Circuit Court for Montgomery County
Case No. C-15-CV-22-001442

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 722

September Term, 2024

NICOLE OTTOLENGHI

v.

EMANUELE OTTOLENGHI

Shaw,
Zic,
Eyler, James R.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw, J.

Filed: May 22, 2025

Appellant, Nicole Ottolenghi, initiated a civil lawsuit against Appellee, Emanuele Ottolenghi, in the Circuit Court for Montgomery County, alleging numerous claims, including intentional infliction of emotional distress, battery, and false imprisonment. Appellee answered and later filed a motion for partial summary judgment on Appellant's claim for intentional infliction of emotional distress ("IIED"). At the conclusion of a hearing, the court granted Appellee's motion. In May 2023, a jury trial was held on the remaining issues, and the jury returned a verdict in favor of Appellee. Appellant timely appealed and presents three questions, which we have reordered[1] for clarity:

> 1. Whether the circuit court erred in ruling that [Appellee] was not bound by [Appellant's] affirmative admissions to his Rule 2-424 requests that she admit that her emotional injuries were both severe and disabling, despite the plain directive in Rule 2-424(d) that "any matter admitted under this Rule is conclusively established."

[1] Appellant's brief ordered its Questions Presented as:

> 1. Whether the circuit court erred in granting summary judgment dismissing [Appellant's] claim for intentional infliction of emotional distress in the face of compelling medical and lay evidence of record, including detailed fact-referenced opinions of [Appellant's] medical experts if the existence and etiology of her severe and disabling emotional distress, e.g. chronic symptomatic PTSD and panic disorder.
>
> 2. Whether the circuit court erred in ruling that [Appellee] was not bound by [Appellant's] affirmative admissions to his Rule 2-424 requests that she admit that her emotional injuries were both severe and disabling, despite the plain directive in Rule 2-424(d) that "any matter admitted under this Rule is conclusively established."
>
> 3. Whether the circuit court erred in so purging essential admissible contextual evidence concerning the March and November 2019 incidents alleged in [Appellant's] surviving batteries claim, that [Appellant] was unfairly prevented from fulsomely presenting her case to the jury.

> 2. Whether the circuit court erred in granting summary judgment dismissing [Appellant's] claim for intentional infliction of emotional distress in the face of compelling medical and lay evidence of record, including detailed fact-referenced opinions of [Appellant's] medical experts if the existence and etiology of her severe and disabling emotional distress, e.g. chronic symptomatic PTSD and panic disorder.
>
> 3.Whether the circuit court erred in so purging essential admissible contextual evidence concerning the March and November 2019 incidents alleged in [Appellant's] surviving batteries claim, that [Appellant] was unfairly prevented from fulsomely presenting her case to the jury.

For reasons discussed below, we affirm the judgment of the circuit court.

BACKGROUND

In December of 2021, Appellant filed a complaint for absolute divorce against Appellee in the Circuit Court for Montgomery County. Appellant alleged that throughout her marriage to Appellee, he engaged in "repeated acts of cruelty." In addition to Appellant's request for divorce, the complaint included claims for IIED, battery, and false imprisonment.

As to her IIED claim, Appellant alleged that Appellee engaged in "a systemic campaign of extreme and outrageous emotional and physical abuse" towards her. Appellee's conduct included "the regular and habitual use of language and other nonphysical coercive conduct, at times publically [sic], and at times in the presence of the parties' children . . . in conjunction with occasions of assault and battery." Appellant contended that she suffered severe emotional distress, a significant impairment of behavioral and affective functioning and overall mental well-being, acute temporary and chronic severe injuries and damages.

Appellant also alleged that throughout the course of their marriage, Appellee "at various times and places" battered her. She cited several incidents. First, in March of 2019, when Appellant attempted to kiss Appellee, he "grabbed [her] by the neck, began to strangle her, [and] forcibly placed and held [a] C-pap machine over her." A few months later, in November of 2019, Appellee forced entry into Appellant's locked bedroom, and in an attempt to retrieve her cellphone, "repeatedly shoved and dragged [Appellant]." In support of her false imprisonment claim, Appellant alleged that in August of 2018, Appellant and Appellee were driving together in a car when Appellee demanded to see Appellant's cellphone. Appellant refused, asking to return home, and Appellee locked the doors such that Appellant could not leave.

