Circuit Court for Prince George's County
Case No. CAL 21-08934

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 546

September Term, 2024

METRO INVESTIGATION AND
RECOVERY SOLUTIONS, INC.

v.

JUAN PINEDA-LOPEZ

Graeff,
Berger,
Kehoe, Christopher
(Senior Judge, Specially Assigned),
JJ.

Opinion by Kehoe, Christopher, J.

Filed: June 2, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Juan Pineda-Lopez filed a civil action against Metro Investigation and Recovery Solutions, Inc. ("Metro") seeking compensation for injuries incurred in a motor vehicle accident. After a trial in the Circuit Court for Prince George's County, the Honorable Cathy H. Serrette, presiding, the jury returned a verdict in favor of Mr. Pineda-Lopez and awarded him $500,000 in damages.

On appeal, Metro presents two questions:

> 1. Whether the trial court's grant of [Mr. Pineda-Lopez's] Motion in Limine to preclude evidence of [his] medical bills at trial, when that Motion was previously denied twice by another judge, was an abuse of discretion warranting a new trial.
>
> 2. Whether the trial court's error in precluding the impeachment testimony of private investigator, Dean Jefferis, due to an alleged discovery violation was an abuse of discretion warranting a new trial.

We will affirm the judgment of the circuit court.

BACKGROUND

On August 21, 2017, an employee of Metro was driving a company-owned truck southbound in the left lane of Allentown Road — a two-way, four-lane divided highway with two lanes in each direction and double yellow lines dividing the opposing lanes. The truck driven by the Metro employee crossed over the double yellow lines, and collided head-on with Mr. Pineda-Lopez's vehicle. The accident occurred in Prince George's County.

A passenger in Mr. Pineda-Lopez's vehicle was taken by ambulance from the scene to a nearby hospital. Mr. Pineda-Lopez was also injured but did not immediately seek

medical treatment. But later that day, Mr. Pineda-Lopez's spouse took him to the emergency room at Southern Maryland Hospital Center where he was treated and released.

About three weeks after the accident, Mr. Pineda-Lopez saw a chiropractor, Amir Arasta, D.C., who treated him for back and leg pain arising out of the accident. Dr. Arasta treated Mr. Pineda-Lopez for approximately three months. The medical bills totaled $7,424.

Mr. Pineda-Lopez filed a civil action against Metro. He did not seek reimbursement for the damage to his vehicle or for his medical expenses. His sole claim was for non-economic damages to reimburse him for past and future pain and suffering that were the consequences of the injuries caused by the accident.

Metro admitted that its employee had caused the accident and that the employee had been operating the vehicle within the scope of his employment. With those concessions, there were two contested issues at trial: whether Mr. Pineda-Lopez's back and leg pain was causally related to the accident and, if so, the amount of damages.

Prior to trial, Mr. Pineda-Lopez filed a motion in limine to prevent Metro from introducing evidence of his medical expenses. A motions judge denied the motion and then denied Mr. Pineda-Lopez's motion for reconsideration. On the first day of trial, Mr. Pineda-Lopez renewed his motion, and the trial court granted it. Metro argues that the trial court erred in doing so. We will discuss this in Part I of our analysis.

At trial, the following fact witnesses testified: Mr. Pineda-Lopez; Blanca Escobar, who was Mr. Pineda-Lopez's spouse; sixteen-year-old Susan Escobar, one of their children; and Carlos Paredes, who was a friend of Mr. Pineda-Lopez and who had been a co-worker with him for several years after the accident. All these individuals testified that Mr. Pineda-Lopez has suffered from significant back pain since the accident.

Michael Franchetti, M.D. was an important witness in Mr. Pineda-Lopez's case. Dr. Franchetti is a board-certified orthopedic surgeon who had been practicing in Maryland for thirty-seven years at the time of trial. At the request of Mr. Pineda-Lopez's attorney, Dr. Franchetti conducted an independent medical evaluation ("IME") of Mr. Pineda-Lopez. Before trial, the parties conducted an audio-video *de bene esse* deposition of Dr. Franchetti. He testified that the accident caused Mr. Pineda-Lopez to suffer from "a chronic lumbosacral strain with a clinical right lumbar radiculopathy[,]" that is, a chronic "injury to the ligaments, muscles, and joints, in . . . the low back with . . . objective sciatic nerve injury" resulting from the accident. Dr. Franchetti testified that the injury would cause pain to Mr. Pineda-Lopez for the rest of his life. On cross-examination, Dr. Franchetti testified that Mr. Pineda-Lopez's medical bills were reasonable. Portions of the video of the deposition were exhibited to the jury. However, as a result of the trial court's disposition of a motion in limine that we will discuss in Part I of our analysis, Dr. Franchetti's testimony regarding Mr. Pineda-Lopez's medical expenses was not presented to the jury.

During its case, Metro called Dr. Arasta as a witness. He testified that Mr. Pineda-Lopez had gradually improved in response to his treatments. Additionally, Metro called Dean Jefferis, a private investigator hired by Metro to surveil Mr. Pineda-Lopez. Mr. Jefferis videotaped Mr. Pineda-Lopez at work and prepared a written report of his investigation. When Mr. Jefferis referenced his report during his testimony at trial, Mr. Pineda-Lopez's counsel objected because the report had not been disclosed in discovery. After a bench conference, the trial court sustained the objection and excluded Mr. Jefferis's testimony as a sanction for the discovery violation. Metro contends that this ruling was erroneous. We shall discuss this issue in Part II of our analysis.

ANALYSIS

I. The Trial Court's Grant of the Motion in Limine

Prior to trial, Mr. Pineda-Lopez filed a motion in limine to preclude Metro from introducing evidence as to the amount of his medical expenses incurred as a result of the accident. The motion stated in pertinent part:

> Plaintiff is not and has not claimed as damages the amount of Plaintiff[']s lost wages and medical expenses that [he] incurred for the care and treatment of the injuries caused by the August 21, 2020 motor vehicle collision in the case. While there will be evidence of the injuries and medical care and treatment that Plaintiff received after the collision, he will be seeking only past, present, and any future non-economic damages.

