Circuit Court for Baltimore City
Case No. 24-C-18-000268

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0130

September Term, 2021

JAMAIYA OGLESBY

v.

BALTIMORE SCHOOL ASSOCIATES, *et al.*

Wells, C.J.,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: August 9, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. MD. RULE 1-104.

This case arises out of a lawsuit brought by Appellant, Jamaiya Oglesby, for injuries that she alleges she suffers from exposure to lead-based paint while living at 2000 East North Avenue, an apartment building that was owned and operated by Appellees, Baltimore School Associates (BSA).[1] On appeal, Oglesby asks us to review the circuit court's exclusion of expert witness testimony and subsequent grant of summary judgment in favor of BSA. As we shall explain, we affirm the circuit court on both issues.

FACTUAL AND PROCEDURAL BACKGROUND

Oglesby was born in 1998 in Baltimore, Maryland. Throughout her childhood, she lived with her mother in several residences in Baltimore City, including Apartment 202 of 2000 East North Avenue, where she lived from December of 1998 until December of 2001. It was while living in this apartment that Oglesby now claims that she was exposed to lead-based paint.

2000 East North Avenue ("East North Avenue") was originally built as a schoolhouse in 1890 and was converted by BSA into apartments for low-income tenants in 1979. It is undisputed that BSA did not maintain the apartments well, and in 2002, BSA elected to close the building rather than make required repairs. All of the other facts regarding Oglesby's alleged exposure—including whether there was lead present at East North Avenue at the relevant time; whether Oglesby came into contact with lead through

[1] In her complaint, Oglesby named several defendants involved in the ownership and management of the apartment building, including Baltimore School Associates; Crowninshield Management Corporation; Jolly Company, Inc.; and the Estate of Mendel Friedman. Like the parties, we refer to the Appellees collectively as "Baltimore School Associates" or "BSA."

peeling or chipping paint; and whether she suffered injury from any exposure—were contested below.

In 2018, Oglesby filed an action in the Circuit Court for Baltimore City against BSA for negligence, violation of the Maryland Consumer Protection Act, and negligent misrepresentation arising out of her alleged exposure to lead-based paint at East North Avenue. BSA filed an answer denying the allegations and asserting numerous affirmative defenses to Oglesby's claims.

During discovery, Oglesby identified Dr. Sandra Hawkins-Heitt as an expert in the areas of clinical psychology and neuropsychology. Dr. Hawkins-Heitt evaluated Oglesby and concluded that she suffered cognitive impairment or deficiency in multiple areas. Oglesby also identified as an expert Dr. Steven Caplan, a board-certified pediatrician trained and experienced in medical issues related to childhood lead poisoning, to help connect the dots between her exposure to lead at East North Avenue and the neuropsychological impairments identified by Dr. Hawkins-Heitt. After reviewing the available evidence, including Dr. Hawkins-Heitt's report, Dr. Caplan opined that "[Oglesby's] likely exposure to lead at 2000 [East] North Ave[nue] is a significant contributing factor to her lead intoxication and, therefore, to her [described] difficulties." Specifically, Dr. Caplan opined that "an IQ deficit of about 3 to 4 IQ points can be attributed to her lead exposure."

Prior to trial, BSA filed a motion to preclude the opinions and testimony of Dr. Caplan on the grounds that he lacked a sufficient factual basis for his opinions and that he

employed an unreliable methodology in calculating Oglesby's alleged IQ loss. BSA also filed a Motion for Summary Judgment, arguing that Oglesby failed to establish that East North Avenue was a substantial factor in causing her elevated blood lead levels and resulting injuries. The circuit court held a hearing[2] and granted both motions.[3]

Oglesby filed a timely Motion to Alter or Amend, or in the Alternative for Reconsideration of, the Court's Orders, arguing that BSA's motions and oral argument to the circuit court contained an "incorrect recitation of the facts and testimony and complete disregard of the applicable case law regarding the admissibility of expert testimony in a lead paint case." BSA opposed the motion, and the motions court denied it in a written order. Oglesby subsequently noted a timely appeal to this Court.

[2] The motions hearing was conducted in conjunction with hearings in two separate cases filed by Oglesby's counsel against BSA, including *Johnson v. Balt. School Assocs.*, which this Court recently decided in an unreported opinion. No. 1248, Sept. Term, 2020, Slip Op. (unreported opinion) (filed July 8, 2022).

