

Circuit Court for Montgomery County  
Case No. C-15-CV-21-000208

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND

No. 686

September Term, 2024

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IN THE MATTER OF  
MONTGOMERY COUNTY, MD.

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Arthur,  
Reed,  
Zarnoch, Robert A.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Arthur, J.

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Filed: July 1, 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).

This appeal concerns an award of temporary total disability benefits by the Workers' Compensation Commission. The employee claimed that he was unable to work as a result of a traumatic brain injury that he sustained while working on July 11, 2017. The employer paid temporary total disability benefits from the date of the initial claim until March 28, 2018, when the employer terminated the payment of benefits.

After a contested hearing, the Commission determined that the employee was entitled to additional temporary total disability benefits from March 28, 2018, through June 10, 2019.

The employer petitioned for judicial review in the Circuit Court for Montgomery County. After a *de novo* trial, the jury found that the employee was not temporarily and totally disabled as a result of his work-related injury from March 28, 2018, to June 10, 2019. The jury further found that the employee knowingly obtained benefits to which he was not entitled throughout that period.

The employee moved for judgment notwithstanding the verdict, contending that the employer failed to produce sufficient evidence about his condition during the relevant time period. At trial, the employer had relied on expert testimony from a neurologist who opined that the employee reached maximum medical improvement from his traumatic brain injury at the time of a medical examination on May 13, 2019, and that he no longer had an impairment as of that date. The employee argued that the evidence did not support a finding that he was able to work at any time before that date.

The circuit court partially granted the motion for judgment notwithstanding the verdict. The court concluded that the evidence was insufficient to establish that the

employee was able to work before May 13, 2019. The court also concluded that the employee must repay the disability benefits that accrued on and after that date.

The employee appealed and the employer cross-appealed, each challenging different aspects of the judgment. For the reasons set forth in this opinion, this Court will affirm the judgment of the circuit court.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### **A. Mr. Kuratu's Work-Related Injury**

Beginning in 2014, Petros Kuratu worked as a Ride On bus operator for the Montgomery County Department of Transportation. On the morning of July 11, 2017, Mr. Kuratu was driving a bus when a passenger began verbally abusing him. The passenger seized Mr. Kuratu's phone and used it to strike him in the face several times. Mr. Kuratu suffered a three-inch laceration above his right eyebrow, as well as a strained right wrist.

Mr. Kuratu received treatment for the laceration at a hospital, where he complained of a headache. Four days later, Mr. Kuratu sought treatment at an urgent care center, complaining that he continued to suffer headaches since the injury. Three days later, Mr. Kuratu again sought treatment at an urgent care center, complaining of worsening headaches, dizziness, and decreased vision in his right eye.

One week after the injury, Mr. Kuratu filed a claim with the Workers' Compensation Commission, requesting employer-provided medical care for his head injury. Shortly thereafter, the Commission determined that Mr. Kuratu sustained an accidental injury arising out of and in the course of his employment. The Commission

reserved the claim for further consideration of the nature and extent of any disability resulting from the accidental injury.

Mr. Kuratu did not return to work in the months following his injury. Mr. Kuratu completed physical therapy to recover from his wrist strain, but he continued to report headaches, confusion, memory loss, and vision problems. Throughout 2018, Mr. Kuratu reported worsening symptoms to his physicians, including blackout spells, fatigue, poor memory, insomnia, depression, irritability, urinary incontinence, and double vision. As of November 2018, his treating neurologist, Dr. Bridgit Venza, reported that Mr. Kuratu was “for the most part nonverbal” and needed assistance with daily living activities.

**B. Payment of Temporary Total Disability Benefits**

Under the Maryland Workers’ Compensation Act, an employee who is temporarily and totally disabled as a result of an injury arising out of and in the course of employment is entitled to compensation ordinarily equal to two-thirds of the employee’s average weekly wage. *See* Md. Code (1991, 2016 Repl. Vol.), §§ 9-618, 9-621 of the Labor & Employment Article. Temporary total disability means a “disability which is temporary in duration but total in extent[.]” *Wal Mart Stores, Inc. v. Holmes*, 416 Md. 346, 353 n.2 (2010). A period of temporary total disability “‘is the healing period, or the time during which the [employee] is wholly disabled and unable by reason of [the] injury to work.’” *Ngo v. CVS, Inc.*, 214 Md. App. 406, 416 (2013) (emphasis omitted) (quoting *Gorman v. Atl. Gulf & Pac. Co.*, 178 Md. 71, 78 (1940)).

Montgomery County, a self-insured employer, paid temporary total disability benefits to Mr. Kuratu for more than eight months following his initial claim. On March

28, 2018, the County terminated the payment of benefits. The County notified Mr. Kuratu that the basis for the termination was that he had failed to attend a scheduled medical appointment.

Counsel for Mr. Kuratu filed issues into the claim, requesting temporary total disability benefits continuously since the date of his injury. After a hearing in March 2019, the Commission issued a supplemental award of compensation. The Commission ordered the County to pay additional temporary total disability benefits, “beginning March 28, 2018 to the present and continuing for as long as [Mr. Kuratu] remains temporarily and totally disabled” as a result of the accidental injury.

The County petitioned for judicial review in the Circuit Court for Montgomery County, challenging the award of temporary total disability benefits. The County requested a jury trial on the issues raised in the petition. In his response to the petition, Mr. Kuratu also requested a jury trial on all issues.

**C. Surveillance of Mr. Kuratu**

Shortly after the Commission hearing in March 2019, the County hired a private investigation agency to investigate Mr. Kuratu’s disability claim. An investigator performed surveillance of Mr. Kuratu at his home on five days in April and May 2019. On two of those days, the investigator observed Mr. Kuratu driving his car with his children. The investigator made video recordings of Mr. Kuratu on those occasions.

On the first such occasion, the afternoon of April 23, 2019, the investigator observed Mr. Kuratu drive to an elementary school. Mr. Kuratu entered the school, exited with two of his children, and secured the children in car seats before he drove

away. Later that afternoon, Mr. Kuratu drove to another building, exited with two of his children, and secured the children in car seats before he drove away.

The investigator also observed Mr. Kuratu leave his home on the afternoon of May 8, 2019. Mr. Kuratu walked to his car alongside one of his children while carrying a mug, a plate, a water bottle, and a sweatshirt. Mr. Kuratu took a sip from the mug and placed it onto the roof of the car before leaning into the car to place other items inside. Mr. Kuratu then walked back toward his home and returned carrying another of his children. After securing the children in their car seats, Mr. Kuratu retrieved the mug from the roof of the car before he drove away.

**D. Independent Medical Examination by Dr. Bartoszek**

On May 13, 2019, Mr. Kuratu underwent an independent medical examination with David Bartoszek, M.D., a neurologist. Mr. Kuratu remained mute throughout the examination. Dr. Bartoszek attempted to administer a neurological evaluation, but he was unable to complete it because Mr. Kuratu did not give verbal responses. Mr. Kuratu's father, who accompanied Mr. Kuratu to the appointment, told Dr. Bartoszek that Mr. Kuratu does not drive and requires assistance to get dressed and to feed himself.

Dr. Bartoszek produced a report based on the examination and a review of Mr. Kuratu's medical history, including the results of radiological imaging. Dr. Bartoszek gave diagnoses of "[m]ild traumatic brain injury" and "[e]ncephalopathy manifested by constricted affect, mute speech, slowed movement, and inconsistent ability to follow commands." Dr. Bartoszek reasoned that it was unlikely that the mild traumatic brain injury could have produced "progressively worsening cognitive dysfunction" several

months after the injury, even though Mr. Kuratu had “normal imaging” results.

After completing his examination report, Dr. Bartoszek received additional information about the surveillance of Mr. Kuratu. Dr. Bartoszek reviewed photographs taken by the private investigator and descriptions of Mr. Kuratu’s activities. Based on that information, Dr. Bartoszek wrote an addendum to his report two weeks after the initial examination.

In the addendum, Dr. Bartoszek emphasized a “marked discrepancy between the behavior manifested” by Mr. Kuratu at the examination and “the behaviors observed during surveillance.” Dr. Bartoszek opined that, on the days when Mr. Kuratu was driving with his children, he demonstrated “relatively intact executive function, absence of apathy, and absence of a gait disturbance.” Dr. Bartoszek also opined that the “abnormal behavior demonstrated” by Mr. Kuratu at the examination was “not related to the work injury.” Dr. Bartoszek concluded that the prior diagnosis of encephalopathy was “no longer appropriate” and recommended a “psychiatric evaluation to consider psychiatric differential diagnoses to possibly include malingering[.]” Dr. Bartoszek concluded that Mr. Kuratu’s mild traumatic brain injury “ha[d] resolved” and that he “ha[d] reached maximum medical improvement regarding the work injury[.]”

On June 10, 2019, the County terminated the payment of temporary total disability benefits to Mr. Kuratu. The termination notice stated that the reason for the termination of benefits was that Mr. Kuratu had reached maximum medical improvement.<sup>1</sup>

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<sup>1</sup> Generally, an employee is not entitled to receive temporary total disability benefits once the employee reaches maximum medical improvement with respect to the

In the circuit court, the County moved for a remand to allow the Commission to consider whether Mr. Kuratu knowingly received benefits to which he was not entitled. In support of the motion, the County relied on a report from the private investigation agency, surveillance videos, the report from Dr. Bartoszek’s independent medical examination, and the addendum to that report. Mr. Kuratu did not oppose the remand request.

The court granted the motion for remand, but retained jurisdiction over the action pending the Commission’s further consideration of the issues raised by the County.

**E. Additional Independent Medical Examinations**

Before the Commission considered the additional issues, Mr. Kuratu participated in three independent medical examinations: one by an ophthalmologist, to assess any visual impairment; and two by psychologists, to assess any psychological impairment.