In addition to other authority, Mr. Pineda-Lopez cited *Wright v. Hixon*, 42 Md. App. 448, 456 (1979), which states in pertinent part:

> [T]he appellant contends that the trial judge erred in not permitting [him] to offer into evidence the medical bills received from the attending physician to corroborate the extent of his pain and suffering. We find no merit in this contention. We see no relevance in the submission of a bill for services submitted by a physician to the severity of appellant's pain and suffering.

The motion was denied. Mr. Pineda-Lopez then filed a motion for reconsideration, which was also denied.[1]

On the morning of the first day of trial, Mr. Pineda-Lopez asked the trial court to revisit the motions court's rulings denying the motion in limine. The court agreed to do so. After listening to argument by counsel, the court stated:

> THE COURT: Counsel [for Metro], I guess I -- the problem I am having is this. The case law clearly says the bills are not relevant. Right? I mean that is what -- that is what . . . Wright versus Hixon says, 42 Maryland App 448.

* * *

[1] For context, we provide a timeline of the relevant filings and orders:

December 6, 2023: Mr. Pineda-Lopez filed a motion in limine to exclude evidence of medical bills.

December 21, 2023: Metro filed an opposition to the motion.

January 8, 2024: The motions court denied the motion in limine.

January 31, 2024: Mr. Pineda-Lopez filed a motion for reconsideration.

February 12, 2024: Mr. Pineda-Lopez conducted Dr. Franchetti's *de bene esse* deposition.

February 15, 2024: Metro filed an opposition to the motion for reconsideration.

February 21, 2024: The motions court denied the motion for reconsideration.

February 26, 2024: The first day of trial.

> [W]e don't decide what is coming in and out of trials based on the fact that somebody during discovery thought they might do something, if they are not going to do it.
>
> So if they are not asking for anything but non-economic damages, then they are not relevant. If they are going to put in testimony about that, then they could be relevant. So I guess my question to [Mr. Pineda-Lopez's counsel], is if you are telling me there is not going to be any evidence about anything but for pain and suffering and non-economic damages, then I would reconsider [the in limine] ruling[.]
>
> If there is going to be some evidence of that, then obviously it would be permissible.
>
> [MR. PINEDA-LOPEZ'S COUNSEL]: There will be absolutely no evidence about economic damages.
>
> * * *
>
> THE COURT: Okay. We will break for lunch. I will do further research and I will give you a ruling when I get back.

When trial resumed, the court stated:

> THE COURT: Okay. Welcome back everybody. . . . As per the request for preclusion of the evidence regarding the medical bills, . . . this Court finds [from] the case law has provided and from what I have heard from counsel, [that] there is no relevance of the bills as to the issue of the appellant's pain and suffering. So I will preclude them from entry into evidence.
>
> And note parenthetically that because the pre-trial judge doesn't preemptively preclude something, doesn't mean that the trial judge will not preclude it.

Metro asserts that the trial court abused its discretion by granting the motion in limine for two reasons. First, it argues that the trial court's grant of the motion in limine on the first day of trial unfairly prejudiced Metro by disrupting its trial strategy. Second, Metro argues that Mr. Pineda-Lopez failed to comply with provisions of Md. Rule 2-416 as that

rule pertained to his *de bene esse* deposition of Dr. Franchetti. We will deal with these contentions separately.

A. The Motion In Limine

The parties' appellate contentions as to relevancy of evidence of Mr. Pineda-Lopez's medical bills to his claim for non-economic damages involve two issues. The first is whether the evidence is relevant to his claim pursuant to Md. Rule 5-401. "The determination of whether evidence is relevant is a matter of law, to be reviewed *de novo* by an appellate court." *DeLeon v. State*, 407 Md. 16, 20 (2008); *see also Williams v. State*, 457 Md. 551, 563 (2018). In reviewing a trial court's ruling on a motion in limine regarding the admissibility of evidence, "we are generally loath to reverse a trial court unless the evidence was plainly improperly admitted or excluded under law, or there is a clear showing of an abuse of discretion." *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 202 Md. App. 307, 337 (2011) (cleaned up), *aff'd*, 429 Md. 387 (2012). A court abuses its discretion "when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles, or when the ruling is clearly against the logic and effect of facts and inferences before the court." *Gizzo v. Gerstman*, 245 Md. App. 168, 201 (2020).

Metro contends that the trial court's grant of the motion in limine on the first day of trial unfairly prejudiced Metro by disrupting its trial strategy. Metro asserts that it had relied on the pre-trial ruling on the motion in limine in developing its trial strategy in general and, in particular, its strategy for cross-examining Dr. Franchetti, including his

opinion that Mr. Pineda-Lopez's medical bills were reasonable.[2] Metro states that it had intended to offer Mr. Pineda-Lopez's medical bills into evidence to provide a factual basis for its intended argument to the jury that the modest amount of Mr. Pineda-Lopez's medical bills should result in a correspondingly modest award of damages. When the trial court granted the motion in limine, however, the trial court ruled that evidence of Mr. Pineda-Lopez's medical bills was inadmissible and further ordered the parties to redact Dr. Franchetti's deposition testimony to delete his discussion of Mr. Pineda-Lopez's medical bills. Crying foul, Metro asserts that it was "severely and unfairly prejudiced" by the trial court's ruling:

> Before the morning of the first day of trial, the issue of whether Plaintiff's medical bills were to be excluded at trial had been decided not once, but twice. Metro relied upon the pre-trial rulings as it developed its trial strategy and its strategy for cross examining Plaintiff's sole expert on damages, Dr. Franchetti, during his videotaped deposition for trial. Based upon the prior rulings, Metro elicited testimony from Dr. Franchetti related to his opinions on the reasonableness of the medical bills incurred by the Plaintiff. Metro intended to offer Plaintiff's medical bills into evidence during trial. However, on the first day of trial, and to the surprise and prejudice of Metro, Plaintiff was permitted to submit argument and have his Motion in Limine heard for a third time.
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> * * *
>
> [In the motion in limine hearing,] the trial court was presented with no new information or evidence when it vacated the two prior orders related to Plaintiff's Motion in Limine. Instead, Metro elaborated on its arguments

[2] Dr. Franchetti was deposed on February 12, 2024. The circuit court denied Mr. Pineda-Lopez's motion in limine to exclude evidence of the medical bills on January 8, 2024.