[3] At the motions stage, Oglesby also opposed dismissal of her Consumer Protection Act and negligent misrepresentation claims. The circuit court denied summary judgment as to the Consumer Protection Act claim but granted it as to the negligent misrepresentation claim. Oglesby later moved to dismiss her remaining Consumer Protection Act claim without prejudice, but after BSA opposed the motion, she ultimately withdrew her motion and consented to the circuit court's entry of summary judgment on this claim, too. Although Oglesby requests that this Court reverse the "judgment*s*" of the circuit court, the only time she mentions her Consumer Protection Act claim is to say that the circuit court initially denied summary judgment as to this claim, and her arguments are framed solely around her claims of negligence. Because the issues of summary judgment on the Consumer Protection Act and negligent representation claims were not briefed or argued, they are waived, *see* MD. R. 8-504, and in this opinion, we are concerned only with the grant of summary judgment as to the negligence claim.

STANDARD OF REVIEW

On appeal, Oglesby asks us to review two, separate but related decisions: (1) the circuit court's decision to exclude Dr. Caplan's expert testimony; and (2) the circuit court's grant of summary judgment for BSA.[4] The two decisions implicate different standards of review, which we address in turn.

Standard of Review for Exclusion of Expert Testimony

The Court of Appeals has often stated that "the admissibility of expert testimony is a matter largely within the discretion of the trial court, and its action in admitting or excluding such testimony will seldom constitute a ground for reversal." *Bryant v. State*, 393 Md. 196, 203 (2006) (collecting cases). As the Court of Appeals recently reiterated in *State v. Matthews*, "it is the rare case in which a Maryland trial court's exercise of discretion to admit or deny expert testimony will be overturned." ____ Md. ____, No. 15, Sept. Term, 2021, Slip Op. at 3 (June 22, 2022). Before the Court of Appeals decided *Rochkind v. Stevenson*, 471 Md. 1 (2020) ("*Rochkind II*"), however, appellate courts were actually tasked with applying two, different standards of review to the two, different determinations that circuit courts were required to make regarding the admissibility of novel scientific expert testimony. For expert testimony predicated on a novel scientific principle or discovery to be admissible, it had to meet *both* the threshold requirement that "the scientific principles or discoveries [be] generally accepted in the relevant scientific community,"

[4] Oglesby also raises a third issue on appeal: whether the trial court abused its discretion in refusing to grant her motion to alter or amend the judgment. Because our resolution of the first two questions disposes of the third, we do not reach it.

pursuant to the then-prevailing *Frye-Reed* jurisprudence, *and* the requirement that the testimony be reliable, pursuant to Maryland Rule 5-702. *Id.* at 12, 21-22. Thus, the circuit court was tasked with "a duplicative analytical process," *id.* at 26, in which it was required to analyze relevant expert witness testimony under both standards. Likewise, appellate courts were tasked with reviewing the circuit court's two determinations under two different standards of review. We reviewed the circuit court's determination under *Frye-Reed de novo*, or without deference, and we reviewed the circuit court's determination under Rule 5-702 with deference, for an abuse of discretion. *Id.* at 37.

In *Rochkind II*, the Court Appeals "streamline[d] the evaluation of scientific expert testimony" by eliminating the duplicative analysis required by *Frye-Reed* and adopting the interpretation of Rule 5-702 set forth in *Daubert v. Merrell Dow Pharm., Inc. Rochkind II*, 471 Md. at 35 (citing *Daubert*, 509 U.S. 579 (1993)). "General acceptance remain[ed] an important consideration in the reliability analysis," but was no longer "the *sole* consideration." *Id.* at 30. The Court of Appeals thereby instructed circuit courts "to evaluate *all* expert testimony—scientific or otherwise—under Rule 5-702." *Id.* at 35. In doing so, the Court also made indelibly clear that "[i]nstead of maintaining two separate, and potentially outcome determinative, standards of review—*de novo* for *Frye-Reed* and abuse of discretion for Rule 5-702," appellate courts were henceforth required to review all decisions regarding the admission of expert testimony under the abuse of discretion standard." *Id.* at 37.

At the time of the motions hearing in this case, the parties briefed and argued, and the circuit court applied, the then-prevailing *Frye-Reed* test in addition to Rule 5-702. After the motions hearing, but before this appeal was noted, the Court of Appeals decided *Rochkind II*. Because this was "a new interpretation of Rule 5-702," the Court held that the decision would "appl[y] to this case and any other cases that are pending on direct appeal when this opinion is filed, where the relevant question has been preserved for appellate review." *Rochkind II*, 471 Md. at 38-39 (quoting *Kazadi v. State*, 467 Md. 1, 47 (2020)). The Court explained that "[i]n this context, the 'relevant question' is whether a trial court erred in admitting or excluding expert testimony under Maryland Rule 5-702 or *Frye-Reed*." *Id.* at 39.

