maryland Department of Transportation, among others, as defendants. Shortly before the first motions hearing, Father dismissed all State of Maryland defendants from the suit. Consequently, the matter proceeded with the Mayor and City Council of Baltimore ("the City") as the sole defendants.

II. CIRCUIT COURT PROCEEDINGS

A. THE FIRST PROCEEDING

The first motions hearing took place on April 2, 2018. There, the circuit court addressed the City's motion to dismiss. The defense focused principally upon the requirements of the Local Government Tort Claims Act ("LGTCA"), and even more specifically upon Father's failure to provide notice of his claim within the 180-day period then specified by statute. The City also presented supplemental arguments directed toward the statutory basis for excuse of the notice requirement—that is, the existence of good cause and prejudice to the defendant.[2]

As to the subject of notice, the City's counsel argued:

> Approximately a year [after the accident] in December of 2015 the City received its first notice of this claim from [Father]. And as Your Honor knows, the requirements of the [LGTCA] in 2014-2015 required that within six months of the action that the City would require notice of such claim. And in this instance . . . the notice of the claim to the City took place approximately a year after the actual accident. And as shown in [Father's] opposition, there is no argument that . . . notice was not [sic] actually given to the City. So, as it relates to whether or not notice was given within the actual time requirements, that is not in dispute.

Moving, then, to a discussion of good cause, counsel argued, in pertinent part:

> [T]here does not appear to be any basis to constitute good cause for the lack of notice to the City. Now, Your Honor is aware there are instances in which good cause can be shown. . . . [However] the basis that was given by [Father] for the good cause was that prior to putting the City on notice of the claim, he was waiting for the police report to be given to him.

[2] A more robust explanation of the applicable law is included in Part II of our Discussion, *infra*.

> Now this is undercut in a variety of ways. First and foremost, [Father] actually gave notice to the City four months before even receiving the police report. But also, the basis of the complaint . . . what he considers to be defects: failing to place appropriate road signs, failing to properly warn of curves, failing to properly maintain roadways. . . . All of these are open and obvious and could have been easily ascertained by [Father] without the necessity of a police report.

Finally, reaching prejudice, counsel argued as follows:

> [T]he City . . . was prejudiced in this case just by the delay in and of itself of the ability to investigate this claim. . . . [T]he ability for the City to timely investigate this matter is of critical essence. And as Your Honor knows, one of the claims here is failing to maintain roadways. And just during that . . . 180 day time period in which [Father] should have provided notice to the City, there was some roadway resurfacing and other work that was done in that area. So for all those reasons, Your Honor, basically the ability to know of a claim, the ability to investigate that claim in a timely manner by the City officials, the City was prejudiced by the lack of notice.

Father, conversely, maintained that there *was* good cause to justify an excuse of the notice requirement. In making his argument, Father first addressed the notice issue, directing the court to the subsequent amendment to the statute extending the statutory notice period from six months to one year. Noting that the change, by the explicit terms of the statute, would not apply retroactively, Father nonetheless contended that the shift was "the legislature's acknowledgment that 180 [days'] notice is a harsh rule that even in the exercise of due diligent care, it's difficult to make notice within 180 days."

Then, shifting attention to good cause, Father's counsel addressed the various factors Maryland courts have identified as relevant to the determination. Taking each factor in turn, Father's counsel argued:

> *The first factor* is whether it was excusable neglect. . . . Your Honor, [Father's] daughter had just passed away. He was grieving for his daughter during that time. A month later he requested the police report to figure out

> what happened. . . . He waited for this police report and was in contact with the police department trying to figure out how to get the police report. How they waited almost a year. That's when [Father], a resident of North Carolina, decided to contact a local attorney and figure out why he wasn't receiving the police report. At that point the local attorney immediately put the City on notice of a potential claim. . . . [U]nder those circumstances, I think a father grieving for his daughter, trying to obtain more facts in an out-of-town location before immediately putting the City on notice signifies reasonable diligence under the circumstances.
>
> *The second* [*factor*] is whether the location [was] out-of-state. [Father] is located out-of-state. In this case, [Father] lives in North Carolina. He does not live in the state. He can't just pop by West Cold Spring Lane and look at the conditions of the road. . . . He has to rely on people out-of-state to do this.
>
> *The third factor* is the inability to retain counsel in cases involving complex litigation. Your Honor, again, we're not saying that there was a pothole in the road. We're saying that it wasn't engineered properly and proper signage wasn't put up. This requires expert testimony. . . . This is not a simple case of there's a pothole or, you know, they allowed the road to fall in disrepair. It is a complex case. . . .
>
> *The fourth* [*factor*] is ignorance of the statutory notice requirement. Again, [Father] is a North Carolina resident. He had no idea about the notice requirement.