On August 14, 2023, Appellee filed a motion for partial summary judgment, which Appellant opposed. During a hearing held by the court, Appellee argued that summary judgment should be granted for the IIED claim because Appellant's evidence could not establish that (1) the conduct was extreme and outrageous; and that (2) the emotional distress was severe. Appellee argued that the emotional distress was "not [] itself severe enough to meet [the] very high threshold for IIED" and that there was ample evidence that Appellant was able to function and complete normal life activities. Appellee stated:

> Since the separation, [Appellant] has held down a full-time job, including as a special needs teacher for early childhood students . . . She has full custody of her two now teenage sons . . . [S]he helps them with homework, attends parent-teacher conferences, is involved in their education, coordinates their extracurricular activities and their various doctor's appointments and other appointments, grocery shops, makes meals, takes them to regular appointments and activities that they have.
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> ***

> [B]eyond just regular daily activities, she's able to socialize. She's able to have a romantic relationship. She attends religious services routinely, and she's even traveled the past two summers internationally with her children. It's far beyond sort of just meeting the daily basic functioning.

In response, Appellant argued that "given the affidavits of what's been alleged here" the IIED claim was "deserving of going through [sic] a jury." Appellant noted allegations in her affidavit that she felt "intimidated," "terrified," "degraded," "humiliated," "isolated," and "harassed," were corroborated by her expert psychologist, her therapist, and a court-appointed psychologist, who agreed that Appellant suffered "a significant impairment of behavioral and effective functioning and overall mental well-being." Each professional diagnosed Appellant with PTSD. Appellant's counsel argued:

> [A]ll they focus on is she got a job after she got a protective order, removed him from the house, and needed to work. And so her testimony is that she that she [sic] has to leave the classroom, that there's a lot of pain. But the bottom line is the fact – you could walk onto the courtroom and look fit as a fiddle, even be fit as a fiddle. That question is only whether it's permanent or temporary, but nobody's going to argue you weren't injured.
>
> This is a woman who did not work outside of the home, she says, because she was not allowed to. But the bottom line is she was not doing any of the things that the defendants [sic] say she could do now. That's only a question of the – of whether there's permanency, if you believe the doctor, or what her condition really is now. But clearly, she was not working . . . until he left.

Appellant contended that evidence in the record showing Appellee's extreme and outrageous conduct established the distress caused by it, and it was severe enough to overcome a motion for summary judgment. Appellant argued that her answers to Appellee's Requests for Admissions conclusively established the severity of her distress.

At the close of the parties' arguments, the court made its oral ruling. In granting Appellee's motion as to the IIED claim, the judge stated:

> what I do find is that under the facts set forth in this case that the plaintiff has failed to articulate and provide evidence that she has suffered from a severe emotional disabling response, as set forth in *Harris v. Jones*, 281 Md. 560.

On October 16, 2023, the court denied a motion filed by Appellant for reconsideration, and a jury trial was held on the remaining claims. Following deliberations, the jury rendered a verdict in Appellant's favor. Appellee timely filed a motion for a new trial, arguing discovery violations. The court granted the motion and vacated the judgment. A second jury trial commenced on May 6, 2024, and following deliberations, the jury rendered a verdict in favor of Appellee. Appellant filed this timely notice of appeal.

STANDARD OF REVIEW

An appellate court reviews a trial court's rulings concerning the admissibility of evidence under an abuse of discretion standard. *Sail Zambezi, Ltd. v. Md. State Highway Admin.*, 217 Md. App. 138, 155 (2014) (*Berndayn v. State*, 390 Md. 1, 7 (2005)). An abuse of discretion occurs "where no reasonable person would take the view adopted by the trial court." *See State v. Robertson*, 463 Md. 342, 365 (2019). When reviewing whether a trial court's evidentiary rulings are legally correct, "we give no deference to the trial court findings and review the decision under a de novo standard of review." *Critzos v. Marquis*, 265 Md. App. 684, 692 (2023) (quoting *Lamson v. Montgomery Cnty.*, 460 Md. 349, 360 (2018)).