At the time of oral argument in this Court, there was some question of whether Oglesby's case qualified as a case "pending on direct appeal" because it had been decided at the trial level but not yet appealed at the time *Rochkind II* was decided. Interpreting the same language in a different context, however, the Court of Appeals has since clarified that "any other cases that are pending on direct appeal when this opinion is filed" includes "cases in which there had not yet been a final disposition, regardless of whether a notice of appeal had been filed at the time the opinion … was issued, and in which the issue had been preserved for appellate review." *Kumar v. State*, 477 Md. 45, 54-55 (2021) (applying transitional rules from *Kazadi*). Thus, although Oglesby had not yet filed an appeal when *Rochkind II* was decided, *Rochkind II* applies to Oglesby's case because there was not yet a final disposition in the case and the objection to the exclusion of Dr. Caplan's testimony

under Rule 5-702 and *Frye-Reed* preserved the issue for appellate review. *See Matthews*, Slip Op. at 33 n.21 (finding that because Matthews objected to the admission of expert testimony under Rule 5-702 and *Frye-Reed*, *Rochkind II* applied). We, therefore, review the circuit court's exclusion of Dr. Caplan's testimony for an abuse of discretion.[5]

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[5] One further point of transition is worth noting regarding the evolution of the case law. Before the Court of Appeals decided *Rochkind II*, there was some debate about what standard of review we were to apply "where a circuit court grants a summary judgment motion on the grounds that the plaintiff's expert lacks a sufficient factual basis of admissible facts and the admissible evidence (if any) is insufficient independently to prove causation." *Hamilton v. Kirson*, 439 Md. 501, 521 n.11 (2014). This disagreement was laid bare in our recent decision in *Johnson*, Slip Op. at 7 n.6 (majority opinion); *see also* Slip Op. at 1-2 (Beachley, J., concurring). As the concurrence explained there, in *Kirson*, Judge Harrell pointed out that, under the governing law at the time, when the two motions are filed as one, the question of expert witness admissibility and the grant of summary judgment are reviewed on appeal under the same standard, that is, both questions were to be reviewed without deference. 439 Md. at 521 n.11. That had to be true, almost without regard to whether the motions were filed at the same time or not, because, independently, both the general acceptance of expert witness testimony under the then-prevailing *Frye-Reed* standard, and summary judgment, were at the time reviewed without deference. *Reed v. State*, 283 Md. 374, 389 (1978) (indicating *de novo* review of the court's threshold *legal* determination of whether novel scientific methodology is generally accepted in the scientific community, as differentiated from the court's *discretionary* determination of whether the testimony would assist a factfinder). In *Levitas v. Christian*, the Court of Appeals, without reference to the earlier *Kirson* analysis, suggested that the factual component of the expert witness analysis would be reviewed with deference to the trial court's ability to judge the credibility of the facts that undergird the definition. 454 Md. 233, 243-44 (2017). Then, as mentioned above, in *Rochkind II*, the Court of Appeals made clear that henceforth, all expert testimony would be reviewed under the abuse of discretion standard. 471 Md. at 37. The Court of Appeals applied this deferential standard in its recent decision in *Matthews*, reiterating that "it is the rare case in which a Maryland trial court's exercise of discretion to admit or deny expert testimony will be overturned." *Matthews*, Slip Op. at 3, 25-26.

Fortunately, we need not determine definitively whether *Levitas*, *Rochkind II*, and *Matthews* overruled this aspect of *Kirson*, or whether it remains good law, because the same facts that distinguished *Johnson* from *Kirson* exist here too. *See Johnson*, Slip Op. at 7 n.6. That is, because BSA filed separate motions first to exclude Dr. Caplan and then for summary judgment, we are not required to use the non-deferential standard of review that

Standard of Review for Grant of Summary Judgment

We review the circuit court's grant of summary judgment without deference. *Mayor & City Council of Balt. v. Whalen*, 395 Md. 154, 161-62 (2006). Like the circuit court, we view the record in the light most favorable to the non-moving party and "construe any reasonable inferences that may be drawn from the facts against the moving party." *Brooks ex rel. Wright v. Hous. Auth. of Balt. City*, 411 Md. 603, 615 n.6 (2009) (cleaned up).