Jeffrey Wexler, M.D., an ophthalmologist, examined Mr. Kuratu on January 15, 2020. Dr. Wexler determined that Mr. Kuratu would not have severe visual impairments if he wore corrective lenses. Dr. Wexler attributed Mr. Kuratu’s visual impairments to preexisting conditions unrelated to his injury. Although Dr. Wexler concluded that Mr. Kuratu’s visual impairments resulted in part from organic causes, Dr. Wexler opined that Mr. Kuratu also had “a component of malingering” to his presentation. Dr. Wexler concluded that Mr. Kuratu had reached maximum medical improvement with respect to

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work-related injury. *See Ngo v. CVS, Inc.*, 214 Md. App. 406, 418-19 (2013). An employee who remains disabled after reaching maximum medical improvement may be entitled to either permanent partial disability benefits or permanent total disability benefits. *Id.* at 418.



his work-related injury.

Aaron Noonberg, Ph.D., a clinical psychologist and neuropsychologist, examined Mr. Kuratu on June 23, 2021. Dr. Noonberg reported that Mr. Kuratu “presents depression caused by his assault” at work. Dr. Noonberg’s primary diagnosis was “psychological factors affecting other medical conditions, along with conversion elements[.]” Dr. Noonberg concluded that the traumatic brain injury should have resolved and “likely did” “resolve long ago,” and that Mr. Kuratu “maintain[ed] the complaints of physical symptoms” because of a psychological disorder caused by his work-related trauma and its aftermath. In Dr. Noonberg’s opinion, the examination of Mr. Kuratu “did not suggest” a “conscious intention to lie or malingering.” Dr. Noonberg opined that Mr. Kuratu had reached maximum medical improvement and retained a “permanent partial psychological impairment caused by” his work-related injury.<sup>2</sup>

Douglas Craig, Psy.D., a psychologist, examined Mr. Kuratu on September 21, 2021. Dr. Craig reported that he was unable to administer psychological tests because of Mr. Kuratu’s “impaired mental status, reported inability to see even [8 inches] from his face, as well as a level of agitation[.]” “Based on the available information capable of being gathered during the evaluation[.]” Dr. Craig concluded that Mr. Kuratu “presents

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<sup>2</sup> Shortly after the examination by Dr. Noonberg, Mr. Kuratu filed a claim amendment with the Commission. In addition to the “[h]ead” injury described in the initial claim, the amendment added the following description: “traumatic brain injury, right eye injury, right wrist injury, headaches, concussion/post-concussive symptoms, cognitive difficulties, visual complaints, depression, psychological factors affecting other medical conditions, conversion disorder, psychological trauma/distress, psychiatric disorder, encephalopathy/progressive encephalopathy, depression, mild neurotraumatic disorder due to traumatic brain injury-physical injury to brain.”

with a Major Depressive Disorder secondary to his primary physical and neurological complaints.” Dr. Craig opined that Mr. Kuratu had reached maximum medical improvement and that there was “no causal connection between the alleged work injury and current psychological complaints as a primary factor[.]”

Dr. Craig wrote an addendum to his report after reviewing the surveillance videos recorded by the private investigator. Dr. Craig opined that Mr. Kuratu’s appearance and behavior on the surveillance videos seemed “inconsistent with the level of impairment” that he had presented during the examination. Dr. Craig stated that it was “unclear” whether Mr. Kuratu was, “by volition, presenting himself as profoundly impaired[.]” Dr. Craig stated that, if Mr. Kuratu was intentionally presenting himself as impaired, then he would attribute Mr. Kuratu’s presentation to a “lack of cooperation and manipulation” rather than to psychological causes.

**F. Commission Decision in Favor of Mr. Kuratu**

At a hearing on October 22, 2021, the Commission considered the reports from the independent medical examinations and other evidence. After the hearing, the Commission issued a decision in favor of Mr. Kuratu on the contested issues.

First, the Commission found that Mr. Kuratu “did sustain a concussion and a mild traumatic brain injury with associated physical and mental squalae [sic]” from the accident on July 11, 2017.

Next, the Commission considered whether Mr. Kuratu obtained temporary total disability benefits “fraudulently from March 28, 2018 to June 10, 2019 in the amount of \$70,900.00[.]” The Commission found that Mr. Kuratu “did not commit fraud” during

that time period.

The Commission further found that Mr. Kuratu was “at maximum medical improvement” and that he was “incapable of working[.]” The Commission authorized ongoing palliative treatment and ordered the County to pay certain medical expenses incurred by Mr. Kuratu.

The County filed a second petition for review, seeking to challenge the Commission’s decision after the remand. The County requested a jury trial on the issues raised in its petition. Mr. Kuratu also requested a jury trial on all issues. The court consolidated the two judicial review actions and directed the parties to make subsequent filings in the second action.

**G. De Novo Jury Trial**

In February 2024, the circuit court conducted a de novo jury trial in the consolidated actions for judicial review of the Commission’s decisions.

The County called Mr. Kuratu as its first witness. In his testimony, Mr. Kuratu complained of frequent memory problems and double vision in his right eye. Mr. Kuratu testified that he dresses himself, feeds himself, and otherwise takes care of himself. Mr. Kuratu acknowledged that he is the person shown driving with his children in the surveillance videos from April and May of 2019. Mr. Kuratu admitted that he sometimes drives a car but stated that he drives only when he has no other option. Mr. Kuratu stated that he had a “bad day” on May 13, 2019, when his father took him to the neurological examination by Dr. Bartoszek. Mr. Kuratu stated that, when he has a “bad day[.]” he sometimes does not speak because he “do[es]n’t want to say something” out of his

control or to start “yelling or cursing” at people.

The County presented testimony from Justin Martin, the private investigator who had performed surveillance in late April and early May of 2019. Mr. Martin explained that, on the days when he conducted surveillance, he monitored Mr. Kuratu’s home for about eight hours and followed Mr. Kuratu if he left his home. Mr. Martin made video recordings on the occasions when Mr. Kuratu left his home. Mr. Martin edited those recordings into an eight-minute compilation, which he described as a “highlight reel” of Mr. Kuratu’s most notable actions. The compilation includes recordings of Mr. Kuratu driving with his children on April 23, 2019, and May 8, 2019. The County introduced the video compilation into evidence and presented it to the jury.

The County presented a recording of the deposition of Dr. David Bartoszek, who testified as an expert in the field of neurology. The deposition occurred more than four years before the trial and nearly two years before the Commission’s second decision.

In his testimony, Dr. Bartoszek explained that he examined Mr. Kuratu for approximately one hour on May 13, 2019. Dr. Bartoszek testified that Mr. Kuratu “did not speak . . . at any point throughout the interview.” Dr. Bartoszek noted that Mr. Kuratu “appeared almost catatonic[.]” Dr. Bartoszek nevertheless observed that Mr. Kuratu “seemed to listen . . . attentively” and “followed some simple commands such as closing his eyes or sticking out his tongue” after “a significant delay[.]” Dr. Bartoszek observed that Mr. Kuratu stood with a “flexed” or “stooped over” posture and that he walked “very slowly” with “shortened” steps and “diminished” arm swing.

Dr. Bartoszek explained that, because Mr. Kuratu did not give verbal responses, he

attempted to obtain information from Mr. Kuratu’s father, who accompanied Mr. Kuratu to the appointment. Dr. Bartoszek testified that Mr. Kuratu’s father reported that Mr. Kuratu needed assistance to dress himself and feed himself, that he did not drive, that he was unable to use a cellphone, and that he spent most of his time at home, either playing with his children or watching television.

Dr. Bartoszek explained that he was able to administer only some parts of the neurological examination, because Mr. Kuratu did not speak. Dr. Bartoszek reviewed Mr. Kuratu’s medical records, including radiological imaging studies of his brain, head, and neck, all of which revealed “normal” results. At the time of the initial examination, Dr. Bartoszek diagnosed Mr. Kuratu with “a mild traumatic brain injury” and “an encephalopathy manifested by constricted affect, mute speech, slow movement, and inconsistent . . . ability to follow commands.”

Dr. Bartoszek nevertheless concluded that it was “unlikely” that the “profound encephalopathy that [Mr. Kuratu] presented with . . . was related to the traumatic brain injury.” Dr. Bartoszek ruled out a causal connection largely because Mr. Kuratu had “normal” imaging results and because he experienced a “period of relatively intact language function with subsequent development of deterioration over time.” Dr. Bartoszek identified other potential causes of Mr. Kuratu’s presentation of symptoms, including “infectious, inflammatory, metabolic, or neurodegenerative causes.” Dr. Bartoszek also identified “potential psychiatric etiologies[,]” including “depression,”

“conversion disorder[,]”<sup>3</sup> and “malingering.”

Dr. Bartoszek explained that, after he produced his initial report, he reviewed information provided by the private investigators who conducted surveillance of Mr. Kuratu during the three weeks before the examination. Dr. Bartoszek perceived a “marked discrepancy between how [Mr. Kuratu] appeared” at the examination and “the behaviors that he was able to accomplish under surveillance.” Dr. Bartoszek noted that, on the surveillance videos, Mr. Kuratu did not have a “flexed” posture and that he walked with a “normal” gait. Dr. Bartoszek observed that Mr. Kuratu “was able to interact with his children normally” and that he did not appear to be “wandering” or “unsure where to go.” Dr. Bartoszek recalled: “In one part of the video, he walked out of his house with at least one of his children with him, . . . and he was carrying a cup of coffee, and some other papers, and a coat. And [he] set the coffee up on the car, put his papers in the car, secured the child, went back, and remembered to put his coffee cup back, and got in the car and drove away.” Dr. Bartoszek reasoned that Mr. Kuratu’s ability to perform these actions “in sequence” and to “remember all those things,” as well as his apparent ability to drive to his destinations safely, demonstrated that “he had intact executive function.”

After reviewing the additional information, Dr. Bartoszek concluded that his prior diagnosis of encephalopathy was “no longer appropriate.” To a reasonable degree of

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<sup>3</sup> Conversion disorder is “a mental illness in which repressed emotional conflicts are changed into sensory, motor, or visceral symptoms with no organic cause[.]” *Conversion disorder*, Mosby’s Medical Dictionary 440 (10th ed. 2017). Conversion disorder is also known as “functional neurological symptom disorder.” American Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* 319 (5th ed. 2013).

medical certainty, Dr. Bartoszek concluded that Mr. Kuratu’s “appearance” and his “abnormal behavior” at the examination were “not related to the work injury.” Dr. Bartoszek continued to recommend consideration of potential psychiatric diagnoses, including malingering. Dr. Bartoszek explained that, as a neurologist, he was not qualified to make any psychiatric diagnosis.