(Emphasis added).

Finally, after addressing the common law factors, Father's counsel turned to prejudice. He argued:

> Your Honor, there was no prejudice to the City for the delay in providing notice within one year, which was still provided within one year. . . . [*First*] the City has attached maintenance records of that area of road, but none of those really apply to this case. Again, we're not alleging that there was a pothole in the road that caused this. All of these maintenance records relate to potholes.
>
> *Second*, the damages in this case are fixed. You know, Ms. Montague unfortunately passed away. So that is not, you know, something where you

> would need to get out and, you know, monitor hospital records or treatment or anything of that nature. The damages are fixed.
>
> [*Third*,] I have a police report right here . . . . [T]he Baltimore City Police Department did a very thorough investigation. They interviewed all the witnesses to the accident. They took photographs as to the road as it existed. It's very extensive. And I believe that accurately captures what occurred on that night such that the City wouldn't have any prejudice in failing to go out six months later.
>
> [*Lastly*,] the car is still impounded. If the City would like to look at the vehicle it's still impounded. They can see the condition of the vehicle.
>
> There's simply no prejudice to the City that it can articulate here other than vaguely saying that it has been prejudiced. And for those reasons the court should find that there is good cause, find that there was no prejudice to the City and allow the case to proceed, [and] deny the motion to dismiss.

(Emphasis added).

Once the City had been allowed its opportunity for rebuttal, the circuit court articulated its judgment from the bench. After reviewing the facts and controlling law, the court led with its discussion of good cause, explaining its rationale as follows:

> Within a month of [Decedent's] death [Father] sought a police report from Baltimore City, but he did not get it. In fact, the police report was not prepared until spring. So he had given notice in December through counsel and it was the following spring as I recall that the police report was actually prepared and ready for distribution.
>
> The fact that he sought the police report within one month suggests to the court that he was acting prudently and the fact that he did not, like many people would probably do, rush to get out and get an attorney who could represent him does not mean that he was ignoring the case or not paying particular attention to what the rights may have been. Some people don't rush to judgment and rather than just assume they had a reason to sue, take their time, examine the facts, and go from there.
>
> And it would appear to me that this gentleman who was out-of-state and probably—and no one has suggested to me that he was familiar with the city or with Cold Spring Lane would be another reason why it would seem to the

> court that he was behaving as a reasonably prudent person would. Waiting for the report before making any determination about what his next step would be.
>
> Counsel is representing that he did not know of the statutory requirement given and that he requested the police report within a month of his daughter's death suggests to the court that had he known, he would have taken the necessary steps to notify the City of the claim.
>
> With regard to the ability to retain counsel, I don't have anything one way or the other, but it would seem to me that this could be a case that's difficult to engage an attorney and because the knee-jerk reaction to this type of case is she failed to negotiate the curve or she did something wrong or she wasn't adequately controlling the car and therefore did damage to herself. And so some lawyers might not touch this case because it does appear to be one that's going too turn largely on expert testimony rather than witness testimony.
>
> So, for those reasons, I find good cause to excuse the late filing.

After explaining its determination regarding good cause, the circuit court turned its attention to prejudice, and explained its reasoning as follows:

> The City indicates it's prejudiced by the late filing, but the court does not find that any specific prejudice was supplied to the court. Normally when people speak of prejudice, they can talk about something tangible. . . .
>
> Certainly, what I received did not admit of any independent witnesses. There was the fourth person mentioned. There were three cars involved in the primary accident . . . . But this case or this accident was sufficiently severe that I doubt the people involved in it would have forgotten the facts in a matter of twelve months versus six or seven or eight or five or four or three. And, you know, when somebody dies and you're involved in the accident, I find it hard to believe that you would all of a sudden have a memory lapse like that.
>
> And with respect to the documents submitted that suggest that potholes have been filled, that does not change the fact that the allegation is that the curvature of the road is such that signage should have been put up or rumble strips or something to notify people who may not be familiar with that road that it's a very sharp turn. That is a very steep area. It's a very steep curve. And if you're not familiar with that part of Cold Spring Lane it can come as a bit of a shock. . . .