DISCUSSION

Reviewing the circuit court's decision to exclude Dr. Caplan's expert testimony with deference, and the circuit court's grant of summary judgment without, we conclude that the circuit court neither abused its discretion in excluding Dr. Caplan's testimony nor erred in granting summary judgment for BSA. We will, therefore, affirm the circuit court. We explain.

I. EXCLUSION OF DR. CAPLAN'S TESTIMONY

In Maryland, the admission of expert testimony is governed by Rule 5-702, which states that "[e]xpert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." MD. R. 5-702. In making that determination, the

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may still apply to both decisions when the two motions are conjoined. *Kirson*, 439 Md. at 521 n.11. Instead, applying the principles enunciated in *Levitas*, *Rochkind II*, and *Matthews*, we apply the abuse of discretion standard of review to the decision to exclude Dr. Caplan.

circuit court evaluates "(1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education[;] (2) the appropriateness of the expert testimony on the particular subject[;] and (3) whether a sufficient factual basis exists to support the expert testimony." *Id.* As the Court of Appeals has explained, this third factor really includes two sub-factors: (a) whether the expert had an adequate supply of data; and (b) whether the expert used a reliable methodology. *Rochkind II*, 471 Md. at 22. Absent either sub-factor, the expert's opinion is "mere speculation or conjecture," and, therefore, is inadmissible. *Id.*

Here, there is no dispute as to (1) whether Dr. Caplan is qualified as an expert by knowledge, skill, experience, training, or education; or (2) the appropriateness of Dr. Caplan's testimony on the subject. Rather, the circuit court excluded Dr. Caplan's testimony on the third requirement of Rule 5-702: because the circuit court found that Dr. Caplan both lacked an adequate supply of data on which to base his opinions and employed an unreliable methodology. We review the circuit court's decision to exclude Dr. Caplan deferentially, and we will not reverse the circuit court simply because we might not have made the same ruling. *Levitas v. Christian*, 454 Md. 233, 243 (2017); *Matthews*, Slip Op. at 25. Rather, to warrant reversal, the circuit court's decision "must be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Matthews*, Slip Op. at 25. The circuit court here was within the bounds of its discretion in finding that Dr. Caplan both lacked an

adequate supply of data on which to base his opinions and employed an unreliable methodology in calculating IQ loss. We address each subfactor in turn below.

A. Adequate Supply of Data

As noted above, much of the data available to Dr. Caplan regarding Johnson's exposure to lead-based paint and resulting injury was disputed by the parties at the motions stage.

First, the parties disputed whether there was any lead-based paint at East North Avenue at the relevant time. Oglesby presented evidence of two tests conducted in 2011 and 2012: one that revealed lead-based paint on several common area surfaces as well as inside a nearby apartment; and a second that revealed lead-based paint on more than eighty surfaces throughout accessible areas of the building's interior and exterior. As BSA pointed out, however, these tests were not conducted until ten years after Oglesby moved out of East North Avenue and neither one indicates that surfaces within Apartment 202 itself were tested or contained lead. Oglesby also relied on other circumstantial evidence, including records establishing that the school building was originally constructed in 1890 when lead-based paint was commonly used, that Apartment 202 was not certified lead-free, and that BSA purchased lead hazard insurance for the building, including for Apartment 202. Moreover, Oglesby identified that other children who lived in the building around the same time were also diagnosed with lead poisoning. BSA countered this circumstantial evidence by arguing that there was no *direct* evidence of lead in Apartment 202, and that there were

other possible sources of Oglesby's lead exposure.[6] The evidence on this first point was, thus, hotly contested.

Second, the parties disputed whether Oglesby was exposed to any lead that may have been present at East North Avenue through contact with deteriorated paint. Oglesby relied primarily on deposition testimony from her mother that there was peeling, chipping paint throughout the common areas of the building from the time she moved in, as well as peeling paint inside Apartment 202 itself after six or seven months. Oglesby also relied on deposition testimony taken in two separate cases, in which another resident and regular visitor both attested to peeling paint in the East North Avenue building. BSA countered by pointing to annual inspection records from December 1998, October 1999, and October 2000, each of which indicated that there were no problems with the condition of Apartment 202, and which Oglesby's mother signed. An additional inspection record from October 2001, however, indicated that Apartment 202 was "unsanitary and "need[ed] rehab" throughout. BSA additionally argued that even if there was peeling paint, Oglesby wasn't exposed to it because "the landlord" repainted the interior common areas and a windowsill in Oglesby's apartment roughly one year after the family moved in, and Oglesby's mother testified that she didn't allow the children to go into the areas of Apartment 202 with