Dr. Bartoszek concluded that Mr. Kuratu had reached maximum medical improvement as of the time of the examination on May 13, 2019, that he had “zero percent impairment of the head” at that time, and that he had no “work restrictions as a result of the mild traumatic brain injury[.]” When asked to explain his conclusion that the traumatic brain injury was “no longer an issue[.]” Dr. Bartoszek opined that the injury “would qualify as a very mild traumatic brain injury[.]” Dr. Bartoszek noted that “the natural history of a traumatic brain injury is very good[.]” and that “[a]pproximately 85 percent” of people who sustain a mild traumatic brain injury “return to normal within a year.”

The County presented a recording of the deposition of Dr. Jeffrey Wexler, who testified as an expert in the field of ophthalmology. Dr. Wexler testified about his independent medical examination of Mr. Kuratu on January 15, 2020.

Dr. Wexler stated that, in visual acuity testing, Mr. Kuratu demonstrated “very poor vision” in both eyes; his performance was only “slightly better” than reading the largest letter printed on a standard eye chart. According to Dr. Wexler, Mr. Kuratu was “particularly uncooperative,” and it “took quite a bit of coaching for [Mr. Kuratu] to read the chart correctly.” Dr. Wexler explained that, as the examination progressed, he “was

able to get [Mr. Kuratu's] visual acuity a lot better than what he originally had said."

Dr. Wexler stated that, in visual-field testing, Mr. Kuratu claimed that he could not see the evaluator's hand when it moved in any direction, which would indicate that he had "no peripheral vision at all." Dr. Wexler observed, however, that one of the surveillance videos showed Mr. Kuratu walking outside his home to retrieve a trash can outside of his direct line of sight. Dr. Wexler concluded that Mr. Kuratu's actions indicated that "at least one side of his visual field" was "completely intact."

In Dr. Wexler's opinion, Mr. Kuratu "needed glasses." Dr. Wexler determined that, with corrective lenses, Mr. Kuratu would have "pretty decent vision" in both eyes, to the point where his vision would not "impact his activities of daily living." According to Dr. Wexler, with corrective lenses, Mr. Kuratu should be able to read and should be able to drive during the daytime under a restricted driver's license. Dr. Wexler concluded that Mr. Kuratu would not be able to work as a bus operator because, even with corrective lenses, his vision would be too impaired for him to qualify for a commercial driver's license.

Dr. Wexler diagnosed Mr. Kuratu with three conditions: myopic astigmatism, which he described as nearsightedness and irregular eye shape; esotropia, which he described as slightly crossed eyes; and nystagmus, which he described as a condition involving involuntary eye movements. Dr. Wexler opined that these conditions, "[m]ore likely than not" were preexisting conditions. Dr. Wexler concluded that Mr. Kuratu had "no organic visual field . . . or vision loss" from his work-related injury and that he "sustained no permanent ophthalmic disease or condition" from the injury. Dr. Wexler



opined that Mr. Kuratu “was not truthful or forthright . . . in his examination, . . . including his visual acuity and . . . his visual-field testing.” In other words, Dr. Wexler believed that Mr. Kuratu was “faking or malingering” during the examination.

The County presented a recording of the deposition of Dr. Douglas Craig, who testified as an expert in the field of licensed clinical psychology. Dr. Craig testified about his independent medical examination of Mr. Kuratu on September 21, 2021.

Dr. Craig testified that he was unable to administer psychological tests during the examination because Mr. Kuratu claimed that he was “unable to see . . . about eight inches beyond his face.” Dr. Craig perceived a “profound discrep[an]cy” in the sense that Mr. Kuratu “was reporting quite profound visual impairments, yet at the same time, also reporting very unconscionable behaviors” when he admitted to driving with his children. This discrepancy made Dr. Craig “very concern[ed]” about “the validity or the truthfulness” of Mr. Kuratu’s reports of impairment. Dr. Craig observed that, throughout the interview, Mr. Kuratu appeared “alert and oriented” and gave “purposeful and intentional” responses to questions. According to Dr. Craig, Mr. Kuratu remained “obsessively focused on his non-psychological alleged injuries related to visual impairments and neurological dysfunction and memory complaints.”

Dr. Craig testified that Mr. Kuratu’s responses “supported . . . subjectively, at least, a major depressive disorder diagnosis secondary to his primary” neurological and visual deficits. Dr. Craig explained, however, that his opinion changed after he reviewed the surveillance videos and other additional records. Based on “credibility and truthfulness concerns” regarding “Mr. Kuratu’s presentation,” Dr. Craig concluded that

there was not “sufficient evidence to support any psychiatric symptoms[.]” Dr. Craig opined that he did not have “any sufficient evidence or data to support . . . to a reasonable degree of medical and psychological certainty that Mr. Kuratu has a causally related psychological injury due to the July 11th, 2017, event.”

**H. Motion for Judgment and Renewed Motion for Judgment**

At the close of the evidence offered by the County, counsel for Mr. Kuratu made a motion for judgment under Md. Rule 2-519(a). Counsel argued that Mr. Kuratu was entitled to judgment in his favor on the issue of whether he was temporarily and totally disabled from March 28, 2018, until May 13, 2019, the date of the examination by Dr. Bartoszek.

Counsel for Mr. Kuratu contended that the question of whether he was temporarily and totally disabled as a result of his work-related injury involved a complex medical issue. Counsel argued that, to satisfy its burden of production, the County needed to present expert medical opinion testimony establishing that Mr. Kuratu was *not* disabled during the period in question. Counsel acknowledged that the County’s expert neurologist, Dr. Bartoszek, had testified that Mr. Kuratu reached maximum medical improvement from his work-related injury as of May 13, 2019.<sup>4</sup> Counsel argued, however, that none of the County’s medical experts had stated any opinion on whether

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<sup>4</sup> The transcript states that the County’s attorney asked whether Mr. Kuratu had reached maximum medical improvement as of “May 31, 2019[.]” Nevertheless, the line of questioning concerned Dr. Bartoszek’s medical opinions at the time of the independent medical examination, which occurred on May 13, 2019. Mr. Kuratu does not dispute that Dr. Bartoszek opined that Mr. Kuratu reached maximum medical improvement with respect to his neurological symptoms as of May 13, 2019.

Mr. Kuratu was able to work before that point in time. Counsel noted that Dr. Bartoszek might have provided some opinion about Mr. Kuratu’s condition before the date of the independent medical examination, but he did not do so.

Opposing the motion for judgment, the County asserted that the evidence was sufficient for the jury to conclude that Mr. Kuratu “is capable of working[.]” When the court asked about the time period in which Mr. Kuratu was capable of working, the County stated that the answer was “kind of elusive” because the County was alleging that Mr. Kuratu “wasn’t honest in any of his presentations.” The County argued that it was “implied” that Mr. Kuratu “would have been able to work if [the County] had gotten an honest . . . medical evaluation[.]” The County asked rhetorically: “how do you expect [the County] to come up with evidence that he can work when he’s not even cooperating?”

The County argued that the surveillance videos from April and May of 2019 indicated that Mr. Kuratu was “capable of activities of daily living” and “capable of work” of some kind. The County asserted that each of its medical experts had questioned the credibility of Mr. Kuratu’s presentation, mentioning the possibility or probability of malingering. The County argued that the surveillance videos and these credibility concerns “could imply” that Mr. Kuratu “was in fact faking back on March 18th, 2018,” more than one year before the first independent medical examination. Based on what it called a “credibility issue,” the County argued that the evidence was sufficient for the jury to conclude that Mr. Kuratu had been capable of working since March 18, 2018.

The court denied Mr. Kuratu’s motion for judgment. The court stated that there

was “sufficient evidence from which the jury could draw an inference that [Mr. Kuratu] was able to work because he wasn’t being truthful.” The court stated that the jury “could determine that he was certainly able to work” based on the surveillance videos which, the court, said were “within” the relevant time period. The court reasoned that the jury could also “draw a negative inference from his unwillingness to participate or be truthful during his examination[.]”

In his case-in-chief, Mr. Kuratu presented live testimony from Dr. Aaron Noonberg. The court accepted Dr. Noonberg as an expert in clinical psychology and neuropsychology. Dr. Noonberg testified that, since the examination on June 23, 2021, he had reviewed the surveillance videos as well as the report and addendum by Dr. Craig. Dr. Noonberg stated that the additional information did not change his opinions regarding Mr. Kuratu’s condition.

Based on psychometric testing,<sup>5</sup> an interview with Mr. Kuratu, and a review of medical records, Dr. Noonberg gave diagnoses of: major depressive disorder, psychological factors affecting other medical conditions, and conversion disorder. Dr. Noonberg concluded that Mr. Kuratu’s “physical complaints,” such as his reports of headaches, were “driven by the psychological trauma” from his assault at work and its aftermath, rather than by physical causes. Dr. Noonberg opined, to a reasonable degree of psychological certainty, that Mr. Kuratu was unable to work from March 2018 through June 2019 as a result of his work-related injury.

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<sup>5</sup> Dr. Noonberg explained that he was able to administer psychometric tests using an “auditory version” of the tests designed for people with visual impairments.

Dr. Noonberg explained that, to make his diagnoses, he needed to consider the possibility of malingering. Dr. Noonberg ruled out malingering in part because he found no evidence of malingering in Mr. Kuratu's psychometric test results. According to Dr. Noonberg, when Mr. Kuratu reports physical complaints, he "believes them" and he is not "consciously making up" his complaints. Dr. Noonberg attributed the inconsistencies in Mr. Kuratu's presentation, such as his muteness during some medical evaluations, to his responses to perceived threats. Dr. Noonberg theorized that Mr. Kuratu sometimes reacted with muteness "as his way of defending against the anxiety caused by the trauma."