An appellate court reviews a circuit court's grant of summary judgment *de novo*. *Westminister Mgmt., LLC v. Smith*, 486 Md. 616, 637 (2024) (citing *Bd. of Cnty. Comm'rs*

of St. Mary's Cnty. v. Aiken, 483 Md. 590, 616 (2023)). In doing so, it must "conduct an independent review of the record to determine whether a genuine dispute of material facts exists." *Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 297 (2022). If, in viewing the record in the light most favorable to the non-movant and construing any reasonable inferences which may be drawn from the facts against the movant, an appellate court finds there are no material facts in dispute, it must determine whether the moving party was entitled to judgment as a matter of law. *Id.* "Ordinarily, [an appellate court] may affirm the trial court only on the grounds upon which the trial court relied in granting summary judgment." *Newell v. Runnels*, 407 Md. 578, 607 (2009).

DISCUSSION

I. The circuit court did not err in ruling that Appellee was not bound by the pretrial admissions of Appellant.

Maryland Rule 2-424 provides:

> (a) **Request for Admission.** A party may serve one or more written requests to any other party for the admission of (1) the genuineness of any relevant documents or electronically stored information described in or exhibited with the request, or (2) the truth of any relevant matters of fact set forth in the request
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> (d) **Effect of Admission.** Any matter admitted under this Rule is conclusively established unless the court on motion permits withdrawal or amendment. The court may permit withdrawal or amendment if the court finds that it would assist the presentation of the merits of the action and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission for any other purpose, nor may it be used against that party in any other proceeding.

Appellant argues that the circuit court erred in failing to find that her pretrial admissions conclusively established her claim. She cites Maryland Rule 2-424 and argues that Appellee should not have been able to offer evidence that contradicted her admissions. Appellee argues that Rule 2-424 restricts Appellant from producing contradicting evidence but has no effect on the presentation of his case.

In *Murnan v. Joseph J. Hock, Inc.*, 274 Md. 528 (1975), the Supreme Court of Maryland examined the "conclusively established" language in Maryland Rule 2-424, formerly Maryland Rule 421. There, the appellee, a contractor sued the appellant, a racetrack owner, for breach of contract alleging that it was owed compensation for the installation of sand on the owner's racetrack. *Id.* at 529. During the discovery period, the appellant requested several admissions from the contractor, including that "the [appellant] had ordered two inches of sand, but instead the contractor had installed the sand to . . . 5 inches." *Id.* at 530. The contractor did not respond to the requests for admission. *Id.* At trial, when the contractor sought to prove that he had installed the sand at a depth of two inches, the appellant proffered to the court admissions that the contractor had installed the sand "to a level averaging in excess of 5 inches in depth." *Id.* Appellant argued that the contractor was conclusively bound by the admissions. *Id.* The trial court ruled that the contractor could provide other evidence relating to that fact. *Id.* The court ultimately entered a judgment against appellant at the conclusion of a bench trial.

In reviewing the court's ruling, the Supreme Court noted that the Rule is centered on "the elimination at trial of the *need* to prove factual matters which the adversary cannot fairly contest." *Id.* at 533 (quoting *McSparran v. Hannigan*, 225 F.Supp. 628, 636–37

(E.D.Pa. 1963) (emphasis added). The Court, in recognizing the purpose of the Rule, stated:

> Rule 36 serves a salutary purpose as one of the means for reducing the area of dispute at the trial. Requests for admission of relevant facts under Rule 36 would be even less useful than interrogatories to parties under Rule 33 if they were not conclusively binding on the party making the admission.

Id. at 534 (quoting *McSparran*, 225 F.Supp. at 636–37). Because the trial judge had failed to resolve whether there was proper service and whether the admission was deemed admitted, the Supreme Court remanded the case for a new trial. *Id.* at 531–32, 534. The Court stated if the trial judge were to rule that the admissions would not be withdrawn, "the admissions would then of course, be conclusively binding upon appellee." *Id.* at 534–35.