> I can't say that the City has said 'oh, we lost witnesses, someone who saw the accident is now dead, someone who had knowledge of the work that was done back then is no longer available to talk about even what potholes have been filled.' We didn't hear that. All we heard is the City has been prejudiced by the passage of time.
>
> And while the change in the statute is not persuasive, evidently the legislature recognized that a little more time is reasonable. . . . [T]he short of it is the City did not demonstrate any specific prejudice. It simply said it was generally prejudiced by the late filing.

Having determined that good cause existed to excuse the lack of notice, and that the City had failed to demonstrate any specific prejudice, the circuit court denied the City's motion to dismiss.

B. THE SECOND PROCEEDING

A second motions hearing was held on February 27, 2019, this time concerning the City's motion for summary judgment. Significantly, the proceedings were before a different judge. In its memorandum supporting its motion for summary judgment, the City offered two arguments. *First*, it sought to establish its governmental immunity as it related to any allegations of design defects. The City maintained that the issues Father complained of—insufficient signage, lack of rumble strips, and poor markings on the roadway—were issues within the City's governmental capacity, and thus were among those acts for which the government is immunized from liability. *Second*, and more pertinently here, the government reasserted its claim regarding notice under the LGTCA, arguing that Father had failed to provide notice within the statutory period and thus could not bring a claim.

As the proceedings began, the City emphasized the lack of actual or constructive notice of the claim. The circuit court registered some confusion as to why the initial motion

to dismiss had been denied in the first proceeding, stating "I'm curious . . . . [E]ven without new evidence, but I'm curious about why it was denied at that point." After the City's initial presentation, Father's counsel offered his arguments, and the circuit court returned its focus to the subject of notice under the LGTCA. The following colloquy ensued:

> [FATHER'S COUNSEL]: With regard to the notice under the [LGTCA], we would simply again repeat what we had indicated in our brief. That this issue was argued previously to Judge Bryant. The evidence really is nothing significantly new that would justify changing that ruling with regard to the court's decision—Judge Bryant's decision. And it is entirely within the discretion of the court as to whether or not due diligence has been shown which is the condition that—or the standard by which the court judges the sufficiency of diligence, the notice, the time in which it was provided to the City.
>
> In this case, again, we don't have an individual who was present to know what happened. We have a grieving father who's called up here to another state to collect his daughter's remains. A month after the incident asks for the police report, requests the police report so that he could find out what happened that evening. And the idea that he should be able to give the City notice or the County notice or the State notice or anybody notice of a claim against them before he's even informed what happened I think raises a significant question for the court in terms of deciding whether or not—if it takes longer to find out what happened, putting the City on notice. This is not something that a lay person knows you even need to do let alone go in that direction when your first request is simply what happened that night. He wasn't there.
>
> COURT: Well, I recognize the grief of both parents immediately after the accident, but when a claim is contemplated, there has to be action on it and this is certainly not a situation where the parents were unaware of the injury or the accident or didn't have the means to do investigation themselves if they wish to. That is, if they wish to pursue the idea of a claim. I mean I assume one of the initial notions would be, you know, among the two—between the two drivers of the vehicles who was at fault in the accident.
>
> [FATHER'S COUNSEL]: You mean with regard to the other drivers that—
>
> COURT: The car that hit the daughter's car.

[FATHER'S COUNSEL]: In terms of filing the claim against them you mean?

COURT: Well, just exploring it. Just trying to determine, you know. I mean it seems to me that the plaintiffs acknowledge that they were concerned immediately after the accident with how it happened, which could include either just, you know, needing to know for purposes of their grief or needing to know for purposes of the possibility of asserting a claim. The first most logical issue would be the other driver it seems to me.

[FATHER'S COUNSEL]: Agreed. I think that the—my answer to you would be number one—I don't believe they were really thinking in terms of looking to sue anybody. They just wanted to find out what happened.

COURT: Right. But the undisputed evidence here is that I think they did not consult an attorney until December of 2015, roughly eleven months after the accident.

[FATHER'S COUNSEL]: I think that's correct. That's—

COURT: Is that due diligence? I mean they could not be expected necessarily to know that the [LGTCA]—

[FATHER'S COUNSEL]: —Right. —

COURT: —would have a short notice period. They may not be expected to even think that the City might be liable for maintenance of the roadway, but an attorney would.