Mr. Kuratu testified on his own behalf. When asked to describe the "problems with [his] mind[.]" Mr. Kuratu mentioned memory loss, bad headaches, seizure, insomnia, urinary incontinence, dizziness, double vision, sadness, fear, and depression. Mr. Kuratu testified that he never had double vision or emotional issues before his injury.

Mr. Kuratu's wife and his brother also testified about their observations of his condition. Both witnesses testified that Mr. Kuratu had always been a hard worker and an attentive father before his injury, that his behavior had changed drastically since the injury, and that he had not improved over time.

At the close of all evidence, counsel for Mr. Kuratu renewed the motion for judgment on the issue of temporary total disability before May 13, 2019, the date of the independent medical examination by Dr. Bartoszek. The court ruled that it would deny the motion "at th[at] time[.]" The court mentioned that it might reconsider the issue in a motion for judgment notwithstanding the verdict.

**I. Jury Verdict and Initial Judgment**

As part of its instructions, the court informed the jury that the Commission “found that Mr. Kuratu did sustain a concussion and mild traumatic brain injury with associated physical and mental sequela[e] from the July 11th, 2017, accidental injury.” The court informed the jury that the Commission also found “that Mr. Kuratu did not commit fraud between March 18th, 2018, and June 10th, 2019.” The court instructed the jury that “[t]hese decisions [we]re presumed to be correct” and that the County had “the burden of proving by a preponderance of the evidence that the decision is wrong.”

The jury delivered its verdict with a special verdict sheet that posed a series of separate questions. The verdict sheet began with the undisputed premise that Mr. Kuratu “sustained a concussion and a mild traumatic brain injury on July 11, 2017.”

The first question asked whether Mr. Kuratu “sustained physical and psychological sequela[e] (meaning, a condition that is a result of an injury) as a result of the July 11, 2017 injury[.]” The jury answered yes to this question.

The second question asked whether Mr. Kuratu was temporarily totally disabled between March 28, 2018, and June 10, 2019, as a result of injuries sustained on July 11, 2017. The jury answered no to this question.

The third question asked whether Mr. Kuratu “committed fraud by knowingly receiving benefits to which he knew he was not entitled when he received temporary total disability benefits at any point” between March 28, 2018, and June 10, 2019. The jury answered yes to this question.

The next question asked the jury to state “the period of time,” from March 28,

2018, to June 10, 2019, in which Mr. Kuratu “receive[d] temporary total disability benefits to which he knew he was not entitled and for which he must reimburse Montgomery County[.]” The jury found that Mr. Kuratu knowingly received benefits to which he was not entitled throughout that entire period.<sup>6</sup>

One week after trial, the circuit court entered judgment affirming in part and reversing in part the decisions of the Commission. The judgment stated that Mr. Kuratu was not temporarily and totally disabled between March 28, 2018 to June 10, 2019, as a result of the injuries sustained on July 11, 2017; that Mr. Kuratu committed fraud by knowingly receiving temporary total disability benefits to which he was not entitled from March 28, 2018, through June 10, 2019; and that Mr. Kuratu must reimburse the County for temporary total disability benefits from March 28, 2018, through June 10, 2019.<sup>7</sup>

**J. Motion for Judgment Notwithstanding the Verdict**

After the entry of judgment, Mr. Kuratu filed a combined motion for judgment notwithstanding the verdict and motion for new trial. Mr. Kuratu moved for judgment on the issues of whether he was temporarily totally disabled from March 28, 2018, until May 13, 2019, and whether he knowingly received benefits to which he was not entitled

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<sup>6</sup> In response to the next question, the jury found that the County is responsible for paying medical expenses incurred by Mr. Kuratu from the date of his injury through October 22, 2021. In response to the final question, the jury found that Mr. Kuratu does not require ongoing palliative treatment as a result of his injury.

<sup>7</sup> By agreement of the parties, the court determined that the Commission’s finding that Mr. Kuratu was incapable of working as of October 25, 2021, “was not ripe for consideration” by the Commission at that time. The court remanded the case for the Commission “to determine what, if any action, may be appropriate if either party files issues on this matter.”

during that period. Mr. Kuratu requested a new trial on the issues of whether he was temporarily totally disabled in the four-week period from May 13, 2019, to June 10, 2019, and whether he knowingly obtained benefits to which he was not entitled during that four-week period.

In his post-judgment motion, Mr. Kuratu argued that the question of whether he was temporarily and totally disabled from March 28, 2018, to May 13, 2019, involved a complex medical issue. Mr. Kuratu argued that, to satisfy its burden of production, the County needed to present expert testimony, expressed to a reasonable degree of medical certainty, to the effect that he was not temporarily and totally disabled in that time period. Mr. Kuratu argued that none of the expert witnesses had stated any opinion that he had reached maximum medical improvement at any time before May 13, 2019, or that he was not temporarily totally disabled in the time period before May 13, 2019, or that his disability during that period was not caused by the work-related injury.

Opposing the post-judgment motion, the County acknowledged that the case presented a complex medical question concerning Mr. Kuratu's recovery from his traumatic brain injury. The County argued that it had produced the requisite medical evidence because, according to the County, all three of its medical experts "found [Mr. Kuratu] to be malingering (faking)" at their examinations. The County also claimed that Dr. Bartoszek had testified that Mr. Kuratu recovered "'very quickly'" or "very rapidly" from his mild traumatic brain injury. The County further argued that the jury could conclude that Mr. Kuratu was capable of working based on the surveillance videos recorded shortly before the independent medical examination on May 13, 2019. The



County argued that Mr. Kuratu’s “conduct created an inference that he was lying about his medical condition and by extension, he was not disabled from March 28, 2018 to June 10, 2019.”

On May 7, 2024, the circuit court entered an order granting in part Mr. Kuratu’s motion for judgment notwithstanding the verdict. The court issued a memorandum opinion to explain its ruling.

The court stated that, because Mr. Kuratu had “prevailed before the Commission, it was incumbent upon the County to establish that he was able to work or had reached [maximum medical improvement] during the relevant period.” The court concluded that the County’s challenge to the Commission’s decision “involve[d] a ‘complicated medical question.’” The court reasoned that “expert testimony [was] required under the circumstances” of the case, “where there was an undisputed initial head injury followed by a genuine dispute as to whether that injury caused a later period of temporary total disability.”

The court observed that, although Dr. Bartoszek opined that Mr. Kuratu reached maximum medical improvement as of the independent medical examination on May 13, 2019, Dr. Bartoszek did not offer an opinion about Mr. Kuratu’s condition before that date. The court wrote: “Although this question certainly hung in the air, none of the [County’s] experts were asked . . . whether they had an opinion to a reasonable degree of medical probability that [Mr. Kuratu] was at [maximum medical improvement] or able to work . . . prior to May 13, 2019[.]” The court concluded that the County had failed to present sufficient evidence to overcome the presumption of correctness of the

Commission’s determination that Mr. Kuratu was temporarily and totally disabled from March 28, 2018, until May 13, 2019.

In the final paragraph of its opinion, the court denied Mr. Kuratu’s request for a new trial concerning temporary total disability benefits for the four-week period after May 13, 2019. The court concluded: “Because the County presented an expert opinion that [Mr. Kuratu] had reached [maximum medical improvement] by May 13, 2019 and was able to work, his motion for a new trial on that issue is denied.”

The court reinstated the Commission’s determinations that Mr. Kuratu was temporarily and totally disabled as a result of his work-related injury from March 28, 2018, until May 13, 2019, and that he did not knowingly obtain benefits to which he was not entitled during that period. The court left the verdict intact to the extent that the jury determined that Mr. Kuratu was not temporarily and totally disabled as a result of his injury from May 13, 2019, through June 20, 2019, and that he committed fraud by knowingly obtaining benefits to which he was not entitled during that period.

After the entry of the circuit court’s order, Mr. Kuratu filed a timely notice of appeal. The County filed a timely notice of cross-appeal.

### **DISCUSSION**

Although the circuit court granted judgment largely in his favor, Mr. Kuratu has appealed from the judgment to the extent that the court denied his motion for new trial. In his appellate brief, Mr. Kuratu presents the following questions:

1. Whether the finding that the Claimant was not temporarily totally disabled from May 14, 2019 – June 10, 2019 (and the finding that he knowingly obtained those benefits to which he was not entitled to during

this timeframe) was based on sufficient evidence.

2. Whether the trial court err [sic] by denying Appellants [sic] Motion for a New Trial.

Mr. Kuratu argues that the circuit court was correct when it determined that the County failed to present sufficient evidence to prove that he was not temporarily and totally disabled at any time before May 13, 2019. Mr. Kuratu argues, however, that the evidence was also insufficient to prove that he was not temporarily and totally disabled during the four-week period after May 13, 2019. Mr. Kuratu contends that the circuit court erred when it denied his motion for a new trial with respect to disability benefits for the four-week period after May 13, 2019.

In its cross-appeal, Montgomery County challenges the circuit court's order partially granting Mr. Kuratu's motion for judgment notwithstanding the verdict. The County's appellate brief presents the following questions:

[1.] Did the trial court judge improperly overturn the jury's finding in granting Appellant/Cross-Appellee's motion for judgment notwithstanding the verdict and thereby vacating the jury's determination that the Appellant/Cross-Appellee was not temporarily totally disabled between March 18, 2018 and June 10, 2019?

[2.] Did the trial court judge err in finding the Appellant/Cross Appellee had reached maximum medical improvement by May 13, 2019?

[3.] Did the trial court judge err in denying the Appellant/Cross Appellee's motion for a new trial?

The County contends that the circuit court erred when it determined that the evidence was insufficient to prove that Mr. Kuratu was not temporarily and totally disabled before May 13, 2019. The County argues that this Court should reinstate the

jury verdict, which determined that Mr. Kuratu was not temporarily and totally disabled from March 28, 2018, through June 10, 2019, and that he knowingly obtained benefits to which he was not entitled throughout that period.