> found in its Opposition to Plaintiff's Motion for Reconsideration and explained to the trial court how it elicited the testimony about Plaintiff's medical bills from Dr. Franchetti[.]
>
> * * *
>
> The surprise decision to vacate two pre-trial orders on the morning of the first day of trial deprived Metro of the ability to develop a new trial strategy related to Plaintiff's claim for damages and unfairly prejudiced Metro.
>
> * * *
>
> As such, by failing to follow established principles on relevance,[3] and by vacating two prior pre-trial orders related to the admission of Plaintiff's medical bills at trial, the trial court not only erred, it abused its discretion prejudicing Metro. Such abuse, prejudice, and error require a new trial.

(Footnote omitted.)

In support of its contentions, Metro directs us to *Charles Riley, Jr. Revocable Trust v. Venice Beach Citizens Ass'n, Inc.*, 487 Md. 1, 22 (2024). Metro asserts that "[i]n *Riley*, the Supreme Court of Maryland held that the trial court abused its discretion when it vacated a prior order granting partial summary judgment." Metro asks us to apply the Court's reasoning in *Riley* to the present case and to hold that the trial court abused its discretion when it granted Mr. Pineda-Lopez's motion in limine on the first day of trial. Metro's contentions are not persuasive for several reasons.

First, an implicit but necessary premise of Metro's argument is that evidence of Mr. Pineda-Lopez's medical bills was relevant to his claim for damages. This certainly can be

[3] Metro does not identify what "established principles on relevance" were ignored by the trial court.

so when a plaintiff seeks compensation for past medical expenses. But when a plaintiff does not ask for reimbursement for those expenses, evidence of medical expenses is irrelevant. This issue was raised and resolved by this Court in *Wright*, 42 Md. App. at 456:

> [T]he appellant contends that the trial judge erred in not permitting [him] to offer into evidence the medical bills received from the attending physician to corroborate the extent of his pain and suffering. We find no merit in this contention. We see no relevance in the submission of a bill for services submitted by a physician to the severity of appellant's pain and suffering.

In the present case, Mr. Pineda-Lopez asserted to the motions court and to the trial court that he was not seeking to recover his medical expenses. The trial court did not err when it concluded that evidence of Mr. Pineda-Lopez's medical bills was not relevant to his claim against Metro.

Second, the trial court clearly had the authority to revisit the prior court orders denying the motion in limine. Md. Rule 2-602 states:

> **Judgments not disposing of entire action**
>
> (a) **Generally. —** Except as provided in section (b) of this Rule,[4] an order or other form of decision, however designated, that adjudicates fewer than

[4] Md. Rule 2-602(b) states:

> (b) **When allowed**. If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment:
>
> (1) as to one or more but fewer than all of the claims or parties; or

(Footnote Continued . . . .)

> all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action:
>
> (1) is not a final judgment;
>
> (2) does not terminate the action as to any of the claims or any of the parties; and
>
> (3) *is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties*.
>
> (b) **When allowed.** — If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment:
>
> (1) as to one or more but fewer than all of the claims or parties; or
>
> (2) pursuant to Rule 2-501(f)(3), for some but less than all of the amount requested in a claim seeking money relief only.

(Emphasis added.)[5]

"A claim is defined as a substantive cause of action that encompasses all rights arising from common operative facts." *Waterkeeper All., Inc. v. Md. Dep't of Agric.*, 439 Md. 262, 279 (2014) (cleaned up). The only claim asserted by Mr. Pineda-Lopez in this action was for damages to compensate him for the pain and suffering that he asserts he

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> (2) pursuant to Rule 2-501(f)(3), for some but less than all of the amount requested in a claim seeking money relief only.

Md. Rule 2-602(b) applies only in cases "where [the trial court] has made a ruling that disposes of one entire claim or of all claims against a party." Kevin F. Arthur, FINALITY OF JUDGMENTS AND OTHER APPELLATE TRIGGER ISSUES 69 (3d ed. 2018). The trial court's grant of the motion on limine disposed of no claims.

[5] Metro does not cite Md. Rule 2-602 in its briefs.

has experienced and will continue to experience because of the injuries he received in the accident. The pre-trial court's rulings that denied his motion in limine did not adjudicate his claim in whole or in part. For this reason, the pre-trial court's rulings were "subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties." Md. Rule 2-602(a)(3); *see also Gertz v. Anne Arundel County*, 339 Md. 261, 272-73 (1995) ("Maryland Rule 2-602(a) makes clear that an order that does not adjudicate all of the claims in an action, or that adjudicates less than an entire claim . . . is not a final judgment and may be revised at any time before the entry of a final judgment.").[6]

Because Mr. Pineda-Lopez had made it clear in his motion in limine that he was not seeking reimbursement for his medical expenses, the pre-trial court's rulings denying his motions were erroneous. The trial court's decision to reconsider the motion in limine was authorized by Md. Rule 2-602(a)(3), and the court's ultimate decision to grant the motion was consistent with the holding of this Court in *Wright v. Hixon.*

[6] *Gertz* does not stand alone. *See, e.g.*, *Rohrbeck v. Rohrbeck*, 318 Md. 28, 44 (1989) (Until there is a final judgment, "under Rule 2-602, all prior rulings remain[] interlocutory and subject to revision[.]"); *Bennett v. Ashcraft & Gerel, LLP*, 259 Md. App. 403, 457 (A court order that is not a final judgment is "an interlocutory order that the court was free to revise and reconsider at any time before the entry of a final judgment."), *reconsideration denied* (Nov. 30, 2023), *cert. denied*, 486 Md. 246 (2023), and *cert. denied*, 487 Md. 51 (2024); *see also* Arthur, *supra*, at 8 ("By its nature, an interlocutory ruling—that is, anything short of a final judgment—is subject to revision by the circuit court at any time before the entry of final judgment.").