[FATHER'S COUNSEL]: Right. But—

COURT: And if they're interested in asserting a claim, don't they have an obligation to consult someone who can put them on that course?

Father's counsel went on to argue that the failure to render timely notice under the LGTCA should be excused, reiterating the same points offered in the initial April 2, 2018 proceeding. Following a brief rebuttal by the City, the circuit court articulated its ruling from the bench. The court stated:

I decide this case based on the [LGTCA] issue. . . . I conclude that adequate notice under the [LGTCA] has not been given and that there is no basis for excusing that failure to comply with the [LGTCA].

I note as counsel have that this is a technical issue and that I'm sure [Father] would feel keenly that . . . the legislature changed within months after the accident. Not because of this accident, but liberalized the [LGTCA] in two steps. In 2015 they increased the notice period from 180 days to one year which itself had it been effective at the time would have made the notice timely. But it's undisputed that that change in the law was not effective until October 1 of 2015 and applied at that point only to causes of action arising after that effective date, and so it did not apply in this case. . . .

Now the regime under the statute [when this action was initiated] was that the failure to give notice can be excused either by what amounts to substantial compliance, which we don't have any question of here, or by a combination of the plaintiffs first showing good cause for the failure to give the notice and then providing the failure of the City to show prejudice arising from it. I conclude that the plaintiffs cannot show good cause in these circumstances. . . .

Here there's no question that the family of course knew of this accident immediately after it occurred. Again, I fully acknowledge [Father's] grief that I imagine would have immobilized [him] for a period of time, but unfortunately [he] must use diligence thereafter in exploring the possibility of a claim. And in the general assembly's judgment at that point, that diligence had to be exercised within six months.

The most obvious step would be to consult an attorney who would be aware of that requirement and aware of the potential liable parties that might be explored, but there is nothing had [Father] explored that and had [he] consulted with an attorney, there's nothing within that time period that would not have allowed them to discover the basis for this claim. That is ironically—their allegation is that the defect in the roadway was open and obvious and notorious at that time, so it would have been open and obvious to an attorney or any other investigator exploring the circumstances immediately after or soon after the accident occurred.

I therefore conclude that [Father has] not shown good cause and [has] not shown due diligence in exploring the claims. It's undisputed that they didn't consult an attorney until eleven months after the accident, then promptly filed the notice within a matter of weeks after first consulting with an attorney, but at that point it was untimely. And not finding good cause, I don't reach the

> question of prejudice or lack of prejudice to the City and to the [LGTCA]. And therefore, summary judgment will be granted to the remaining defendant on that basis.

Following the circuit court's grant of summary judgment, Father timely filed this appeal.

DISCUSSION

Father's argument on appeal centers on the conflict between the circuit court's initial and subsequent judgment regarding the LGTCA notice issue. Father notes that the subjects of notice and good cause had already been decided in the initial proceeding concerning the City's Motion to Dismiss. Thus, he avers, the circuit court erred in the second proceeding by returning to issues that had previously been decided. Father emphasizes that the circuit court, in the initial proceeding, properly exercised its discretion when reaching a decision on good cause. As such, he maintains that the circuit court "erred by relitigating the issues raised in [the City's] Motion to Dismiss[,] which motion had already been properly decided and disposed of by another Judge." In so doing, Father argues, the circuit court's decision in the second proceeding amounted to an abuse of discretion warranting reversal.

The City, unsurprisingly, contends that the circuit court's decision to revisit the notice issue was *not* an abuse of discretion. Preliminarily noting that notice is a condition precedent to establishing a claim under the LGTCA, the City argues that there was no reason why the circuit court could not reconsider the prior decision on the matter. The City avers that the circuit court is not bound by prior decisions of the same court and further contends that its decision in the second proceeding was sufficient, notwithstanding its

failure to explicitly consider the various common law factors that may apply when evaluating good cause.

I. RECONSIDERATION BY A JUDGE OF COORDINATE JURISDICTION

Before turning to the circuit court's ultimate decision, we will address a preliminary issue raised by Father in his brief. At the heart of Father's argument on appeal is the authority of one associate judge of the circuit court to review the prior decision of another. That is where we begin our analysis.