Although Mr. Kuratu is the appellant and the County is the cross-appellant (*see* Md. Rule 8-111(a)(1)), this discussion will begin by addressing the contentions raised by the County. Mr. Kuratu’s challenge to the denial of his motion for new trial begins with the premise that the circuit court was correct when it granted his motion for judgment notwithstanding the verdict. Because the County is challenging that underlying premise, this opinion will resolve that challenge before reviewing the denial of the motion for new trial.

**I. Grant of Motion for Judgment Notwithstanding the Verdict**

In its cross-appeal, Montgomery County contends that the circuit court erred when it granted in part Mr. Kuratu’s motion for judgment notwithstanding the verdict. The County argues that the evidence was sufficient to prove that Mr. Kuratu had fully recovered from his traumatic brain injury by March 28, 2018, more than one year before the first independent medical examination.

Under Maryland Rule 2-519(a), a party may “move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence.” When evaluating the motion, the court must “consider all evidence and inferences in the light most favorable to the party against whom the motion is made.” Md. Rule 2-519(b). To defeat a motion for judgment, a party with the burden of proof must produce “legally sufficient evidence to send the case

to the jury” for a resolution of a factual issue. *Giant Food, Inc. v. Booker*, 152 Md. App. 166, 177 (2003). The requirement of “legally sufficient evidence” means that a party who bears a burden of proof “‘cannot sustain this burden by offering a mere scintilla of evidence, amounting to no more than surmise, possibility, or conjecture.’” *Elste v. ISG Sparrows Point, LLC*, 188 Md. App. 634, 647 (2009) (quoting *Cavacos v. Sarwar*, 313 Md. 248, 259 (1988)) (further quotation marks omitted).

After the entry of judgment on a jury verdict, a party may move for judgment notwithstanding the verdict “only if that party made a motion for judgment at the close of all the evidence and only on the grounds advanced in support of the earlier motion.” Md. Rule 2-532(a). The standard used to evaluate a motion for judgment notwithstanding the verdict is the same as the standard used to evaluate a motion for judgment at trial. *See Giant Food, Inc. v. Booker*, 152 Md. App. at 176. The moving party “‘is entitled to judgment notwithstanding the verdict . . . when the evidence at the close of the case, taken in the light most favorable to the nonmoving party, does not legally support the nonmoving party’s claim or defense.’” *Elste v. ISG Sparrows Point, LLC*, 188 Md. App. at 648 (quoting *Giant Food, Inc. v. Booker*, 152 Md. App. at 177).

On appeal, this Court reviews a ruling on a motion for judgment or motion for judgment notwithstanding the verdict to determine whether the ruling was legally correct. *See Scapa Dryer Fabrics, Inc. v. Saville*, 418 Md. 496, 503 (2011); *see also Kantar v. Grand Marques Café*, 169 Md. App. 275, 284 (2006) (stating that “[w]e review the circuit court’s decision to grant judgment because expert medical evidence is lacking to determine whether it is ‘legally correct’”) (quoting *Desua v. Yokim*, 137 Md. App. 138,

143 (2001)). This Court evaluates the sufficiency of the evidence ““by conducting the same analysis”” that a trial court must use to evaluate the sufficiency of the evidence. *Tyson Farms, Inc. v. Uninsured Employers’ Fund*, 471 Md. 386, 406 (2020) (quoting *Thomas v. Panco Mgmt. of Maryland, LLC*, 423 Md. 387, 394 (2011)).

Analysis of the sufficiency of the evidence often begins with the threshold issue of identifying which party bears the burden of proof. *E.g.*, *Kantar v. Grand Marques Café*, 169 Md. App. at 281. In the present case, the County petitioned for judicial review under Md. Code (1991, 2016 Repl. Vol.), § 9-737 of the Labor & Employment Article to challenge two decisions by the Workers’ Compensation Commission. In any proceeding for judicial review of a decision of the Commission, “(1) the decision of the Commission is presumed to be prima facie correct; and (2) the party challenging the decision has the burden of proof.” *Id.* § 9-745(b). On motion of any party, “the court shall submit to a jury any question of fact involved in the case.” *Id.* § 9-745(d).

Courts frequently describe this type of proceeding, in which a jury decides factual questions involved in a decision by the Commission, as “an ‘essentially’ de novo trial.” *Baltimore County v. Kelly*, 391 Md. 64, 74 (2006) (quoting *Richardson v. Home Mut. Life Ins. Co.*, 235 Md. 252, 255 (1964)). This type of proceeding is “similar to a new trial except that the decision” of the Commission “is admitted as evidence and treated as presumptively correct.” *Pro-Football, Inc. v. Tupa*, 197 Md. App. 463, 478 (2011), *aff’d*, 428 Md. 198 (2012). The presumption of correctness “serves primarily to shift the burden of proof in judicial-review actions in which the employer is the party aggrieved by the Commission’s decision.” *Montgomery County v. Maloney*, 245 Md. App. 369,

381 (2020) (citing *Gen. Motors Corp. v. Bark*, 79 Md. App. 68, 80 (1989)). “After the Commission issues an award to a claimant, ‘the burden of proof, which was borne by the claimant before the Commission, switches to the employer before the circuit court.’” *Calvo v. Montgomery County*, 459 Md. 315, 324-25 (2018) (quoting *Baltimore County v. Kelly*, 391 Md. at 75-76). In those circumstances, the employer may be vulnerable to a motion for judgment against it unless the employer produces sufficient evidence to prove that the Commission’s decision was incorrect. See *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357, 368 (1997).

In this appeal, some arguments made by the County demonstrate that the County fails to “accept the full implications” (*S.B. Thomas, Inc. v. Thompson*, 114 Md. App. at 368) of the shift in burden of production. For example, the County argues that the jury could consider Mr. Kuratu’s “failure to produce his own neurologist” when assessing whether he was capable of working. The County also argues that the jury could evaluate Mr. Kuratu’s “testimony and demeanor . . . throughout the trial” and find that he had a “lack of credibility[.]” The County further argues that Mr. Kuratu “failed to provide any reasonable explanation” for the discrepancies between his conduct on the surveillance videos and his conduct at the independent medical examinations.

Mr. Kuratu’s failure to produce expert testimony or other evidence in support of his position would be important “if [he] had had some burden of proof, but, of course, he had none.” *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. at 369. Mr. Kuratu’s failure to produce evidence in his favor is immaterial to assessing whether the County had satisfied its burden of production. By definition, a party who bears the burden of production

cannot satisfy that burden simply by highlighting the opponent’s failure to produce evidence in support of the opponent’s position. Moreover, “[t]he jury’s prerogative not to believe certain testimony” from Mr. Kuratu “does not constitute affirmative evidence” of the opposite of his testimony. *See VF Corp. v. Wrexham Aviation Corp.*, 350 Md. 693, 711 (1998). Arguments about the quantity or quality of the evidence offered by Mr. Kuratu could be considered when evaluating whether the County met its ultimate burden of persuasion, but those arguments would not suffice to satisfy the County’s initial burden of production.

In another attempt to address its burden of production, the County alleges that Mr. Kuratu engaged in spoliation (i.e., the destruction or alteration of evidence). The County asserts that the jury could conclude that Mr. Kuratu “fail[ed] to cooperate and honestly present himself” at the independent medical examinations in May 2019, January 2020, and September 2021. The County further argues that his conduct was “tantamount to withholding and altering evidence[,]” which, the County argues, may “give[] rise to inferences or presumptions unfavorable to” the party found to have withheld or altered evidence. The County argues that Mr. Kuratu’s conduct permits “an inference that he was lying about his medical condition” at the independent medical examinations “and, by extension, that he was not disabled from March 28, 2018 to June 10, 2019.”

The County’s spoliation argument suffers from a fatal defect. “Although an inference arises from the suppression of evidence by a litigant that this evidence would be unfavorable to [the litigant’s] cause[,] . . . it is well settled that this inference does not amount to substantive proof” of the opposing party’s case. *Muse-Ariyoh v. Bd. of Educ.*



of *Prince George's Cnty.*, 235 Md. App. 221, 239 (2017) (quoting *Bereano v. State Ethics Comm'n*, 403 Md. 716, 747 (2008)) (further quotation marks omitted); *see also* *Anderson v. Litzenberg*, 115 Md. App. 549, 560 (1997) (stating that “[u]nexplained and intentional destruction of evidence by a litigant . . . would not in itself amount to substantive proof of a fact essential to [the] opponent’s cause”) (quoting *Miller v. Montgomery County*, 64 Md. App. 202, 214 (1985)). Where there is evidence of spoliation, “the fact finder is not permitted to find the destruction of evidence to be substantive proof that the evidence was unfavorable.” *Castruccio v. Estate of Castruccio*, 230 Md. App. 118, 151 (2016) (quoting *Bereano v. State Ethics Comm'n*, 403 Md. at 747), *aff'd*, 456 Md. 1 (2017). An adverse inference might have helped the County meet the ultimate burden of persuasion (*see generally* Maryland Civil Pattern Jury Instruction 1:18), but it could not satisfy the County’s initial burden of production.

In this case, the circuit court concluded that the County had failed to meet its burden of production because the County failed to present expert medical testimony concerning Mr. Kuratu’s condition before May 13, 2019. In support of the conclusion that expert testimony was required, the court cited *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357 (1997). In that case, an employee injured his back while working and returned to his full job duties shortly thereafter. *Id.* at 362-63. Nearly eight months after the accident, the employee experienced severe back pain and felt “that his back had ‘locked up[.]’” *Id.* at 363. The employee sought treatment and ultimately required surgery for a herniated disc. *Id.* The Commission determined that the employee had sustained an accidental injury arising out of and in the course of his employment and

further determined that the accidental injury caused the disability that he experienced eight months later. *Id.* at 363-64.