In *Scapa Dryer Fabrics, Inc. v. Saville*, the Maryland Supreme Court examined whether admissions under Rule 2-424 required the trial court to make a finding of liability, or whether they were "merely statements of fact." 418 Md. 496, 518 (2011). There, Mr. Saville sued several companies, including appellant Scapa Dryer Fabrics claiming negligence relating to his work environment and his diagnosis of asbestosis and other illnesses. *Id.* at 501. Scapa then filed a lawsuit against its co-defendants. *Id.* During discovery, Scapa received admissions from Mr. Saville in response to its Requests for Admissions of Facts.[2] *Id.* at 518–19. A jury trial was held, and, as part of its case against its co-defendants, Scapa's attorney read into evidence several admissions from Mr. Saville alleging joint tort-feasor liability. *Id.* at 518–19. The jury found Scapa liable but denied

[2] Prior to trial, Scapa Dryer Fabrics' co-defendants settled with Mr. Saville. *Id.* at 501.

its crossclaims. *Id.* at 502. Scapa then moved for judgment notwithstanding the verdict on the crossclaims, and the trial court denied the motion. *Id.*

On certiorari, Scapa argued that Mr. Saville's admissions "conclusively established" the co-defendant's liability, and therefore its crossclaims. *Id.* at 517. The Supreme Court did not agree. *Id.* at 518. It held that "*uncontested* factual matters, which are introduced into evidence through party admissions, are conclusively established." However, "the jury, or the trial court . . . [is] still required to weigh the evidence . . . [to find liability]." *Id.* at 521 (emphasis added). The Court elaborated that:

> Although the facts admitted did provide some evidence to support Scapa's cross-claims, they did not establish substantial factor causation under *Balbos*, as a matter of law and they did not compel "only one inference." Therefore, the admissions were properly submitted to the jury for consideration as part of Scapa's case in chief against the cross-defendant and co-defendant.

Id. at 520.

In the present case, at the motions hearing, Appellant's counsel stated:

> [APPELLANT'S COUNSEL]: Under the request for admission, Rule 2-424(d), if you submit a request for admission . . . And it's admitted. It's conclusively established. This is what's read to the jury.
>
> We will ask, and we are entitled to have an instruction to the jury that the parties have agreed on the following. There's a request for admission and an admission, and this is what they say. Ms. Ottolenghi has panic or anxiety attacks on a near daily basis which prevent her from completing all of her work on time and is [sic] required.
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> THE COURT: But requests for admissions are binding upon the party that issued the admission, not the party that sought the admission.
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> [APPELLANT'S COUNSEL]: They're conclusively established. . . .

> THE COURT: Against the party that makes the admission, not against the party that sought the admission.

Based on our review of the record, we hold that the court did not err in ruling that the admissions did not conclusively establish Appellant's claim. Rule 2-424(d) allows a propounding party to submit into evidence admitted facts, and it also allows that party to present other evidence on issues that have been admitted. We conclude that admissions are binding on the party that made the admission and not the propounding party.

II. The circuit court did not err in granting the motion for summary judgment.

Maryland Rule 2-501 provides, "any party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." A genuine dispute exists if, in viewing the evidence in the light most favorable to the nonmoving party, a reasonable juror could find in favor of the nonmoving party. *Windsheim v. Larocca*, 443 Md. 312, 326 (2015). A fact is material for the purposes of summary judgment if it "affects the outcome of the case." Md. Rule 2-501(e).

The tort of intentional infliction of emotional distress requires a plaintiff to prove four elements:

> (1) conduct that was intentional or reckless; (2) conduct that was extreme and outrageous; (3) a causal connection between the wrongful conduct and the emotional distress; [and] (4) emotional distress that was severe.

Lasater v. Guttmann, 194 Md. App. 431, 448 (2010) (quoting *Harris v. Jones*, 281 Md. 560 566 (1977)). To meet the fourth element, a party must establish that "[they] suffered a *severely* disabling emotional response to the defendant's conduct" and that "the distress

was so severe that no reasonable man could be expected to endure it." *Harris v. Jones*, 281 Md. 560, 566, 570–71 (1977). The distress must be such that the party cannot function or "tend to necessary matters." *Haines v. Vogel*, 250 Md. App. 209, 232–33 (2021) (quoting *Leese v. Balt. Cnty.*, 64 Md. App. 442, 471 (1985)). "While the emotional distress must be severe, it need not produce total emotional physical disablement." *Figueiredo-Torres v. Nickel*, 321 Md. 642, 656 (1991) (quoting *Reagan v. Rider*, 70 Md. App. 503, 513 (1987)).