Though Father maintains that it was an abuse of discretion for the circuit court, in the latter proceeding, to return to the subjects of notice and good cause, his position is unsupported by legal authority. Father supplies ample legal support for the proposition that the circuit court judge in the initial proceeding appropriately exercised her discretion when assessing and deciding the good cause issue. However, that point is not contested. We agree that the circuit court in the first proceeding had and appropriately exercised its discretion; but to state that the circuit court judge possessed the authority and discretion to decide the issue in the first instance does not imply or establish that the circuit court judge in the second proceeding abused his discretion in returning to it.

As the City properly asserts in its brief, "one judge of a trial court ruling on a matter is not bound by the prior ruling in the same case by another judge of the court; the second judge, in [their] discretion, may ordinarily consider the matter *de novo*." *State v. Frazier*, 298 Md. 422, 449 (1984). *See also St. Joseph Medical Center, Inc. v. Turnbull*, 432 Md. 259, 281 (2013); *Scott v. State*, 379 Md. 170, 184 (2004); *Ins. Comm'r of State of Md. v. Equitable Life Assurance Soc'y of U.S.*, 339 Md. 596, 611 n.6 (1995); *Gertz v. Anne*

Arundel Cty., 339 Md. 261, 273 (1995); *Stewart v. State*, 319 Md. 81, 91 (1990). "[N]o trial judge is required to abdicate his own individual judgment merely because a colleague of coordinate jurisdiction has made a ruling of law." *Stewart*, 319 Md. at 91. Thus, to the extent Father would contend that the second judge was bound to abide by the decision of the first, he is simply incorrect.

Father argues that "the trial judge's findings will not be disturbed absent a showing of abuse of discretion[,]" and "[i]t was an abuse of discretion for the Summary Judgment Judge to disturb the Motion to Dismiss Judge's ruling[.]" If, on the one hand, Father is arguing that Judge Fletcher-Hill ought only to have revisited the LGTCA notice issue upon a finding that Judge Bryant abused her discretion, we think the authority discussed above dispenses with that contention. We acknowledge that the Court of Appeals has dictated that an abuse of discretion standard be applied with reviewing whether a plaintiff showed good cause for their failure to comply with the LGTCA notice requirement (a point that we shall revisit, *infra*). *Harris v. Hous. Auth. of Balt. City*, 227 Md. App. 617, 636 (2016). *See also Ellis v. Hous. Auth. of Balt. City*, 436 Md. 331, 348 (2013); *Prince George's Cty. v. Longtin*, 419 Md. 450, 467 (2011). However, Father's position in this regard would conflate appellate review with the "lateral reconsideration" at issue here. As the Court explained in *Frazier*, such reconsideration is a matter of discretion for the judge in a subsequent proceeding and is conducted *de novo*—no abuse of discretion need be found.

If, in the alternative, Father's contention is that the circuit court abused its discretion in the second proceeding by departing from the traditional summary judgment analysis, or otherwise by failing to undertake a full analysis of the common law factors, our

consideration of those points is incorporated into our more general discussion of the circuit court's decision in the second proceeding, *infra*.

II. CIRCUIT COURT JUDGMENT IN THE SECOND PROCEEDING

Having explained that the circuit court retains authority to revisit a previously decided issue, we now directly consider the correctness of the circuit court judgment challenged on appeal.

The portion of the LGTCA concerning the statutory period for providing notice, as it was at the time the cause of action arose, read as follows:

> (b) *Notice required.* — (1) Except as provide in subsections (a) and (d) of this section, an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given **within 180 days after the injury.**

Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings ("CJP") § 5-304(b) (emphasis added).[3] Further, the portion of the provision regarding the failure to give notice then read (as it does now):

> (d) *Waiver of notice requirement.* — Notwithstanding the other provisions of this section, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown the court may entertain the suit even though the required notice was not given.

[3] The statute was amended by 2015 Md. Laws Ch. 131 (H.B. 113), which extended the notice period to one year. The amendment explicitly stated that the changes would apply "only prospectively" and that the Act would become effective on October 1, 2015. *Id.*

Id. at § 5-304(d). Thus, a failure to properly provide notice to the appropriate governmental body may be overcome given a showing of good cause, so long as the defendant in the action was not resultingly prejudiced.