The employer petitioned for judicial review and requested a jury trial. *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. at 364. At the de novo trial, the employer set out to prove that the employee’s disability “was not causally related to the accidental injury[.]” *Id.* at 370. “[R]ather than produce any expert medical testimony to that end,” the employer “sought to demonstrate ‘factually,’ that the [employee] must have had a non-work-related accident that caused his current disability.” *Id.* The employer highlighted the relatively minor nature of the accident, the long delay between the disability and the accident, and certain statements by the employee, which, according to the employer, cast doubt on the connection between the two events. *Id.* The employer also sought to introduce a video recording of the employee “walking and running the day before [his] back allegedly ‘locked up’ as evidence that an intervening accident had occurred[.]” *Id.* at 371.

The trial court granted the employee’s motion for judgment at the end of the employer’s case. *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. at 370. The court concluded that the case presented a complex medical question concerning the causal connection between the employee’s work-related accident and his later disability. *Id.* at 370-71. The court reasoned that, “[j]ust as the claimant would be required, if he had the burden of proof of going forward to demonstrate causal relationship through expert testimony, . . . the employer-insurer seeking to disprove the relationship ha[d] the same requirement” when challenging the decision. *Id.* at 383. On appeal, this Court agreed

that, in the absence of expert medical testimony, the employer had failed to meet its burden of production. *Id.* at 371.

This Court explained that, in the underlying proceedings before the Commission, the employee had carried his burden to prove the causal relationship between his work-related accident and his later disability. *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. at 363. In other words, “[c]ausation had already been established” as presumptively correct. *Id.* at 369. In the employer’s action challenging the Commission’s decision, the employer had “the burden of production affirmatively to establish . . . a legally sufficient[] case *that there was no causal connection* between the earlier injury and the later disability.” *Id.* at 367 (emphasis in original). The employer’s burden “was not the lesser task of merely casting doubt on the claimant’s proof of causation,” but, “rather, the greater task of *generating affirmatively a genuine jury issue of non-causation.*” *Id.* at 367-68 (emphasis in original).

The Court explained that, “when there is a genuine issue as to whether there is a causal connection between an earlier injury and a subsequent disability, in the majority of cases it will be a complicated medical question requiring, as a matter of law, expert medical testimony.” *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. at 383. The Court observed that a party “may sometimes” generate sufficient evidence to prove the causal connection, even in the absence of expert testimony, when there is “a very close temporal relationship between the initial injury and the onset of the trauma” and “an obvious cause-and-effect relationship that is within the common knowledge of lay[persons].” *Id.* at 382. The Court observed that “expert medical testimony will almost always be

required” to prove the causal connection when there is “some significant passage of time between the initial injury and the onset of the trauma” or “a more arcane cause-and-effect relationship that is not part of common lay experience[.]” *Id.*

Under the facts presented, the Court concluded that “the possible relationship” between the employee’s work-related injury and the herniated disc that he endured eight months later was a “complicated medical question” outside the ordinary understanding of laypersons. *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. at 385. The Court reasoned: “If expert medical testimony is required to connect two events in the first instance, it is, once that connection has been established, equally required to disconnect them.” *Id.* at 384. The Court announced the following general rule: “when the relationship between an earlier injury and a subsequent disability presents a complicated medical question so that expert medical testimony would be required to establish a *prima facie* case of *causation*, expert medical testimony would also be required, when the allocation of the burden of production is reversed, to establish a *prima facie* case of *non-causation*.” *Id.* at 383-84 (emphasis in original). In the case before it, the Court concluded that “expert medical testimony was as surely required for the [employer] to prove non-causation as it would have been required for the [employee] to prove causation” if the employee had still had the burden of proof. *Id.* at 384.

In light of *S.B. Thomas, Inc. v. Thompson*, it is difficult to imagine how the County might have produced sufficient evidence to overturn the Commission’s decision without expert medical testimony. As the County recognizes, the cause-and-effect relationship between a traumatic brain injury and reports of physical and mental

symptoms several months or years after the injury is a medical issue outside the common knowledge and experience of the average layperson. There is no serious question that, to prevail in the Commission, Mr. Kuratu needed expert medical evidence establishing that his traumatic brain injury caused his reported mental and physical conditions. Because Mr. Kuratu required expert medical evidence to establish that causal connection, it should follow that the County also required expert medical evidence to disprove the connection. *See S.B. Thomas, Inc. v. Thompson*, 114 Md. App. at 384-85. Otherwise, the County could prevail by “merely casting doubt on [Mr. Kuratu’s] proof of causation[.]” *Id.* at 367-68. “If that were all that was required of the [County], the presumption of correctness of the Commission’s decision and the shifting of burdens at the circuit court level would be meaningless.” *Id.* at 385.

At some points in its brief, the County appears to argue that it had no need to produce any expert medical testimony at all. The County contends that the circuit court erred when it concluded that this case involved a complex medical question. The County emphasizes that it introduced surveillance videos that show Mr. Kuratu engaging in daily living activities without apparent limitations “during the period” of temporary total disability found by the Commission. The County suggests that the jury could conclude, based on the surveillance videos recorded in April 2019 and May 2019, that Mr. Kuratu “was faking his injury and could return to his work as a driver by March 28, 2018.”

Despite these arguments, the County offers little reason to conclude that its burden was any different from the burden faced by the employer in *S.B. Thomas, Inc. v. Thompson*. In an attempt to make some meaningful distinction, the County asserts that

“the *Thompson* case is about causation[.]” The County insists that the present case “is not about causal relationship[.]” The County asserts that the present case is “about credibility[.]” The County invokes the principle that questions about the credibility of witnesses generally fall within the province of the jury, as the finder of fact, rather than expert witnesses.

The County’s argument reflects a misunderstanding of the holding of *S.B. Thomas, Inc. v. Thompson*. The opinion expressly “concern[s] . . . the legal sufficiency of the proof of *non-causation*.” *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. at 383 (emphasis in original). The opinion establishes a general rule that, whenever the relationship between an earlier injury and a subsequent disability presents a complicated medical question, expert medical testimony is required “to establish a *prima facie* case of *non-causation*.” *Id.* at 383-84 (emphasis in original); *see also Kelly v. Baltimore County*, 161 Md. App. 128, 152 (2005), *aff’d*, 391 Md. 64 (2006). Here, the County presented a particular theory of non-causation: that the cause of Mr. Kuratu’s complaints was not the work-related injury but instead his intentional “malingering” or “faking” of those complaints. The County’s theory was not the same as the theory of the employer from *S.B. Thomas, Inc. v. Thompson*, but it was still a theory of non-causation.<sup>8</sup>

In this case, if the County had failed to produce any expert medical testimony and had relied entirely on the discrepancies between his behavior at the independent medical

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<sup>8</sup> Moreover, there is no question that *S.B. Thomas, Inc. v. Thompson* involved issues of credibility. Specifically, the employer disputed the credibility of the employee’s claim that his back suddenly locked up without any intervening injury.

examinations and his conduct recorded on the surveillance videos, Mr. Kuratu would have been entitled to judgment in his favor under *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. at 371. Just as an employer could not rely on a video recording of the employee walking and running to prove that his herniated disc did not result from an earlier work-related accident, the surveillance videos of Mr. Kuratu were inadequate to prove a lack of causal connection between his reported symptoms and the traumatic brain injury that he sustained several months earlier. In both cases, “[m]edical expert testimony was essential to prove the lack of a causal connection.” *Id.*

In at least some of its arguments, the County appears to recognize that this case involves a complex medical issue for which expert medical testimony was necessary. In its response to the motion for judgment notwithstanding the verdict, the County “concede[d] that there was a complex issue in this case, which was whether [Mr. Kuratu] was malingering/faking a traumatic brain injury[.]”<sup>9</sup> The County contends that, to the extent that it might have been required to produce expert medical testimony, it satisfied that requirement. At trial, the County relied primarily on testimony from three expert witnesses: Dr. Bartoszek, a neurologist; Dr. Wexler, an ophthalmologist; and Dr. Craig, a psychologist. According to the County, all three witnesses opined that Mr. Kuratu was “malinger (faking) concerning his medical status and that [he] did not have any

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<sup>9</sup> Despite this concession to the circuit court, the County attempted to backtrack on appeal. In its appellate brief, the County wrote: “the County concedes *arguendo* that there was a complex issue in this case, which was whether [Mr. Kuratu] was malingering/faking a traumatic brain injury, visual problems, and/or psychiatric issues from his accident on July 11, 2017.” In its reply brief, the County insisted that it never made any “concession” that this case presents any complex medical issue.

conditions related to the work injury that prevented work.”

Even on its own terms, the County’s argument falls short. Of the County’s three expert witnesses, only Dr. Wexler, the ophthalmologist, rendered any definite opinion on the subject of malingering. Dr. Wexler opined that Mr. Kuratu had “‘a component of malingering’” to his presentation at the independent medical examination on January 15, 2020. Dr. Wexler concluded that Mr. Kuratu “was not truthful or forthright” in the examination, “including his visual acuity . . . and his visual field testing.” Dr. Wexler opined that Mr. Kuratu was “faking or malingering because he has . . . no organic reason why he doesn’t see well.”

By contrast, Dr. Bartoszek, the expert neurologist, never opined that Mr. Kuratu was malingering. Dr. Bartoszek opined that it was unlikely that Mr. Kuratu’s presentation at the independent medical examination was related to his traumatic brain injury. Dr. Bartoszek explained that he considered “a broad differential diagnosis” for Mr. Kuratu’s presentation, which would include “potential psychiatric etiologies[,]” including “depression[,]” “conversion disorder,” and “malingering.” Dr. Bartoszek emphasized, however, that he is “not a psychiatrist,” and that “making those diagnoses . . . is in the realm of psychiatry[.]”

As support for its claim that Dr. Bartoszek opined that Mr. Kuratu was malingering, the County relies on Dr. Bartoszek’s response to a question about why he recommended a psychiatric evaluation:

[DR. BARTOSZEK:] Again, I talked about the differential diagnosis before, and one of the items on the differential diagnosis was a psychiatric diagnosis. And given his appearance on that video, I saw a contrast of what



he looked like when I saw him for the examination. I mean, malingering has to be considered. And malingering is not a diagnosis -- I mean, it's a diagnosis I can suspect, but it's not a diagnosis that I would make. The psychiatrist . . . would make that diagnosis.

Under any fair interpretation of this testimony, Dr. Bartoszek did not opine that Mr. Kuratu was malingering at the independent medical examination or at any other time. Dr. Bartoszek declined to render any opinion on those matters. Dr. Bartoszek had mentioned malingering as one possible explanation for Mr. Kuratu's presentation, along with others such as depression and conversion disorder. Dr. Bartoszek expressed his understanding that, although a psychiatrist might be able to render an opinion about whether Mr. Kuratu was malingering, he was not capable of rendering an opinion on that issue, as a neurologist.<sup>10</sup> Testimony explaining why an expert declined to render an opinion on a subject does not amount to an opinion on that subject. *See Ramsey v. Physicians Mem'l Hosp., Inc.*, 36 Md. App. 42, 48-49 (1977) (holding that expert testimony stating that it was "very difficult to have a definite opinion" about breach of standard of care did not amount to an opinion that physician breached standard of care).

The County's expert psychologist, Dr. Craig, did not examine Mr. Kuratu until September 21, 2021. Throughout his testimony, Dr. Craig never directly mentioned "malingering" or "faking." Dr. Craig repeatedly expressed "concern[s]" about the "truthfulness" of Mr. Kuratu's presentation, particularly his claim that he could not see well enough to read the electronic tablet used to administer psychological tests. Largely

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<sup>10</sup> In a later section of its brief, the County writes: "What Dr. Bartoszek said is that a psychiatrist would have to make an official diagnosis about whether [Mr. Kuratu] was faking his condition."

based on “credibility and truthfulness concerns” regarding “Mr. Kuratu’s presentation[,]” Dr. Craig opined that there was not “sufficient evidence to support any psychiatric symptoms” or any “psychological disorder related to” the injury. Even in the light most favorable to the County, it would be an overstatement to characterize Dr. Craig’s testimony as an expert opinion that Mr. Kuratu was malingering when he had complained of *neurological* symptoms three years before the psychological examination.<sup>11</sup>

The County repeatedly asserts that Dr. Craig, an expert psychologist, determined that Mr. Kuratu “did not have any vision or neurological deficits.” The testimony cited by the County fails to support that assertion. In the cited testimony, Dr. Craig commented on “discrepancies” between Mr. Kuratu’s actions recorded on the surveillance videos and his appearance at the independent medical examination. Dr. Craig did not offer any medical opinion on whether Mr. Kuratu had neurological symptoms or impaired vision. In fact, during cross-examination, Dr. Craig explained that he could not give an opinion about alleged “neurological complaints” or “visual deficits[.]” Dr. Craig explained that the “actual presence” of those “primary factors” was “beyond the expertise of a psychologist” and would need to be assessed “by a neurologist and a visual specialist.”

In sum, the record fails to support the County’s assertions that all three of its expert witnesses opined that Mr. Kuratu was malingering at the independent medical

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<sup>11</sup> For example, from the middle of 2018 through early 2019, Mr. Kuratu was receiving treatment from a neurologist, Dr. Bridgit Venza, for his complaints of blackout spells, fatigue, poor memory, and insomnia. Dr. Craig did not state any opinion about whether Mr. Kuratu falsely presented his neurological symptoms at those times.

examinations.

But even if there was sufficient evidence to conclude that Mr. Kuratu was malingering at those examinations, another deficiency remains. Throughout its arguments, the County treats the purported expert opinions about “malingering” as if those opinions were retroactive. The independent medical examinations by the County’s experts occurred in May 2019, January 2020, and September 2021. The County attempts to treat any evidence that Mr. Kuratu falsely presented his symptoms at those times as proof that he had recovered by a much earlier date: March 28, 2018. The County fails to elaborate on its proposed reasoning. On its own, a finding that Mr. Kuratu was malingering in his presentation at examinations beginning on May 13, 2019, would not support a finding, by a preponderance of the evidence, that he was malingering more than a year earlier.

To the extent that the County suggests that the jury could find that “there was no injury” at all, that suggestion is untenable. At trial, there was no dispute that Mr. Kuratu had sustained a traumatic brain injury. The County’s expert neurologist, Dr. Bartoszek, opined that Mr. Kuratu “did sustain a mild traumatic brain injury” as “the direct result of the work injury on July 11th, 2017.” No witness refuted the conclusion that Mr. Kuratu sustained a mild traumatic brain injury. Indeed, the County acknowledges this injury when it states that its medical experts found “no injury other than a minor traumatic brain injury[.]” Although the injury was undisputed, the recovery was in dispute. As phrased in the County’s brief, the County sought to prove that Mr. Kuratu had “recovered from his injury sufficiently so that he could have returned to work.” We are unconvinced that

the timing of Mr. Kuratu's recovery from a traumatic brain injury was anything other than a complex medical issue of the type that requires expert testimony from the party with the burden of proof.

Near the end of Dr. Bartoszek's direct examination, the County elicited the following testimony about Mr. Kuratu's recovery from the mild traumatic brain injury:

[THE COUNTY:] Now, you also . . . say . . . later on in your report . . . that[] he had a mild traumatic brain injury. But what, if any, significan[ce], given the nature of the history of a mild traumatic brain injury, is the recovery? Why do you seem to think that that's no longer an issue for him?

\* \* \*

[DR. BARTOSZEK:] Okay. So I guess to start with . . . the definition of a mild traumatic brain injury is -- I mean, obviously there's head trauma, but there's head trauma and one of the following: there's either a loss of consciousness, an alteration in consciousness -- and that could be as minimal as being dazed and confused, or sort of seeing stars after an injury. And then more of what's called post-traumatic amnesia where you could lose a period of time after the injury.

So and when I'm able to obtain a history from an individual, I usually pay attention to that, and try to establish that being present. In this claimant, I was unable to do that. From what I could glean from the records, there was no loss of consciousness, and one note talked about being no confusion. But I sort of gave him the benefit of the doubt in calling this a mild traumatic brain injury, because I didn't have -- I didn't get the face-to-face from him. So it would qualify as a very mild traumatic brain injury, and the natural history of a traumatic brain injury is very good. Approximately 85 percent of individuals return to normal within a year.

Throughout its briefs, the County repeatedly asserts that Dr. Bartoszek testified that Mr. Kuratu recovered "very quickly" or "very rapidly" from his mild traumatic brain injury. More than once, the County presents the words "very quickly" in quotation marks, to suggest that the County is directly quoting Dr. Bartoszek's testimony. The

County attaches great significance to this purported testimony. The County theorizes that “[v]ery quickly” had certainly expired by eight months” after the injury. The County argues that the jury could infer, based on the purported testimony that Mr. Kuratu recovered ““very quickly,”” that Mr. Kuratu recovered “by March 28, 2018[.]”

Despite the County’s assertions, the transcript shows that Dr. Bartoszek never used the words “quickly” or “rapidly” or any synonym for those words. When asked to explain his conclusion that the mild traumatic brain injury was “no longer an issue[.]” Dr. Bartoszek characterized the injury as “a very mild traumatic brain injury” and noted that “the natural history of a traumatic brain injury is very good.” The statement that the “natural history” of this type of injury is “very good[.]” is by no means equivalent to an opinion that Mr. Kuratu recovered “very quickly” or “very rapidly.” In this context, the phrase “very good” is a relative term with no reasonably definite meaning. If anything, Dr. Bartoszek indicated that a person’s recovery might take longer than eight months when he added: “Approximately 85 percent of individuals return to normal within a year.” A factual statement that 85 percent of people recover “within a year” is certainly not an opinion that Mr. Kuratu recovered within eight months.

Immediately after those statements, the County inquired about Mr. Kuratu’s condition as of the time of the independent medical examination in May 2019:

[THE COUNTY:] At that point, in May 31, 2019 [sic], had you [sic] reached maximum medical improvement?

[DR. BARTOSZEK:] Yes.<sup>[12]</sup>

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<sup>12</sup> Although the transcript states that the County’s attorney asked whether Mr. Kuratu had reached maximum medical improvement by “May 31, 2019[.]” Mr. Kuratu

[THE COUNTY:] And did you provide an impairment rating at that time?

[DR. BARTOSZEK:] Yes, I gave a zero percent impairment of the head.

\* \* \*

[THE COUNTY:] I've got no further – he has had any work restrictions as a result of the mild traumatic brain injury?

[DR. BARTOSZEK:] No.

In sum, Dr. Bartoszek opined that Mr. Kuratu had reached maximum medical improvement by the time of the independent medical examination, that Mr. Kuratu had no impairment of the head at that time, and that Mr. Kuratu no longer had any work restrictions related to the traumatic brain injury. This opinion testimony would tend to support a finding that Mr. Kuratu was capable of returning to work by the time of the independent medical examination on May 13, 2019. This opinion testimony was insufficient to support a finding, by a preponderance of the evidence, that Mr. Kuratu had recovered more than a year before that examination. Generally, when an expert witness fails to render an opinion on an issue, the testimony does not support a finding in favor of the party who bears the burden of proof on that issue. *See Retina Grp. of Washington, P.C. v. Crosetto*, 237 Md. App. 150, 176 (2019) (holding that expert testimony was insufficient to permit a finding that physician breached standard of care where the expert criticized aspects of the physician's treatment, but never opined to a reasonable degree of medical certainty that the physician breached standard of care).

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has conceded that Dr. Bartoszek testified that Mr. Kuratu reached maximum medical improvement from his neurological injuries by May 13, 2019.

If he had been asked for his opinion, Dr. Bartoszek might have opined that Mr. Kuratu probably experienced a full recovery within eight months, or within one year, or within some other time period. Dr. Bartoszek might also have opined that he lacked enough information to assess, to a reasonable degree of medical certainty, Mr. Kuratu's condition before the date of the independent medical examination. During the testimony, the County never asked for a medical opinion about Mr. Kuratu's condition during the period before that examination. A fact finder would need to resort to speculation to decide that, if Dr. Bartoszek had been asked, he would have opined, to a reasonable degree of medical certainty, that Mr. Kuratu had fully recovered by March 28, 2018.

The burden faced by the County here was not insurmountable. As the circuit court observed, the County could have asked its expert witnesses for their opinions about Mr. Kuratu's condition during the time period at issue. In fact, one expert witness at trial did give opinion testimony about Mr. Kuratu's condition during that period. Counsel for Mr. Kuratu asked Dr. Noonberg, an expert in clinical psychology and neuropsychology, the following question: "To what degree, to a reasonable degree of medical certainty or psychological certainty, was Mr. Kuratu able to work in March of 2018, up and through June of 2019, or at any time?" Dr. Noonberg answered: "My opinion is no." The County could have posed similar questions to its own expert witnesses.<sup>13</sup>

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<sup>13</sup> The date of March 28, 2018, has no apparent relationship with any opinions stated by the County's expert witnesses. That date does have some procedural significance: March 28, 2018, was the date that the County first terminated the payment of temporary total disability benefits to Mr. Kuratu, on that ground that he had missed a scheduled medical appointment. At trial, the County did not present any evidence related to a missed medical appointment on that date.

Ultimately, the evidence presented by the County was deficient as it concerned a matter of timing. The question of when Mr. Kuratu recovered from his mild traumatic brain injury sufficiently so that he could return to work involved a complex medical issue. The expert medical testimony presented on that issue was Dr. Bartoszek’s opinion that Mr. Kuratu had reached maximum medical improvement and had no impairment resulting from the mild traumatic brain injury as of May 13, 2019. This testimony was inadequate to support a finding, by a preponderance of the evidence, that he had recovered more than one year earlier. Accordingly, the circuit court correctly determined that the County failed to produce sufficient evidence with respect to disability benefits that accrued before May 13, 2019.

## **II. Denial of Motion for New Trial**

In his appeal, Mr. Kuratu contends that the trial court erred when it refused to order a new trial on the issues of whether he was temporarily and totally disabled during the four-week period after May 13, 2019, and whether he knowingly obtained benefits to which he was not entitled during that period.

In general, the decision of whether to grant a motion for new trial rests in the discretion of the trial court. *See Exxon Mobil Corp. v. Albright*, 433 Md. 303, 349 (2013) (citing *Buck v. Cam’s Broadloom Rugs, Inc.*, 328 Md. 51, 56 (1992)). An appellate court will reverse the denial of a motion for new trial “only upon a showing that the trial court abused its discretion in failing to order a new trial.” *Id.* at 349-50. Ordinarily, this Court “should not interfere with the trial court’s discretion unless (1) the trial court has not fairly exercised its discretion, or (2) the most ‘extraordinary or compelling



circumstances” are present. *Holden v. Blevins*, 154 Md. App. 1, 8 n.9 (2003) (quoting *Thodos v. Bland*, 75 Md. App. 700, 707 (1988)).

Maryland Rule 2-533(b) specifies the method for raising an issue on a motion for new trial. It provides: “All grounds advanced in support of the motion [for new trial] shall be filed in writing within the time prescribed for the filing of the motion, and no other grounds shall thereafter be assigned without leave of court.” *Id.* Accordingly, the appellate court will not consider grounds for granting a new trial if a party failed to raise those grounds in support of the motion for new trial. *See Patras v. Syphax*, 166 Md. App. 67, 82 (2005) (declining to consider grounds for granting new trial set forth in appellate brief, where “[n]one of those grounds were mentioned” in the motion for new trial).

At trial in this case, Mr. Kuratu moved for judgment solely on the issue of whether there was sufficient evidence to prove that he was not temporarily and totally disabled from March 28, 2018, to May 13, 2019. After the entry of judgment, Mr. Kuratu filed a combined motion for judgment notwithstanding the verdict and motion for new trial. The entire argument in his post-judgment motion was devoted to the same contention raised at trial: that the evidence was insufficient to establish that he was not temporarily and totally disabled from March 28, 2018, to May 13, 2019. Likewise, the reply in support of his motion was entirely devoted to the contention that the evidence was insufficient to establish that he was not temporarily and totally disabled during that period.

To the extent that Mr. Kuratu’s post-judgment motion discussed the period following May 13, 2019, his motion suggested that the evidence *was* sufficient for a factfinder to conclude that he was not entitled to temporary total disability benefits after that

date. The motion stated: “[Mr. Kuratu] does not contend that medical testimony was not presented that [he] had reached maximum medical improvement as of May 13, 2019.”

The motion continued: “However, no medical opinions were presented to a reasonable degree of medical probability by any of the [County’s] experts to support the contention that Mr. Kuratu was not temporarily totally disabled at any time before May 13, 2019.”

Similarly, the reply in support of the motion stated: “Determining entitlement to disability requires expert medical opinion. None was presented in this case until May 13, 2019[,] when [Mr. Kuratu] was evaluated by Dr. [Bartoszek].”

Mr. Kuratu’s post-judgment motion and reply made requests for judgment in his favor with respect to the period from March 28, 2018, until May 13, 2019. Although the motion and reply also included requests for a new trial with respect to the four-week period after May 13, 2019, these submissions did not specify any reasons why the court should grant a new trial as to that time period. Mr. Kuratu did not challenge the sufficiency of the evidence regarding his disability after May 13, 2019, nor did he argue that he suffered any unfair prejudice concerning that issue. When the trial court denied the request for a new trial, it stated: “Because the County presented an expert opinion that [Mr. Kuratu] had reached [maximum medical improvement] by May 13, 2019 and was able to work, his motion for a new trial on that issue is denied.”

On appeal, Mr. Kuratu now asserts that Dr. Bartoszek opined that Mr. Kuratu had reached maximum medical improvement only “as it related to the neurological injury.” Mr. Kuratu asserts that he “may have achieved [maximum medical improvement] as it related to the underlying physical, traumatic brain injury, but he had not achieved

maximum medical improvement” as it related to “the psychological sequela.” Mr. Kuratu contends that the evidence was insufficient to conclude that, “psychologically, he was capable of working, even if he was at [maximum medical improvement] neurologically.”

Strictly speaking, a motion for new trial is not the proper method for challenging the sufficiency of the evidence. The proper method for challenging the sufficiency of the evidence at a jury trial is to make a motion for judgment during trial and a motion for judgment notwithstanding the verdict. *See, e.g., Scapa Dryer Fabrics, Inc. v. Saville*, 418 Md. 496, 503 (2011). When a party makes a motion for judgment, the party must “state with particularity all reasons why the motion should be granted.” Md. Rule 2-519(a). A party’s “[f]ailure to state a reason [why the motion for judgment should be granted] serves to withdraw the issue from appellate review.” *MEMC v. Elec. Materials, Inc. v. BP Solar Int’l, Inc.*, 196 Md. App. 318, 335 (2010) (quoting *Kent Vill. Assocs. Joint Venture v. Smith*, 104 Md. App. 507, 517 (1995)). Where a party fails to raise an issue regarding the sufficiency of the evidence in the party’s motion for judgment and motion for judgment notwithstanding the verdict, the issue is not preserved for appellate review. *See Hoffman v. Stamper*, 385 Md. 1, 46 (2005).

In this case, counsel for Mr. Kuratu made a proper challenge to the sufficiency of the evidence by moving for judgment at the close of the evidence presented by the County, renewing that motion at the close of all the evidence, and moving for judgment notwithstanding the verdict. Those motions challenged the sufficiency of the evidence solely as to the time period before May 13, 2019. Those motions did not include any

challenge to the sufficiency of the evidence as it related to psychological conditions after May 13, 2019. Consequently, Mr. Kuratu’s challenge to the sufficiency of evidence concerning the four-week period beginning on May 13, 2019, is not properly preserved for appellate review. *See Hoffman v. Stamper*, 385 Md. at 46; *MEMC v. Elec. Materials, Inc. v. BP Solar Int’l, Inc.*, 196 Md. App. at 336.

In his brief, Mr. Kuratu further argues that the trial court “improperly permitted” the jury to consider “evidence of the entire [temporary total disability] timeframe[,]” rather than requiring the jury to decide a “narrower” issue of whether he had a psychological disability after May 13, 2019. Mr. Kuratu theorizes that, if the trial court had limited the issues to the period after May 13, 2019, then the opinions of the County’s neurologist and ophthalmologist would have become “irrelevant,” and “only the opinions of the psychologists” could have been properly considered.<sup>14</sup>

In our assessment, Mr. Kuratu is attempting to raise a new issue that exceeds the scope of his post-judgment motion. The post-judgment motion included a bare request for a new trial regarding the period after May 13, 2019. The motion did not argue or suggest that it was improper or prejudicial for the jury to consider the entire time period covered by the Commission’s decision. “When deciding a motion, ‘[t]he trial court is not

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<sup>14</sup> Mr. Kuratu fails to elaborate on his assertion that the opinions of Dr. Bartoszek and Dr. Wexler would have been inadmissible in a trial concerning whether Mr. Kuratu had a psychological disability after May 13, 2019. Mr. Kuratu fails to acknowledge that both psychologists considered Mr. Kuratu’s medical history, including the opinions of Dr. Bartoszek and Dr. Wexler, in reaching their conclusions. At a minimum, therefore, the opinions of Dr. Bartoszek and Dr. Wexler may have been relevant for the purpose of demonstrating the bases for the opinions reached by the two psychologists.

required to imagine all reasonable offshoots of the argument[s] actually presented” in support of the motion. *Estate of Brown v. Ward*, 261 Md. App. 385, 443 (2024) (quoting *James B. Nutter & Co. v. Black*, 225 Md. App. 1, 27 (2015)) (further citation and quotation marks omitted). The grounds for new trial raised in Mr. Kuratu’s appellate brief are not adequately preserved for review. *See Patras v. Syphax*, 166 Md. App. at 82 (applying Md. Rule 8-131(a)). In light of the arguments presented, the trial court did not abuse its discretion in concluding that Mr. Kuratu had failed to advance any grounds warranting a new trial.

**JUDGMENT OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY  
AFFIRMED. COSTS TO BE PAID 50% BY  
APPELLANT/CROSS-APPELLEE AND  
50% BY APPELLEES/CROSS-  
APPELLANTS.**