[6] BSA specifically mentions as other possible sources of exposure the properties Oglesby lived in both before and after she lived in Apartment 202 at East North Avenue, as well as her uncle's home, where she spent weekends "once or twice a month" and where her cousins later claimed they were exposed to lead. Oglesby, in turn, counters that there was no direct evidence presented that there was lead in any of these other properties, and that even if there was, she could not have been exposed because, as her mother testified, there was no peeling paint in any of the other homes.

peeling paint. Moreover, BSA argued, Oglesby's mother testified that although her children played in the hallways where there was undisputedly peeling, chipping paint, she never observed Oglesby touching any of the peeling paint or putting it in her mouth. The evidence on this second contested point was, thus, also hotly contested.

Third, the parties disputed whether Oglesby suffered any injury from exposure to lead while living at East North Avenue. To establish injury, Oglesby relied on a combination of her elevated blood lead levels around the time she lived in Apartment 202,[7] her mother's deposition testimony, and the report of her expert witness, Dr. Hawkins-Heitt. Oglesby's mother testified that Oglesby was diagnosed with a "learning disability" and Attention Deficit Hyperactivity Disorder (ADHD) as a child and "had an [Individualized Education Plan (IEP)]" at school. Oglesby's mother also described Oglesby as having "an anger and temper problem to this day." Dr. Hawkins-Heitt conducted a neuropsychological evaluation of Oglesby and concluded in her report that Oglesby suffered cognitive impairment or deficiency in multiple areas. BSA countered by pointing to the fact that Oglesby's limited medical records contain no diagnoses, that no educational records were offered as evidence, and that Oglesby herself denied having any long-standing problems with focus and attention, any active illnesses, or any psychiatric problems such as depression. Again, the supply of data with respect to Oglesby's injury was hotly contested.

[7] The record indicates that Oglesby's blood lead levels were tested three times: first, roughly four months after she moved into Apartment 202, at which time Oglesby's blood lead level measured 2 micrograms per deciliter (μg/dL); second, roughly four months after moving out of Apartment 202, when her blood lead level measured 5.5 μg/dL; and third, more than two years later, when Oglesby's blood lead level measured 4 μg/dL.

The circuit court found these three supplies of disputed data—whether there was lead present at East North Avenue; whether Oglesby came into contact with lead through peeling or chipping paint; and whether she suffered injury from any exposure there—inadequate to form the basis of Dr. Caplan's opinions, and, as a result, excluded his expert testimony. On appeal, our view is that these disputes made for a close question. Dr. Caplan had more, and clearer, data to work with here than he did in *Johnson*, where it was unclear if, and when, Johnson spent substantial time at the relevant property. *Johnson v. Balt. School Assocs.*, No. 1248, Sept. Term, 2020, Slip Op. at 1 n.2 (unreported opinion) (filed July 8, 2022). Here, it is at least clear that Oglesby lived at East North Avenue for almost three years, and a different trial judge may have viewed the totality of the evidence differently. Given the disputed nature of the evidence regarding the presence of lead in Apartment 202, the disputed nature of the evidence regarding Oglesby's exposure to peeling paint, and the disputed nature of the evidence regarding any injury suffered as a result—combined with our deferential standard of review based on *Levitas*, *Rochkind II*, and *Matthews*, *see supra* pp. 4-7 and n.5—however, we cannot say that the circuit court abused its broad discretion in finding that Dr. Caplan lacked an adequate supply of data.[8]

[8] To be explicit, the standard of review may well be outcome determinative. Were we reviewing the evidence *de novo*, we might well have found the supply of data adequate to support Dr. Caplan's opinions, such that any dispute of fact would be grounds for cross-examination, rather than exclusion. *See Rochkind II*, 471 Md. at 38 (citing *Daubert*, 509 U.S. at 596) ("Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.").

We, therefore, affirm the circuit court's decision to exclude his testimony on the basis of this first subfactor.[9]

B. Reliable Methodology[10]

The circuit court also found Dr. Caplan's testimony inadmissible on the basis of the second subfactor: because he failed to use a reliable methodology to estimate Oglesby's alleged IQ loss. As the Court of Appeals has explained:

> To satisfy this prong, an expert opinion must provide a sound reasoning process for inducing its conclusion from the factual data and must have an adequate theory or rational explanation of how the factual data led to the expert's conclusion. We have explained that for an opinion to assist a trier of fact, the trier of fact must be able to evaluate the reasoning underlying that opinion. Thus, conclusory statements of opinion are not