The allowance for consideration of good cause "leaves the courts some discretion in enforcing the notice requirement, and allows a court, in certain circumstances, to avoid an unjust result." *Longtin*, 419 Md. at 467. The Court of Appeals, in *Heron v. Strader*, 361 Md. 258 (2000), stated that the broad standard governing a finding of good cause is "'whether the claimant prosecuted his claim with that degree of diligence that an ordinarily prudent person would have exercised under the same circumstances.'" *Id.* at 271 (quoting *Westfarm Assocs. Ltd. P'ship v. Washington Suburban Sanitary Comm'n*, 66 F.3d 669, 676-77 (1995)). Five factors have been favorably cited and applied by Maryland courts in determining whether that standard has been met. As summarized by this Court in *Wilbon v. Hunsicker*, the five factors are:

> "'[1] excusable neglect or mistake (generally determined in reference to a reasonably prudent person standard), [2] serious physical or mental injury and/or location out-of-state, [3] the inability to retain counsel in cases involving complex litigation, . . . [4] ignorance of the statutory notice requirement[,]'" or (5) misleading representations made by representative of the local government.

172 Md. App. 181, 205-06 (2006) (alterations in original) (footnote omitted) (quoting *White v. Prince George's County*, 163 Md. App. 129, 152 (2005)).

In an alternative to CJP § 5-304(d), a failure to strictly meet the notice obligations of the LGTCA may also be overcome when there was been "substantial compliance" with the Act's requirements. Courts apply four conjunctive factors when determining whether

a party has substantially complied with the statutory notice requirement. A plaintiff achieves substantial compliance when

> (1) the plaintiff makes "some effort to provide the requisite notice"; (2) the plaintiff does "in fact" give some kind of notice; (3) the notice "provides . . . requisite and timely notice of facts and circumstances giving rise to the claim"; and (4) the notice fulfills the LGTCA notice requirement's purpose[.]

Ellis, 436 Md. at 342-43 (quoting *Faulk v. Ewing*, 371 Md. 284, 298-99 (2002)). The Court of Appeals explained the Act's purpose in *Bartens v. Mayor and City Council of Balt.*, 293 Md. 620, 626 (1982), stating that the statute was meant:

> to protect the municipalities and counties of the State from meretricious claimants and exaggerated claims by providing a mechanism whereby the municipality or county would be apprised of its possible liability at a time when it could conduct its own investigation, *i.e.*, while the evidence was still fresh and the recollection of the witnesses was undiminished by time, sufficient to ascertain the character and extent of the injury and its responsibility in connection with it.

Having explained the applicable legal framework, we now turn our focus to a pair of arguments offered by Father in challenging the circuit court's judgment.

A. RELATIONSHIP BETWEEN GOOD CAUSE AND SUMMARY JUDGMENT ANALYSES

Specifically regarding summary judgment, Father argues that the second judge "did not engage in the proper analysis for such a motion[,]" and "essentially reversed the previous Judge's decision on the Motion to Dismiss instead of deciding the Motion for Summary Judgment that was before him . . . ."[4] This Court, in *Harris*, previously discussed the relationship between the good cause and summary judgment analyses, explaining:

[4] We think it worth noting that the City's Motion for Summary Judgment and Father's response did, in fact, include arguments on the notice issue, and that both parties

> Because the issue of good cause frequently arises in these cases in a defendant's motion for summary judgment, as it did in this case, we caution future litigants not to conflate the applicable standards. It is the circuit court's responsibility to find—or to not find—whether good cause exists. *See* CJP § 5-304(c) ("upon motion and for good cause shown the court may entertain the suit . . ."). The standard for this limited good cause inquiry is not the summary judgment standard of Maryland Rule 2-501—"no genuine dispute as to any material fact." The circuit court must resolve factual disputes as to good cause, and, **once the court makes a finding on whether good cause exists, that finding becomes a relevant (and perhaps the only dispositive) fact in the summary judgment inquiry**. That fact is simply no longer disputed, and the question then becomes whether summary judgment is proper.

Harris, 227 Md. App. at 637 n.10 (emphasis added). *Harris* clarifies the point that a circuit court's relative assessments of good cause and summary judgment, while involving distinct inquiries, are nonetheless interrelated. And as the *Harris* Court acknowledged, good cause frequently arises during a court's analysis of summary judgment. *Id. See generally Hous. Auth. of Balt. City v. Woodland*, 438 Md. 415 (2014); *Ellis*, 436 Md. 331; *Mitchell v. Hous. Auth. of Balt. City*, 200 Md. App. 176 (2011). Father's argument would result in the untenable proposition that a summary judgment inquiry and an assessment of good cause are somehow incompatible. That conclusion is not borne out by the case law, and we decline to hold as much here.