All of this notwithstanding, Metro directs us to *Charles Riley, Jr. Revocable Tr. v. Venice Beach Citizens Ass'n, Inc*., 487 Md. 1 (2024), as authority for its contention that the trial court abused its discretion by addressing the motion in limine. We read *Riley* differently.

Riley was a factually and procedurally complicated case. The parts of the case that are relevant to Metro's appellate contentions involved a dispute between the Charles Riley, Jr., Revocable Trust and Bay Pride, LLC (collectively "Riley") and the Venice Beach Citizens Association (the "Association"), over the Association's claim that its members had the right to access two waterfront parcels owned by Riley. At a relatively early stage in the litigation, the circuit court granted Riley's motion for summary judgment as to one of the parcels. 487 Md. at 8. On the day of trial as to the second parcel, the trial court *sua sponte* vacated the judgment as to the first parcel and eventually ruled in the Association's favor as to both parcels even though neither party presented evidence or argument regarding the first parcel. *Id.* at 12–13. At no time did the trial court explain the reasons for its rulings. *Id.*

The issue in *Riley* that is relevant to Metro's contentions in the present case was whether the trial court erred when it vacated the order of the court granting summary judgment in Riley's favor as to the first parcel. Writing for the majority in *Riley*, Justice Gould explained:

> We begin with a recognition that, *as a general principle, 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 his discretion, may*

> *ordinarily consider the matter de novo*. This principle finds expression in Maryland Rule 2-602(a), which gives the circuit court limited discretion to enter a final appealable judgment on orders that partially resolve a case. A court's decision to vacate its prior order is reviewed for an abuse of discretion[.]
>
> * * *
>
> *The breadth of the court's discretion depends on context*. . . . The general rule allowing courts to reconsider prior rulings without deference is inapplicable if a statute or rule reflects a different intent in a particular situation. That exception applies here: *The court's discretion to modify a partial summary judgment order is informed by Maryland Rule 2-501 and its animating principles*.

Id. at 16–17 (emphasis added) (cleaned up).

In our view, the Court's reasoning in *Riley* provides scant support for Metro's appellate contentions. The relevant motion in the present case was a motion in limine and not a motion for summary judgment. The circuit court's denial of Mr. Pineda-Lopez's motion in limine was not a judgment because it did not resolve a claim or any part of a claim. Therefore, the applicable rule is not Md. Rule 2-501, it is 2-602(a). And Rule 2-602(a) makes it clear that a court order that does not dispose of a claim or part of a claim is subject to revision by the circuit court until at any time until entry of judgment. The plain language of Rule 2-602(a) together with the analyses of the Supreme Court and this Court in interpreting and applying the rule all point to the conclusion that the trial court had the authority to revisit Mr. Pineda-Lopez's motion in limine. We will now address whether the trial court erred in granting that motion. We hold that the court did not.

The trial court granted the motion in limine because it concluded that evidence of Mr. Pineda-Lopez's medical expenses was not relevant to his claim for non-economic damages. Evidence is relevant if it makes "the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. "[A]n item of evidence can be relevant only when, through proper analysis and reasoning, it is related logically to a matter at issue in the case, i.e., one that is *properly provable* in the case." *Taneja v. State*, 231 Md. App. 1, 11 (2016) (emphasis added in *Taneja*) (quoting *Snyder v. State*, 361 Md. 580, 591 (2000)).

As we have explained, this Court has held that there is "no relevance in the submission of a bill for services submitted by a physician to the severity of appellant's pain and suffering." *Wright*, 42 Md. App. at 456. Because Mr. Pineda-Lopez sought only non-economic damages, evidence regarding his medical bills would have no "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401; *see also* Md. Code, Cts. & Jud. Proc. § 11-108(a)(2)(i) (defining non-economic damages in personal injury matters as "pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury").

Metro does not argue that our holding in *Wright* was incorrect; in fact, Metro does not discuss *Wright* in any fashion in its briefs. In effect, Metro's contentions boil down to the proposition that the trial court was required to allow Metro to present evidence of Mr.

Pineda-Lopez's medical bills even though that evidence was inadmissible as a matter of law. The trial court's decision to the contrary was not one that "no reasonable person would take[,]" nor was it made "without reference to any guiding rules or principles, or when the ruling is clearly against the logic and effect of facts and inferences before the court." *Gizzo*, 245 Md. App. at 201.[7]

[7] In its Reply Brief, Metro asserts:

> If, on the morning of trial, the trial court was inclined to reverse the two pre-trial orders, the appropriate remedy was not to exclude the evidence, permit Plaintiff to pause and skip over portions of the testimony of his expert given in his *de bene esse* deposition, and proceed with the trial at the peril of Metro's case. In doing so, the trial court allowed Plaintiff to completely avoid the requirements of Maryland Rule 2-416(g), resulting in grave prejudice to the defense. Instead, under *Riley*, if the trial court determined that the prior rulings warranted being reversed, it was incumbent on the trial court to do so in a way that avoided the clear prejudice arising from the timing of such a decision. The trial court needed to postpone the case and to allow the issues the reversal created at trial, not the least of which was the cross-examination of Plaintiff's expert, to be properly addressed by the parties before proceeding to a trial. *Riley v. Venice Beach*, 487 Md. 1, 16 (2024).

There are three independently fatal problems with this contention.

First, although this contention could have been presented in its principal brief, Metro raised it for the first time in its reply brief, thus depriving Mr. Pineda-Lopez of an opportunity to respond. For this reason, "appellate courts ordinarily do not consider issues that are raised for the first time in a party's reply brief." *Gazunis v. Foster*, 400 Md. 541, 554 (2007); *Nesbitt v. Mid-Atl. Builders of Davenport, Inc*., 255 Md. App. 580, 595 n.9 (2022) ("A reply brief cannot be used as a tool to inject new argument." (quoting *Anderson v. Burson*, 196 Md. App. 457, 476 (2010))).

(Footnote Continued . . . .)