[9] We note here that our review of the record was made more complicated by the inclusion in the Record Extract of multiple, redundant copies of witness depositions, expert witness reports, medical and housing records, academic studies, and the transcript of the proceedings below. We direct counsel's attention to the Rule governing production of the Record Extract. That Rule requires that "[d]ocuments and excerpts of a transcript of testimony presented to the trial court more than once shall be reproduced in full *only once* in the record extract." MD. R. 8-501(i) (emphasis added). The 1,858-page Record Extract provided in this case, however, did not comply with the Rule. Such redundant designation not only fails to assist this Court, but also imposes undue costs on the parties and may, in the future, result in sanctions. MD. R. 8-501(m), 8-608.

[10] Because this case was argued and decided at the circuit court level when *Frye-Reed* was still applicable, *see supra* pp. 5-7, the parties argued in terms of both whether Dr. Caplan's opinion was "reliable" under Rule 5-702 and whether it was shown to be "generally accepted" within his field. *Reed*, 283 Md. at 381. Although, "[g]eneral acceptance remains an important consideration in the reliability analysis," it is no longer "the *sole* consideration." *Rochkind II*, 471 Md. at 30. Thus, we focus our analysis on the question of reliability, and not explicitly on the language of general acceptance. *See Matthews*, Slip Op. at 33 (assessing the trial court's reliability determination).

> sufficient—the expert must be able to articulate a reliable methodology for how she reached her conclusion.

Rochkind v. Stevenson, 454 Md. 277, 287 (2017) ("*Rochkind I*") (cleaned up).

Here, Dr. Caplan's methodology for calculating that Oglesby suffered a loss of "about 3 to 4 IQ points" as a result of her exposure to lead relied on two studies: the Canfield study[11] and the Lanphear study.[12] These studies have been frequently relied upon in previous lead paint cases, and Maryland courts have repeatedly held "that a properly qualified expert witness can rely on the Lanphear Study methodology, as well as other accepted scientific research, as a factual basis for an opinion that a plaintiff's elevated [blood lead levels] caused the loss of a specific number of IQ points." *Sugarman v. Liles*, 460 Md. 396, 434 (2018); *see also Roy v. Dackman*, 445 Md. 23, 51 n.16 (2015) (accepting expert testimony based, in part, on Lanphear study); *Levitas*, 454 Md. at 254-55 (same). As the circuit court explained here, however, its quarrel with Dr. Caplan's methodology was not that he relied on these studies, but that he used them in a way that was "directly

[11] Richard L. Canfield, Charles R. Henderson Jr., Deborah A. Cory-Slechta, Christopher Cox, Todd A. Jusko, and Bruce P. Lanphear, *Intellectual Impairment in Children with Blood Lead Concentrations Below 10 µg per Deciliter*, 348 NEW ENG. J. MED. 1517 (2003).

[12] Bruce P. Lanphear, Richard Hornung, Jane Khoury, Kimberly Yolton, Peter Baghurst, David C. Bellinger, Richard L. Canfield, Kim N. Dietrich, Robert Bornschein, Tom Greene, Stephen J. Rothenberg, Herbert L. Needleman, Lourdes Schnaas, Gail Wasserman, Joseph Graziano, and Russell Roberts, *Low-Level Environmental Lead Exposure and Children's Intellectual Function: An Intermediate Pooled Analysis*, 113 ENVTL. HEALTH PERSPECTIVES 894 (2005).

and expressly contradictory to that which he … identifies as generally accepted," and that he "offer[ed] no explanation" for his methodology.

The circuit court did not specify with which part of Dr. Caplan's application of the Canfield and Lanphear studies it took issue, but BSA presented several methodological problems that the circuit court could have believed. *First*, BSA argued that Dr. Caplan incorrectly calculated Oglesby's average blood lead level by simply adding up each test result and dividing by the number of tests. This was an improper methodology, BSA argued, because the calculation must also consider the age span of the tests. Canfield, *supra* note 11, at 1518 (describing methodology). *Second*, BSA argued that Dr. Caplan improperly drew causal inferences between Oglesby's elevated blood lead levels and her IQ loss, even though both studies say that "it is not possible to draw causal inferences from these findings." Canfield, *supra* note 11, at 1523; *see also* Lanphear, *supra* note 12, at 898 ("The observational design of this study limits our ability to draw causal inferences."). And *third*, BSA argued that Dr. Caplan improperly extrapolated a *linear* relationship between Oglesby's blood lead level and IQ loss despite that the Canfield study explicitly states that "the relation between children's IQ score and their blood lead concentration is *nonlinear*." Canfield, *supra* note 11, at 1521-22 (emphasis added). Oglesby countered by arguing that Dr. Caplan's methodology for calculating IQ loss was the same as that employed by experts, and approved by the Court of Appeals, in previous cases like *Levitas*, 454 Md. 233; and that any dispute about his precise calculations should go to the weight, rather than

the admissibility of his testimony, and as such was more properly the "grist for cross-examination."