As an aside, we would also note that this bifurcated inquiry has implications for our standard of review. While we are presented with the task of reviewing what is ostensibly a grant of summary judgment, that judgment was predicated on the failure of a condition precedent—specifically, the absence of timely notice. Failure to render timely notice may

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addressed the point in the proceeding. Consequently, the issue was not wholly unrelated to the summary judgment proceeding, as Father's brief may be read to imply.

be excused upon a showing of good cause, and as we briefly noted above, the Court of Appeals has prescribed an abuse of discretion standard for reviewing a circuit court's determination regarding that showing.

B. CONSIDERATION OF COMMON LAW FACTORS

We turn, then, to Father's assertion that the circuit court abused its discretion by failing to consider the various common law factors applicable to a court's assessment of good cause. Father takes issue with the fact that "[t]he Summary Judgment Judge did not provide his reasoning or go through all of the factors regarding whether there was good cause or not." While the assertion is accurate factually, that fact alone is not dispositive, nor does it independently warrant reversal.

Despite Father's contention, "[i]t is a well-established principle that trial judges are presumed to know the law and apply it properly." *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (internal quotation omitted). "It is equally well-settled that there is a strong presumption that judges properly perform their duties, and that trial judges are not obliged to spell out in words every thought and step of logic." *Id.* (internal quotations omitted); *see also Kirsner v. Edelmann*, 65 Md. App. 185, 196 n.9 (1985) ("[A] judge is presumed to know the law, and thus is not required to set out in intimate detail each and every step in his or her thought process."). Thus, "[a]bsent an indication from the record that the trial judge misapplied or misstated the applicable legal principles, the presumption is sufficient for us to find no abuse of discretion." *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003). Insofar as these principles apply to the particular factors of a given legal analysis, "a trial judge's failure to state each and every consideration or

factor in a particular applicable standard does not, absent more, constitute an abuse of discretion, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion." *Id.*; *see also John O. v. Jane O.*, 90 Md. App. 406, 429 (1992), *overruled on other grounds by Wills v. Jones*, 340 Md. 480 (1995) ("The trial judge need not articulate each item or piece of evidence she or he has considered in reaching a decision. . . . Unless it is clear that he or she did not, we presume the trial judge knows and follows the law. The fact that the court did not catalog each factor and all the evidence which related to each factor does not require reversal."). It is clear, then, that the circuit court's failure to explicitly state and consider each of the common law factors does not, in and of itself, obligate this Court to reverse the circuit court's decision.

While we acknowledge, as the above-cited authority clearly establishes, that the circuit court's decision enjoys the presumption of correctness, that should not be read as license to engage in an incomplete or cursory analysis. The circuit court is not obligated to articulate findings as to each relevant factor in a given analysis. However, where the facts of a given case directly implicate one or more delineated factors, a failure to even mention or discuss those facts as they relate to the law leads us to doubt whether we may arrive at the "reasonable conclusion that appropriate factors were taken into account in the exercise of discretion." *Cobrand*, 149 Md. App. at 445.

To clarify this point, we would juxtapose the above-cited *Cobrand v. Adventist Healthcare*. In *Cobrand*, this Court considered an appeal arising from the Prince George's County Circuit Court concerning its allowance of a change of venue. The suit was filed by

Billy Jean Cobrand and Kenneth Neville Rocke, Jr. ("Parents"), parents of the young Kenneth Neville Rocke, III, who claimed that their son received negligent post-natal care while at Washington Adventist Hospital. Prior to trial, Adventist filed a motion to transfer the case from Prince George's to Montgomery County on the basis of *forum non conveniens*. At a subsequent status conference, Adventist was ordered to supply information, including the addresses and counties of residence of all employees likely to be called as witnesses. From that information, it was educed that the distance and time of travel for the prospective witnesses was notably greater in commuting to the Prince George's Circuit Courthouse as opposed to the courthouse in Montgomery County. Relying upon that fact, the circuit court granted Adventist's motion for change of venue. An appeal to this Court shortly followed.