B. Compliance with Md. Rule 2-416

Metro's second appellate contention pertains to Mr. Pineda-Lopez's *de bene esse* deposition of Dr. Franchetti. It argues that Mr. Pineda-Lopez failed to comply with provisions of Md. Rule 2-416, which pertains to audio and audiovisual depositions.

Metro's focus is on Rule 2-416(g), which sets out procedural requirements for making and preserving objections. Metro states that Mr. Pineda-Lopez's counsel: "utterly failed to follow the procedure laid out in Md. Rule 2-416(g) regarding objections[.]" According to Metro, the trial court allowed Mr. Pineda-Lopez "to completely avoid the requirements of Maryland Rule 2-416(g), resulting in grave prejudice to the defense." These contentions are not persuasive.

Rule 2-416 states:

> (g) **Objections.** — The officer shall keep a log of all objections made during the deposition and shall reference them to the time shown on the clock on camera or to the indicator on the audio or audio-video recording. Evidence objected to shall be taken subject to the objection. A party intending to offer a deposition recorded by audio or audio-video means in evidence shall notify the court and all parties in writing of that intent and of

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Second, Metro's assertion to the contrary notwithstanding, there is nothing in the Supreme Court's analysis in *Riley* that suggests that it is incumbent upon a trial court to find a way to "avoid[] the clear prejudice arising from the timing of [its] decision."

Third, after the trial court granted Mr. Pineda-Lopez's motion in limine, there was nothing that prevented Metro from requesting a recess, a postponement, or some other form of relief. But Metro made no such request. Metro may not ask an appellate court for relief that it did not ask the trial court to grant. *See* Md. Rule 8-131(a) (Other than certain jurisdictional issues, "[o]rdinarily, an appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

> the parts of the deposition to be offered within sufficient time to allow for objections to be made and acted upon before the trial or hearing. Objections to all or part of the deposition shall be made in writing within sufficient time to allow for rulings on them and for editing of the electronic audio or audio-video recording before the trial or hearing.

Metro presents three overlapping arguments involving Md. Rule 2-416(g). It contends that Mr. Pineda-Lopez: (1) failed to object to Metro's questions about his medical bills during Dr. Franchetti's deposition, (2) "utterly failed to follow the procedure laid out in Md. Rule 2-416(g) regarding objections[,]" and (3) "failed to file the required notice pursuant to Maryland Rule 2-416(g) of his intent to offer at trial, subject to objections, Dr. Franchetti's video deposition testimony." These contentions are without merit.

First, and Metro's contentions to the contrary notwithstanding, Mr. Pineda-Lopez timely objected to Metro's questions during Dr. Franchetti's deposition:

> [METRO'S COUNSEL]: In your report that you've read from, Dr. Franchetti, you actually did offer an opinion as it relates to the medical bills, is that right?
>
> [DR. FRANCHETTI]: Yes, I was asked to do so and I did.
>
> [METRO'S COUNSEL]: And your opinion was, I'm just going to find it, the bills for this treatment have been fair, reasonable, necessary and causally related to the injuries of August 21, 2017, correct?
>
> [MR. PINEDA-LOPEZ'S COUNSEL]: *Objection, motion to strike*.
>
> [DR. FRANCHETTI]: Yes, that was my opinion.
>
> [METRO'S COUNSEL]: Is it still your opinion?
>
> [DR. FRANCHETTI]: Yes.
>
> [METRO'S COUNSEL]: Doctor, what do you utilize, if anything, to assist you in coming to an opinion as to whether a medical bill is reasonable for, you know, the area in which you're in or the industry?

> [DR. FRANCHETTI]: Over three and a half decades, I have seen bills, I know the range. There's no single number that is reasonable and necessary, there's a range for each of them and I compare them to the range of what is reasonable and necessary.
>
> [MR. PINEDA-LOPEZ'S COUNSEL]: *Continuing objection, motion to strike*.

(Emphasis added.)

Second, and without further elaboration, Metro contends that Mr. Pineda-Lopez "utterly failed to follow the procedure laid out in Md. Rule 2-416(g) regarding objections[.]" We decline to address this contention. *Westminster Mgmt., LLC v. Smith*, 486 Md. 616, 674 (2024) ("[I]f a point germane to the appeal is not adequately raised in a party's brief, the court may, and ordinarily should, decline to address it." (quoting *DiPino v. Davis*, 354 Md. 18, 56 (1999))).

Finally, Metro contends that Mr. Pineda-Lopez "failed to file the required notice pursuant to Maryland Rule 2-416(g)[8] of his intent to offer at trial, subject to objections, Dr. Franchetti's video deposition testimony." Metro does not identify anything in the record that suggests that this contention was raised in or decided by the trial court. We will not consider the matter further. *See* Md. Rule 8-131(a).

For all these reasons, there is no basis for us to conclude that the trial court abused its discretion when it admitted Dr. Franchetti's redacted *de bene esse* deposition testimony.

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[8] Md. Rule 2-416(g) provides in relevant part as follows:

> Objections to all or part of the deposition shall be made in writing within sufficient time to allow for rulings on them and for editing of the electronic audio or audio-video recording before the trial or hearing.

II. Exclusion of the Surveillance Evidence

As we mentioned earlier, Metro retained Dean Jefferis, a private investigator, to surveil Mr. Pineda-Lopez. On August 17, 2023, Mr. Jefferis videotaped Mr. Pineda-Lopez while the latter was working on a roofing project at a house in Severn, Maryland. Mr. Jefferis provided Metro with copies of video recordings of Mr. Pineda-Lopez's activities on that day as well as a written report. Metro provided copies of the recordings to Mr. Pineda-Lopez in response to his discovery requests. Metro did not provide a copy of Mr. Jefferis's report to Mr. Pineda-Lopez. Nor did Metro inform him that such a report existed.

The significance of all of this became clear on the third day of the trial, when Mr. Jefferis was testifying about his surveillance of Mr. Pineda-Lopez. To set the stage, Mr. Jefferis testified that he had located himself and his video camera at a location close to the job site and that Mr. Pineda-Lopez was visible on the roof of the house in question. Mr. Jefferis also testified that he had prepared a report. Mr. Pineda-Lopez's counsel objected and asked for a bench conference. Unfortunately, the court's recording equipment malfunctioned for part of the conference and much of what the lawyers said was inaudible. We set out the relevant portion of the transcript:

> [METRO'S COUNSEL]: From your vantage point, could you see all sides of the roof?
>
> [MR. JEFFERIS]: No, absolutely not. And that was part of the problem with the geographical area of the roof. There's a pitch on the roof. So you can only see the one side. When he walked on the other side of the roof, I

could only see him coming up from the roof, but I could not see what was going on on the other side of the roof.

And I believe in my statement, in my report, I documented that; that I could not identify what was going there.

[METRO'S COUNSEL]: How long did you observe him on the roof approximately?

[MR. PINEDA-LOPEZ'S COUNSEL]: Objection, Your Honor. Can we approach, please?

THE COURT: Sure.

(Whereupon, a Bench Conference followed and is inaudible/indiscernible except for as transcribed below.)

[MR. PINEDA-LOPEZ'S COUNSEL]: (Inaudible).

[METRO'S COUNSEL]: (Inaudible).

THE COURT: All right. But is there a report that wasn't provided? Because if there is, then he can't testify to anything that is in that report.

[METRO'S COUNSEL]: Well, Your Honor, number one, I (inaudible).

THE COURT: Okay. Show it to me.

(Long pause.)

THE COURT: And what is the document request that you are identifying?

[MR. PINEDA-LOPEZ'S COUNSEL]: I will have to (inaudible).

THE COURT: Okay.

(Long pause.)

[MR. PINEDA-LOPEZ'S COUNSEL]: So (inaudible).

THE COURT: So read it for the record.

[MR. PINEDA-LOPEZ'S COUNSEL]: For the record, (inaudible).

THE COURT: Right.

[MR. PINEDA-LOPEZ'S COUNSEL]: (Inaudible).

THE COURT: Okay. Was any report provided to the Plaintiff?

[METRO'S COUNSEL]: Your Honor, this is what (inaudible).

THE COURT: Okay. And any report he provided you at all?

[METRO'S COUNSEL]: (Inaudible).

THE COURT: [Mr. Pineda-Lopez's counsel].

[MR. PINEDA-LOPEZ'S COUNSEL]: (Inaudible).

THE COURT: I think what is being objected to at this point is the report. Right?

[MR. PINEDA-LOPEZ'S COUNSEL]: That is (inaudible).

[METRO'S COUNSEL]: (Inaudible).

THE COURT: But it wasn't disclosed. The issue is that it wasn't disclosed in discovery.

[MR. PINEDA-LOPEZ'S COUNSEL]: (Inaudible).

THE COURT: Okay. I will read the Shenk case,[9] and unfortunately –

* * *

THE COURT: Okay. Let me let [the jury] have a break then.

* * *

[MR. PINEDA-LOPEZ'S COUNSEL]: There is a motion that I filed, the Plaintiff's motion in limine to exclude evidence that Defendant chose not to produce in discovery. That has a lot of case law and stuff.

THE COURT: Was that ruled on?

[MR. PINEDA-LOPEZ'S COUNSEL]: It was ruled.[10]

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[9] The trial court was referring to *Shenk v. Berger*, 86 Md. App. 498 (1991).

[10] The motion in question is titled "Plaintiff's Motion In Limine To Exclude Evidence Defendants Chose Not To Produce In Discovery." It is not in the record extract. The docket entries indicate that the motion was filed on December 6, 2023 and that Metro filed an answer on December 21st. On January 8, 2024, the circuit court entered the following order: "RESERVED-there is not enough context at this juncture to decide this matter." Neither party discusses this motion or the motions court's ruling in their briefs.

THE COURT: Okay. Thanks.

* * *

THE COURT: Okay. This Court has looked at the case law and in particular also reviewed Rule 2-204, the Scope of Discovery and Sanctions.

This Court finds that the -- this material was requested in both the interrogatories and in the request for documents.

* * *

Okay. These materials were clearly requested, both the report and any statements made by this witness. Nothing was provided, which is inconsistent and a violation of Rule 2-402 and also renders it incredibly difficult perhaps, because I haven't read the report, to appropriately cross examine Mr. Jefferis. And accordingly, Mr. Jefferis will not be permitted to testify.

[METRO'S COUNSEL]: Your Honor, may I make a record?

THE COURT: Sure.

[METRO'S COUNSEL]: Thank you.

Your Honor, this is clearly impeachment evidence. The Shenk case is instructive to the Court when it comes to the production of substantive -- or video surveillance that is being used for substantive evidence, not impeachment.

THE COURT: Counsel, are you suggesting that this report was not discoverable?

[METRO'S COUNSEL]: Not for impeachment.

THE COURT: Counsel, if your entire case is based on the chiropractor and this gentleman, who is going to testify that he saw Mr. Pineda-Lopez being able to do things that would indicate that the injury wasn't what the injury -- I mean, that is your case, I am assuming; is all about your two witnesses. His treatment ended with the chiropractor and look at all the things he can do.

So to suggest that the report of the investigator is somehow not discoverable, I will let you make your record. Absolutely. But it seems to me to be a clear violation of the discovery rules. But go ahead.

[METRO'S COUNSEL]: Thank you, Your Honor.

With regard to the impeachment piece of this, as I was saying, Shenk v. Berger is instructive with regard to substantive evidence. The video surveillance is directly impeaching the testimony of Mr. Pineda-Lopez yesterday.

That testimony was that a stakeout occurred. The videos that he testified on direct he reviewed that were produced in discovery were five minutes or less. He testified about the difficulties he has with regard to lifting.

These videos, the testimony of this witness, directly impeaches the testimony from yesterday. If this Court is to preclude any reference to the videos that impeach, that are not being used for the matter asserted but impeach the testimony, the Court is allowing Mr. Pineda-Lopez to lie under oath to the jury.

And again, Your Honor, this is not a surprise witness. This witness was identified by way of a supplement to discovery, and we did that in the event that the trial testimony was such that we needed to impeach the testimony. This is not a surprise witness. There is nothing in the report that changes the voracity [sic] of the videos, and there is nothing in the report that negates the fact that the videos completely contradict the, frankly, less than truthful testimony of Mr. Pineda-Lopez.

I do believe, Your Honor, this is -- if this is precluded and its impeachment, you know, I do believe this is potentially reversible error. And I would proffer to the Court that the videos that we intended to play show precisely what Mr. Pineda-Lopez says did not occur and he could not do.

Specifically, it shows him bending, removing roofing materials, hoisting them over his shoulder, using one hand to walk completely across with roofing materials, across the roof, holding roofing materials above his head. Quite frankly, activities that someone who has a permanent injury would not be doing.

And this Court is allowing Mr. Pineda-Lopez to tell the jury in his direct exam and through his counsel in opening and closing that he is unable to do all of this when we have impeachable evidence that tell us otherwise that he testified to, Mr. Pineda-Lopez testified to, in his direct examination by his lawyer.

There is no surprise. There is no prejudice here. If Your Honor wants to do a review of the report to what, if anything, somehow prejudiced [Mr. Pineda-Lopez's counsel], by all means. I am happy to provide it to you.

But it is our position, Your Honor, that because this is being utilized for impeachment evidence the production of the report would not have occurred during the course of discovery, and Shenk v. Berger does not require it to be disclosed in the course of discovery.

* * *

[MR. PINEDA-LOPEZ'S COUNSEL]: We had two witnesses that testified precisely to what is on the video. The first witness that we heard was Carlos Paredes. He said that before the crash Mr. Pineda would lift two boxes, two to three boxes that were 25 pounds each. But after he was not lifting that.

He also said that when picking up trash, the debris, which is what you see in the video, he lifts up the -- about 10 pounds worth of material and he puts them on. So that is what you see in the video.

My client also testified to the same information. He never says that he can't bend over. He has never said that he can't walk. He just does it with pain. And he also says that he -- he also testified that he -- when I asked him about the video, he also testified -- I asked him what does the video show? It shows me doing some work. I picked up some things. He never said he couldn't do any of that. He admitted it. He talked about it.

And we should have gotten that in discovery, and this is important for our case.

[METRO'S COUNSEL]: They did get -- they got 15 videos in discovery.

[MR. PINEDA-LOPEZ'S COUNSEL]: *Not the videos. The report*.

[METRO'S COUNSEL]: They got stills, photographs, in discovery. And again, *it was always with the understanding of utilizing for impeachment purposes only, and the case law is clear that the requirement to disclose this information in discovery is only as to substantive evidence*.

THE COURT: Okay. It seems to this Court that that report was indeed, given nature of this case, discoverable and that it was withheld, that it was requested, that that was a violation of Maryland [Rule] 2-402 and that the

> sanction of precluding this witness is a fair sanction in light of the failure to turn over the materials.

(Emphasis added.)

After the bench conference, Mr. Jefferis did not return to the witness stand, the jury returned to the courtroom, and Metro's counsel called Mr. Pineda-Lopez to testify.

On appeal, Metro claims that "[t]he testimony of Mr. Jefferis was for impeachment purposes only and thus not discoverable." We see things differently—we are not concerned with his testimony, our focus is on his report. Mr. Jefferis's report is not part of the record, and Metro did not provide the trial court with a proffer of the report's contents.

We assume for purposes of analysis that the report contained only impeachment evidence. Based on that assumption and the record before us, we hold that the trial court did not err when it concluded that Metro failed to meet its disclosure obligations imposed by Md. Rule 2-402. Nor did the court abuse its discretion by prohibiting Mr. Jefferis from testifying further.

A. Metro did not comply with Md. Rule 2-402

Under certain circumstances, a party is required to disclose that it is in possession of evidence that is protected by the work product doctrine even though it is not required to disclose the evidence itself. Md. Rule 2-402(d) states in pertinent part:

> Subject to the provisions of sections (f) and (g) of this Rule,[11] a party may obtain discovery of documents . . . prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative . . . only upon a showing that the materials are discoverable under section (a) of this Rule and that the party seeking discovery has substantial need for the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. . . .

Md. Rule 2-402(e) states:

> (1) **Information Withheld.** — A party who withholds information on the ground that it is privileged or subject to protection *shall describe the nature of the documents, . . . not produced or disclosed* in a manner that, without revealing the privileged or protected information, will enable other parties to assess the applicability of the privilege or protection.

(Emphasis added.)

At least two of Mr. Pineda-Lopez's interrogatories requested information that, if provided, would have disclosed the existence of Mr. Jefferis's report.

First, Mr. Pineda-Lopez's interrogatory number 4 and Metro's response were as follows:

> **INTERROGATORY NO. 4:** State the names, addresses and telephone numbers of all persons who [have] given you oral, signed, written, or recorded statements concerning the incident herein involved, describe the contents of any such statement, and attach a copy of any such statement in your control.

[11] Md. Rule 2-402(f) pertains to disclosures made by the party propounding the discovery. Md. Rule 2-402(g) pertains to identification of expert witnesses. Neither exception is relevant to the parties' contentions in this appeal.

> **ANSWER:** None other than what is contained in the State of Maryland Motor Vehicle Crash Report and the medical records exchanged throughout the course of discovery.

At oral argument in this Court, Metro's counsel argued that the term "incident" referred strictly to the events of the vehicle accident. We disagree for two reasons. First, Metro's appellate contention is inconsistent with its answer to the interrogatory, which also identified the "medical records exchanged throughout . . . discovery" as responsive to the request. Second, a narrow interpretation is inconsistent with the principle that the Maryland discovery rules are intended "to encourage liberal discovery and minimize surprise at trial." *Food Lion, Inc. v. McNeill*, 393 Md. 715, 718 (2006).

Second, Mr. Pineda-Lopez's interrogatory number 9 stated:

> **INTERROGATORY NO. 9:** If you intend to rely upon any documents, electronically stored information, or tangible things to support a position that you have taken or intend to take in the action, including any claim for damages, provide a brief description, by category and location, of all such documents, electronically stored information, and tangible things, and identify all persons having possession, custody, or control of them, and attach them to your answer. (Standard General Interrogatory No. 3.)

Metro's response was:

> **ANSWER:** This Party objects to this Interrogatory to the extent that it is overly broad and unduly burdensome. *Further objection is made to the extent that it seeks to discover information that is attorney work product and therefore protected.* Subject to, and without waiving said objections, this Party reserves the right to rely upon any documents exchanged by the parties in discovery.

(Emphasis added.)

To be sure, Metro is entitled to assert the work-product doctrine in appropriate circumstances. Metro asserts that Mr. Jefferis's written report summarizing his surveillance of Mr. Pineda-Lopez constituted work product. We are unable to assess the merits of this contention because the report is not in the record. However, assuming for purposes of analysis that the report constituted work product, Metro was nonetheless required to disclose the existence of the report in its responses to Mr. Pineda-Lopez's discovery request. Md. Rule 2-402(e)(1) states:

> (e) **Claims of Privilege or Protection. —**
> (1) **Information Withheld.** — A party who withholds information on the ground that it is privileged or subject to protection *shall describe the nature of the documents* . . . not produced or disclosed in a manner that, without revealing the privileged or protected information, will enable other parties to assess the applicability of the privilege or protection.

(Emphasis added.) Disclosing the "nature of the document[]" necessarily includes disclosing the fact that the document exists in the first place.

Md. Rule 2-402(e)(1) reflects long-settled Maryland law that "when a party demands of another discovery of a document or other tangible thing, the adversary, even though resisting the demand, should nonetheless be required to specifically answer whether it has in its possession or under its control such an item or items." *Shenk v. Berger*, 86 Md. App. 498, 505 (1991) (quoting *Kelch v. Mass Transit Admin.*, 287 Md. 223, 228 (1980)).

The trial court did not err when it concluded that Metro failed to comply with the Maryland Rules pertaining to discovery.[12]

B. The trial court's sanction was not an abuse of its discretion

Lastly, Metro claims that the court abused its discretion by excluding Mr. Jefferis's testimony as a sanction for the discovery violation.[13] We do not agree.

Our review involves two separate standards. First, we exercise de novo review over the trial court's legal conclusion that there was a discovery violation. *See, e.g.*, *Wilson-X v. Dep't of Hum. Res*., 403 Md. 667, 675 (2008) ("This Court has recognized that trial

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[12] Metro argues that it is "generally understood" that "[i]mpeachment evidence does not have to be disclosed before trial." As support, Metro points to Md. Rule 2-504.2, which states that, at pre-trial conferences, each party must identify:

> each non-expert whom the party expects to call as a witness at trial (other than those expected to be used solely for impeachment) separately identifying those whom the party may call only if the need arises[.]

Md. Rule 2-504.2(b)(9).

Metro misses the point. The relevant rule is Rule 2-402, not Rule 2-504.2. And Rule 2-402(e)(1) requires a party (like Metro) that withholds information in discovery on the basis of privilege or other grounds to "describe the nature of the documents . . . in a manner that, without revealing the privileged or protected information, will enable other parties to assess the applicability of the privilege or protection." By inadvertence or design, Metro failed to do this.

[13] Mr. Pineda-Lopez argues that Metro "did not proffer the witness's alleged excluded testimony" to the trial court. This is incorrect. After the court issued the sanction for the discovery violation at trial, Metro's counsel asked for and obtained permission from the trial court to "make a record" and then provided details and context about Mr. Jefferis's expected testimony.

judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature."); *Arrington v. State*, 411 Md. 524, 552 (2009) ("Of course, the court's discretion is always tempered by the requirement that the court correctly apply the law applicable to the case.").

Second, "[t]rial courts are vested with a reasonable, sound discretion in applying the discovery rules, which discretion will not be disturbed in the absence of a showing of its abuse." *Marshall v. Safeway, Inc*., 210 Md. App. 545, 577 (2013) (cleaned up) (quoting *Falik v. Hornage*, 413 Md. 163, 182 (2010)), *aff'd*, 437 Md. 542 (2014). For this reason, "[a]n appellate court reviews for abuse of discretion a trial court's decision to impose, or not impose, a sanction for a discovery-violation." *Dackman v. Robinson*, 464 Md. 189, 231 (2019). In exercising this discretion, the trial "court should weigh (1) the reasons why the disclosure was not made; (2) the existence and amount of any prejudice to the opposing party; (3) the feasibility of curing any prejudice; and (4) any other relevant circumstances." *Id*. at 231-32 (quoting *Beka Indus., Inc. v. Worcester County Bd. of Educ.*, 419 Md. 194, 232 (2011)).

As we have previously explained, we will not set aside a trial court's ruling on a matter committed to the court's discretion unless "no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles, or when the ruling is clearly against the logic and effect of facts and inferences before the court." *Gizzo*, 245 Md. App. at 201.

In the present case, the trial court noted that Metro failed to disclose the report because of its incorrect interpretations of Mr. Pineda-Lopez's discovery requests. The court assessed the prejudice to Mr. Pineda-Lopez and stated that the failure to disclose the report "render[ed] it incredibly difficult . . . to appropriately cross examine Mr. Jefferis." The court determined that "the sanction of precluding this witness is a fair sanction in light of the failure to turn over the materials." We decline Metro's invitation to "reweigh the factors [considered by the trial court] and second-guess [its] ruling where the record does not reveal that the circuit court exercised its discretion in a manner that was manifestly unreasonable, or on untenable grounds, or for untenable reasons." *Dackman*, 464 Md. at 235 (cleaned up).

Lastly, Metro asserts that "Mr. Jefferis['s] testimony, which was highly relevant and probative of one of the most important issues of the trial, was never heard by the jury. The jury was left to speculate as to why he was removed from the witness stand mid-testimony." However, as Metro's attorney conceded at oral argument, Metro did not attempt to provide an explanation to the jury about the abrupt end to Mr. Jefferis's testimony.

For all of these reasons, we conclude that the trial court did not abuse its discretion when it concluded that Mr. Jefferis's report should have been disclosed in discovery and

that Metro's failure to do so justified the sanction of precluding further testimony by that witness.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.