After a close review of the Canfield and Lanphear studies and the case law approving them, we cannot say whether we, in the first instance, would find Dr. Caplan's methodology consistent or inconsistent with the studies' directives or other previously sanctioned expert testimony.[13] Again, given our deferential standard of review, however, *see supra* pp. 4-7, we can say that the circuit court was within the bounds of its discretion in finding Dr. Caplan's methodology—that is, his application of Oglesby's facts to the Canfield and Lanphear studies—unreliable. We, therefore, affirm the circuit court's decision to exclude Dr. Caplan's testimony on this ground.[14]

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[13] By way of example, we note that while the Canfield study appears to have taken time into consideration when calculating average blood lead level (a methodology referred to in the study as computing the "area under the curve"), the Lanphear study appears to have simply used "mean blood lead rather than area under the curve." At best, the record is unclear, and a different trial judge could have viewed this methodology and reasonably come to the opposite conclusion.

[14] We note here that the arguments regarding Dr. Caplan's methodology were confined to his calculation of Oglesby's IQ loss. After the circuit court issued its ruling excluding Dr. Caplan's testimony, Oglesby sought to clarify that Dr. Caplan would still be allowed to opine that East North Avenue was a substantial contributing factor to bringing about her elevated blood lead levels and that Oglesby suffered other, neuropsychological injuries apart from specific IQ loss. The circuit court explained that "because of the factual issues in … the [case]," Dr. Caplan was "precluded from giving *any* opinion testimony … based on the information gathered in [the case.]" (Emphasis added). That is, the circuit court ruled that because Dr. Caplan was excluded both because of his inadequate supply of data and because of his methodology, it was excluding his testimony entirely. Given the disputed nature of the facts supporting these opinions, *see supra* section I.A., we cannot say that this ruling was error.

II. SUMMARY JUDGMENT

Having first determined that Dr. Caplan's expert testimony was inadmissible, the circuit court then found that Oglesby could not make out a *prima facie* case for negligence and granted summary judgment for BSA. Summary judgment is appropriate when there is no genuine dispute as to any material fact, and the moving party is entitled to judgment as a matter of law. MD. R. 2-501(f). One way to survive summary judgment in a lead paint negligence action is to show that (1) the defendant violated a statute or ordinance designed to protect a specific class of persons which includes the plaintiff, and (2) the violation proximately caused the injury complained of. *Hamilton v. Kirson*, 439 Md. 501, 524 (2014) (citing *Brooks v. Lewin Realty III, Inc.*, 378 Md. 70, 79 (2003)). Viewing, as we must, the record in the light most favorable to Oglesby, *see Brooks ex rel. Wright*, 411 Md. at 615 n.6, we conclude that Oglesby presented sufficient evidence to raise a dispute of material fact as to the first, but not the second, required showing. We, therefore, affirm the circuit court's grant of summary judgment, addressing each required showing in turn.

A. Statutory Violation

Oglesby identified the relevant statutory violations as those of the Baltimore City Code, which requires that lead-paint hazards be abated and that residences be kept free of peeling, chipping, or flaking paint.[15] As the Court of Appeals has explained, these provisions "were clearly enacted to prevent lead poisoning in children. Therefore, [a

[15] Oglesby's complaint relied upon HOUSING CODE, BALTIMORE CITY CODE (1976), Art. 13, §§ 702, 703, & 706; as well as the Maryland Reduction of Lead Risk in Housing Act, MD. CODE, ENVIRONMENT §§ 6-815 & 6-817.