On appeal, Parents maintained that the circuit court relied too heavily on the consideration of convenience to the exclusion of other appropriate factors. In conducting our review, we noted that "there are two basic factors to be considered by the court in ruling on a motion to transfer: convenience and the interests of justice, each with particularized sub-parts that have grown in the case law." *Id.* at 438. We additionally noted that during the pre-trial status conference, the record indicated that the circuit court judge "had before him all pleadings that had been filed to that time, including the motions for, and opposing, transfer, and the supporting legal memoranda." *Id.* at 441. Acknowledging the circuit court judge's remark that he had "looked at everything . . . in the case[,]" we "[drew] a rational inference from this comment that he had taken into account all of the factors raised in the motions . . . ." *Id.* at 444. Operating under this assumption, we ultimately affirmed

the circuit court's decision, explaining that we were "satisfied from our review of the record that [the circuit court judge] engaged in a clear and thorough consideration of the requisite factors created by [the applicable statute] and the opinions of this Court and the Court of Appeals." *Id.* at 445-46.

In the instant matter, we cannot say that we are similarly satisfied. The circuit court's decision in the second proceeding was not "clear and thorough." *Id.* As a preliminary matter, we acknowledge that the circuit court judge did assert, at the beginning of the second proceeding, that he had "read [the parties'] papers[,]" and that those papers did include arguments as to notice and good cause. However, the judge also plainly admitted that he was not familiar with the previous decision or its disposition on those issues. That, we think, is important factual context. While it is clear that the circuit court was under no obligation to abide by or otherwise uphold that decision, where, as here, a thorough decision had previously been rendered considering all applicable legal factors, a cursory review of the same issue becomes all the more glaring.

The principal issue lies in the fact that, though the circuit court rendered its judgment as to good cause, it did not fully engage in the necessary inquiry. The circuit court stated that it was "deciding this case based on the [LGTCA] issue," that "there [was] no basis for excusing that failure to comply[,]" and that Father "cannot show good cause in these circumstances." In explaining his decision, the court focused primarily on Father's failure to consult an attorney within the statutorily specified period, concluding that such failure amounted to an insufficient effort to demonstrate the requisite due diligence. The court also emphasized that Father became aware of the accident immediately after its occurrence,

and that his theory of recovery—that the road was poorly designed and maintained—was not of the variety requiring time to manifest such that a decision to refrain from consulting counsel for a year was justified.

We duly recognize that the circuit court's analysis is broadly directed toward the issue of reasonable due diligence. However, as the common law factors indicate, a good cause analysis is concerned, at least in part, with the existence of mitigating factors that might otherwise excuse a failure to provide timely notice. The circuit court's analysis makes no reference to facts that may have been relevant to that inquiry. We would cite with particularity Father's out-of-state residence, and to a lesser extent, the possibility of excusable neglect and ignorance of the notice requirement.

For clarity, we do not hold that a court must explicitly identify and make a finding as to each common law factor to arrive at a conclusion on good cause. Indeed, though the Court of Appeals has cited them approvingly, Maryland courts have not yet taken the direct step of adopting those factors as necessary components to a good cause analysis; rather, they have been recognized primarily as a touchstone—factors recognized in other jurisdictions that we may apply in our own exploration of the question.[5] *See, e.g.*, *Heron*, 361 Md. at 272 (noting that "several other jurisdictions have sought to define good cause" and aggregating the relevant considerations into "several broad categories" that we recognize as the common law factors); *Wilbon*, 172 Md. App. at 205 (noting only that courts "have considered" the common law factors); *White*, 163 Md. App. at 152 (explaining

[5] This Court *has*, however, applied those factors in its analysis on more than one occasion. *See, e.g.*, *Halloran*, 185 Md. App. at 193-94; *Wilbon*, 172 Md. App. at 205-06.

that in *Heron* the Court discussed good cause and "considered the factors that have generally been found to constitute good cause for a belated notice"). *Contra Mayor and City Council of Balt. v. Stokes*, 217 Md. App. 471, 487 (2014). However, in light of the second circuit court judge's stated lack of familiarity with the prior decision by Judge Bryant, the relative brevity of his analysis, and the lack of any discussion of mitigating factors, save for the parents' grief, we are unsatisfied that he gave due consideration to those facts that may have supported a finding of good cause. We conclude these omissions were "well removed from [the] center mark" of what constitutes a good cause inquiry, and "beyond the fringe of what [we] deem[] minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994). Consequently, we hold that the circuit court abused its discretion.

We vacate the judge's ruling and remand this case for further proceedings so that the circuit court may elaborate on its decision, with or without further evidence or argument as the judge so decides.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEE.