

Circuit Court for Baltimore County
Case No.: C-03-CV-23-003558

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 566

September Term, 2025

DANIEL BURGESS

v.

HEATHERWOOD, LLLP, *et al.*

Friedman,
Kehoe, S.,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 4, 2026

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

In August 2023, appellant Daniel Burgess sued appellees Heatherwood, LLLP, and Hendersen-Webb, Inc. (collectively, “Heatherwood”), in the Circuit Court for Baltimore County, alleging negligence, breach of contract, breach of the warranty of habitability, and violation of the Maryland Consumer Protection Act. Burgess’s claims stemmed from injuries and damages he allegedly suffered while he was Heatherwood’s tenant.

A jury trial was originally scheduled for September 19, 2024. Less than a week before trial, Burgess disclosed, for the first time, four additional witnesses he planned to call to testify. Heatherwood moved to strike these witnesses due to their late disclosure, as well as Burgess’s designated expert witness due to Burgess’s failure to provide any opinions or conclusions about the matter for which the expert was offered to testify. The trial was ultimately postponed to April 2025 for unrelated reasons, so the court denied Heatherwood’s motion but granted leave for it to depose Burgess’s new witnesses.

Three days before the April 2025 trial, Heatherwood moved *in limine* to exclude the new witnesses because, based on their depositions, the witnesses did not have any relevant testimony. Heatherwood also moved to exclude Burgess’s expert for the same reason. The court heard argument from the parties before jury selection on the first day of trial and granted both of Heatherwood’s motions.

At the close of Burgess’s case-in-chief, Heatherwood moved for judgment, which the court granted. This appeal followed.

On appeal, Burgess does not dispute the merits of the judgment. He contends only that the trial court erred by excluding his witnesses.¹ We disagree.

Burgess first contends that the trial court should not have considered Heatherwood’s motions because they were untimely. He did not argue this before the trial court and so has failed to preserve the issue for our review. *See* Md. Rule 8-131(a). And in any event, contrary to Burgess’s argument on appeal, the court did not exclude his witnesses as a discovery sanction. Rather, the court excluded them after making a preliminary determination on the admissibility of their testimony. *See* Md. Rule 5-104. In other words, there was no discovery rule violation at issue here, and the procedural requirements for alleging a discovery rule violation did not apply.

Finally, Burgess contends that the excluded witnesses’ testimony was relevant. Relevant evidence is “evidence having any 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. We review *de novo* a trial court’s determination that evidence is relevant. *See Perry v. Asphalt & Concrete Servs., Inc.*, 447 Md. 31, 48 (2016).

¹ Burgess also argues the court erred in denying his post-judgment motions related to “the clerk’s mishandling of witness subpoenas and Appellees’ counsel’s misconduct[.]” Burgess did not file these motions until after noting this appeal and did not appeal from their denial. Thus, they are outside the scope of our review. *See* Md. Rule 8-131(a) & 8-202(a).

Here, Burgess’s claims all related to the conditions of his townhome during his tenancy. The single fact witness that the trial court excluded,² Brandon Frederick, had never been to the property and, thus, had no knowledge of the conditions of Burgess’s townhome during his tenancy. To be sure, Frederick resided at another of Heatherwood’s properties and dealt with the same maintenance personnel as did Burgess. But he still could not testify to any specific facts related to Burgess’s townhome during his tenancy. Similarly, Burgess’s expert witness, Chuck Saur, did not visit the property until nearly a year after Burgess vacated the premises, never went inside, and admitted that he did not have any information, other than what Burgess had told him, about the conditions while Burgess lived there. Thus, Saur also could not testify to any specific facts related to Burgess’s townhome during his tenancy.

In short, given their ignorance of the conditions of Burgess’s townhome during his tenancy, neither Frederick nor Saur could have offered any testimony that would have made “the existence of any fact that is of consequence to the determination of the action more probable or less probable[.]” Md. Rule 5-401. The trial court therefore did not err in finding that Burgess’s witnesses did not have relevant testimony and excluding them.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**

² At the hearing, Burgess signaled that he did not intend to call the other three fact witnesses identified in Heatherwood’s motion.