plaintiff alleging exposure to lead-based paint] ... is in the class of people intended to be protected by the Housing Code, and [that person's] injury, lead poisoning, is the kind of injury intended to be prevented by the Code." *Kirson*, 439 Md. at 525 (quoting *Brooks*, 378 Md. at 89). Thus, to make out a *prima facie* case, Oglesby only needed to show that there was peeling, chipping, or flaking paint in East North Avenue. *Id.*[16] At the motions stage, there was contradictory evidence about the condition of the paint in Apartment 202 and the building as a whole. For example, Oglesby's mother testified, and BSA did not dispute, that there was peeling or chipping paint throughout interior common areas and the exterior from the time she moved in. Oglesby's mother, however, did not recall having any issues with peeling or chipping paint *inside* Apartment 202 until six or seven months after she moved in. BSA countered Oglesby's mother's testimony by pointing to the annual inspection records from December 1998, October 1999, and October 2000, which indicated that there were no issues with the condition of Apartment 202. An additional inspection record from October 2001, however, indicated that the unit was "unsanitary" and "need[ed] rehab" throughout. Viewing this evidence in the light most favorable to Oglesby, as the non-moving party, *Brooks ex rel. Wright*, 411 Md. at 615 n.6, we assume the truth of her mother's testimony that there was peeling, chipping paint in Apartment 202. We, therefore,

[16] In Maryland, there is no requirement that the landlord must have had notice of the violation. The violation itself is evidence enough to establish a *prima facie* case for negligence. *Brooks*, 378 Md. at 72.

conclude that Oglesby presented sufficient evidence to make a *prima facie* case for violation of a statute designed to protect a class of persons that included her.[17]

B. Causation

Having established a statutory violation, Oglesby must next show that the violation was a proximate cause of her injuries. *Kirson*, 439 Md. at 526. The Court of Appeals has described the causation element as requiring a plaintiff to establish three links in a chain: (1) that the property contained lead-based paint that was a source of the plaintiff's exposure ("source"); (2) that the lead-based paint at the property was a reasonably probable source of the plaintiff's elevated blood lead levels ("source causation"); and (3) that the elevated blood lead levels are a cause of the plaintiff's injuries ("medical causation"). *Ross v. Housing Auth. of Balt. City*, 430 Md. 648, 668 (2013). The circuit court found that Oglesby could not establish causation but did not specify whether this was based on failure to establish one, two, or all three links in the chain. Because we conclude that without Dr. Caplan's testimony, Oglesby cannot establish the third link, medical causation, we need not reach the questions of whether she can establish the first and second links, source and source causation.

[17] Here, the difference in appellate standards of review discussed above, *see supra* pp. 4-8, becomes most acute. Oglesby put forward the same evidence of deteriorated paint to establish the basis of Dr. Caplan's opinions as she did to oppose the grant of summary judgment. Even though we find that the circuit court erred, as a matter of law, in finding these facts insufficient to raise a material dispute of fact regarding a statutory violation, we can, at the same time, also hold that the circuit court did not abuse its discretion in finding that these same facts were insufficient to form the basis of Dr. Caplan's opinions.

The third link, medical causation, "encompasses both general and specific causation—whether lead can generally cause certain injuries, and whether that exposure did cause [the plaintiff's] injuries." *Liles*, 460 Md. at 416. Expert testimony, though not required to establish the first two links in the chain of causation, may well be necessary to establish this third link. *Ross*, 430 Md. at 668 ("Expert opinion testimony could be helpful in establishing any of the links and might sometimes be essential in proving the second and third links."). It is, in fact, difficult to imagine how this third link could be established without the aid of expert testimony. The connection between an elevated blood lead level and cognitive or neuropsychological injury is not "within the understanding of the average layperson," and without expert testimony, "the trier of fact would not … be able to reach a rational conclusion" from the evidence. *See State v. Galicia*, ____ Md. ____, No. 5, Sept. Term, 2021, Slip Op. at 53-54 (June 27, 2022). *See also* MD. R. 5-702 ("Expert testimony may be admitted … if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue."). Here, Dr. Caplan was Oglesby's sole witness as to medical causation. Without his testimony, there is no evidence linking Oglesby's elevated blood lead levels to any of her alleged injuries. Even viewing the record in the light most favorable to Oglesby and construing any reasonable inferences that may be drawn from the facts against BSA, *Brooks ex rel. Wright*, 411 Md. at 615 n.6, Oglesby cannot connect her exposure to lead at East North Avenue to her alleged cognitive impairments. Having excluded Dr. Caplan, the circuit court, therefore, did not err in granting summary judgment for BSA.

CONCLUSION

We hold that the circuit court did not abuse its discretion in excluding Dr. Caplan's expert testimony on the grounds that he lacked a sufficient factual basis for his opinions. Once Dr. Caplan's testimony was excluded, Oglesby was unable to establish medical causation. As a result, Oglesby failed to make a *prima facie* case for negligence sufficient to survive summary judgment. We, therefore, affirm the circuit court's grant of summary judgment for BSA.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.