In *Moniodis v. Cook,* this Court analyzed whether the appellees produced sufficient evidence to support the trial court's finding that they suffered extreme emotional distress in an employment case. 64 Md. App. 1 (1985). At trial, the appellants moved for a directed verdict, arguing, in part, that the appellees had submitted insufficient evidence of severe emotional distress. *See id.* at 8. The court denied the motion, and a jury later found in favor of the appellees on their IIED claims. *Id.* at 7. On appeal, this Court, quoting the *Harris* court, stated, "there must be a severely disabling emotional response, so acute that no reasonable man could be expected to endure it. Such severity is measured by factors including the intensity of the response as well as its duration." *Id.* at 15 (quoting *Harris*, 281 Md. at 571). We held that for three of the appellees, the evidence was insufficient to establish the required emotional distress as described in *Harris*. *Id.* at 15. We found that only one appellee's case was sufficient. *Id.* at 15–17. We stated, "[t]hough each [of the three] testified that [they] were upset after the terminations, and suffered symptoms such as increased smoking, lost sleep, and "hives," none indicated that she was emotionally unable, even temporarily to carry on to some degree with the daily routine of [] life." *Id.* at 15–16. We acknowledged that evidence that a party was "managing by herself an entire

household," in the absence of other evidence tending to prove severe distress, directly contradicted the level of distress needed for a showing of severity. *See id*. at 16. As to appellee Cook, we held that the "evidence was more than enough to permit a jury finding that she had been severely distressed." *Id.* We noted:

> When Moniodis told her she would be transferred, her hours diminished, and her store keys taken, she was deeply disturbed. Her husband found her at home crying and wringing her hands. . . . She became a recluse . . . and did not "come out of it" for a year. Relatives came to the home to tend to household chores which Ms. Cook could no longer perform. She took pains to avoid contact with neighbors who might ask her why she no longer worked at Rite-Aid.

Id. We affirmed the judgment in favor of appellee Cook and reversed the judgments in the three remaining cases. *Id.* at 19.

In *Manikhi v. Mass Transit Administration*, the Supreme Court of Maryland examined a trial court's dismissal of an IIED claim. 360 Md. 333, 370 (2000). Ms. Manikhi alleged in her complaint that (1) she sought medical treatment; (2) she was fearful at work; (3) she was constantly alert; and (4) she was forced to leave her work site for another one. *Id.* at 368. The defendants moved to dismiss the claim, and the trial court granted their motion. *Id.* at 341.

In observing the "high burden" required to prove severe emotional distress, the Supreme Court stated:

> The conclusory allegations within the IIED count fail to state a claim, and there are no facts alleged anywhere in the amended complaint describing conduct of the MTA, its Officials, or the Union Officials that is "extreme and outrageous." We shall assume, however, that [the defendants'] conduct was extreme and outrageous. Nonetheless, we agree with the [Appellate Court] that, even taking these factors into account, the amended complaint fails to plead facts that, if true, would rise to the level of *severe* emotional distress.

Id. at 368 (internal citations omitted) (emphasis in original); *see also Caldor, Inc. v. Bowden*, 330 Md. 632, 642–45 (holding evidence that plaintiff went to a psychologist one time, felt insecure and incapable of trusting others, and suffered weight loss did not suffice to show severe distress); *Leese*, 64 Md. App. at 472 (holding evidence that plaintiff suffered "physical pain, emotional suffering and great mental anguish" was insufficient to satisfy the element of severe distress). The Court affirmed the trial court's grant of the motion to dismiss and held that the medical treatment alone was insufficient to prove that the distress was severe. *Id.* at 370 ("Nowhere does the complaint state with reasonable the nature, intensity, or duration of the emotional injury . . . Without such 'evidentiary particulars' [] the allegation that Manikhi was forced to seek medical treatment [is not enough].").

Most recently, this Court reviewed the dismissal of an IIED claim in *Haines v. Vogel*. 250 Md. App. at 209. There, the appellant filed a complaint against his ex-wife, alleging, among other things, intentional infliction of emotional distress. *Id.* at 214. In doing so, he argued that she deprived him of his right to visit his children and to have parenting time, which resulted in his "extreme emotional distress." *Id.* Appellee moved to dismiss the IIED claim arguing that Appellant's allegations did not amount to the type of conduct required for an IIED claim, and the trial court granted her motion. *Id.* at 215.

Appellant noted an appeal to this Court, and we affirmed the decision of the circuit court. *Id.* at 233. We held that the ex-wife's alleged conduct did not meet the test of outrageousness, and that Appellant did not claim that he could not function or carry on with "necessary matters." *Id.* While he alleged that his relationship with his children had

suffered severely, he did not allege that [Ms. Vogel's] actions have taken such an emotional toll that he could not carry on or endure. *Id.* (citing *Harris*, 281 Md. at 571). We affirmed the trial court's ruling, holding that, "[s]ince Father d[id] not allege the requisite conduct nor a severe enough injury here," a jury could not make a finding of IIED. *Id.*

In the present case, at the hearing on partial summary judgment, Appellant offered several affidavits to support her position that her distress was severe. First, she offered an affidavit from an expert forensic psychiatrist, who opined that she suffered from post-traumatic stress disorder and anxiety as a result of Appellee's conduct. The expert psychiatrist stated, in pertinent part:

> 9. I opine that Ms. Ottolenghi suffers from PTSD and Unspecified Anxiety Disorder. Both conditions were proximately caused by intentional severe emotional and physical abuse sustained over a roughly 13-year period from Mr. Ottolenghi.
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> 44. Ms. Ottolenghi experienced prominent dissociated symptoms associated with PTSD to the trauma and abuse inflicted by Mr. Ottolenghi. Dissociation is a condition of experiencing an altered state of consciousness. Her dissociation manifested as depersonalization, which is feeling as if outside of one's body, observing events or one's mental processes from afar. . . . She feels elements of depersonalization daily, and feels "frozen" during them, as if her body is very still an unable to move.
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> ***
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> 55. Ms. Ottolenghi has not worked as a barrister since 2006. After her separation, Ms. Ottolenghi worked for 1 year as a Pre-K teacher. She then began working as a special needs teacher for Montgomery County in August 2021. Prior to these, she received training for mediation and works as a volunteer mediator at schools and for other situations . . . .
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> 59. [Ms. Ottolenghi's] ability to concentrate is impaired due to mental fatigue from the various stressors and living with posttraumatic symptoms daily, including insomnia and nightmares. This negatively affects her ability to learn . . . She needs to continue attending weekly therapy for treatment of her ongoing PTSD and anxiety problems.
>
> 60. Her psychiatric state, as a result of [Appellee's conduct], substantially impairs her ability to return to work as a lawyer 13 years after Mr. Ottolenghi forbade her from working.
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> ***
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> 67. My conclusion, to a reasonable degree of psychiatric probability, is that Ms. Ottolenghi sustained intentionally inflicted extreme and outrageous emotional, verbal, and physical abuse. . . . Ms. Ottolenghi's emotional distress was and is so severe that no reasonable person should or could be expected to endure it.

Next, Appellant offered her own sworn affidavit that stated, in pertinent part:

> 3. With regard to identifying the precise dates of the defendant's acts of emotional . . . abuse, I begin by reiterating that the verbal insults . . . were employed by defendant virtually from the beginning of our marriage in 2006 to and including November 17, 2019, when we separated and were so frequent that it would be impossible to attribute a specific date for each and every one.
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> 4. However . . . there are a number of first hand witness [sic] who have personally observed and are available to testify concerning defendant's abuse over the years . . .
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> 12. [Appellee's conduct caused Appellant] extreme emotional distress, a significant impairment of behavioral and affective functioning and overall mental well-being, acute, temporary, and chronic severe and substantial injuries and damages, including but not limited to episodic anxiety and depression, intense physical and emotional pain and suffering, deep humiliation, intrusive memories and dread of future abuse by [Appellee], and unwelcome changes in thinking, mood and emotional reactions and responses.
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> 14. The emotional distress [Appellant] has experienced as a consequence of [Appellee's] intentionally outrageous conduct, as described above, has been so severe that no reasonable person should or could be expected to endure it.

Finally, she offered a joint affidavit submitted by their sons. In paragraph 3, the sons stated, "[o]ver the years, we have heard and/or observed numerous instances during which our father physically and emotionally abused our mother as well as ourselves, including grabbing, yelling, criticizing, denigrating, privately and publicly."

Initially, we note that while the sons' statement addressed Appellee's conduct, it does not address the effect of his conduct on Appellant. The statement does not address the severity of Appellant's distress. Likewise, Appellant's affidavit did not address or specify the "nature, intensity, or duration" of her condition. Her affidavit does not include severely disabling emotional responses to the appellee's conduct, such that appellant could not "function or tend to necessary matters." *See Manikhi*, 360 Md. at 370; *see also Leese*, 64 Md. App. at 472 (establishing that a complaint alleging that a plaintiff suffered "physical pain, emotional suffering and great mental anguish" without more was insufficient to show a severe injury).

Appellant argues that the psychiatrist's medical opinions were sufficient and "affirmatively outline the severity of Wife's emotional distress," citing *Reagan v. Rider*, 70 Md. App. 503 (1987). In *Reagan*, the appellee, Glenda Rider sued appellant John Reagan for IIED. *Id.* at 505. At trial, Ms. Rider testified that she suffered "extreme embarrassment, humiliation, mortification, depression, and . . . gain[ed] weight to the point of obesity." *Id.* at 506. Ms. Rider's psychiatrist also testified that "she was 'mistrustful' of other people . . . and seemed to have no ability to form any 'lasting interpersonal

relationships." *Id.* Following deliberations, the jury returned a verdict in favor of appellee. On appeal, this Court held that the plaintiff's evidence was legally sufficient to show severe distress, noting that "medical evidence is [not] an absolute prerequisite to recovery," but "it is an important factor in determining the severity of the element." *Id.* at 513. We stated, "in many cases the extreme and outrageous character of the defendant's conduct is in itself important evidence that the distress has existed." *Id.* at 509 (quoting *Harris*, 281 Md. at 570–71. We affirmed, stating:

> As the [Supreme Court] said in Harris, the four elements of [IIED] must coalesce . . . From the very nature of [Reagan's] conduct . . . and the intensity and duration of the emotional distress – a severe depression deteriorating over a three-year period and requiring an additional two years of therapy, the jury could properly find that the emotional distress was severe.

Id. at 513–14.

Here, although the psychiatrist's medical testimony was considered in determining whether Appellant's distress is severe, it, alone, was insufficient. Appellant's treating psychiatrist, when asked, stated that she could not say that Appellant's distress was "debilitating." There was further undisputed evidence that (1) Appellant's anxiety attacks do not prevent her from performing her work duties; (2) Appellant cares for herself and their children on a daily basis; (3) Appellant is in an intimate relationship; and (4) Appellant has vacationed with her family.

The trial judge explained:

> What I found particularly interesting was the evidence that was set forth by [Appellee] which talked about her job and ability to work.
>
> She's had a constant job since the separation . . . Says [sic] her job duty's [sic] is a special education teacher. And I note that that is – can be a

> stressful job. It requires time and attention to dealing with children that have particularly difficult educational needs.
>
> She's able to perform those duties well.
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> It goes on . . . Doctor Lazar where it says – the question is, do you say that she was suffering from debilitating and severe emotional distress? Well, when you say debilitating, that's quite an adjective, isn't t, because it implies a lack of function. And I'm not– that I'm not endorsing.
>
> That goes to the heart of what intentional infliction of emotional distress requires. It requires that somebody be debilitated to a certain extent.
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> ***
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> I also note that she's able to take care of her children, able to travel internationally. . .

We hold that the trial judge did not err in granting summary judgment. There was no genuine dispute of material fact, and Appellant did not establish the fourth element of IIED, severe emotional distress, as a matter of law. *See Moniodis*, 64 Md. App. at 16 (finding that undisputed evidence that a plaintiff was managing a household by herself and renovating the home was sufficient to dismiss an IIED claim as a matter of law). We hold that the trial judge did not deviate from the holdings in *Harris*, *Murnan*, *Moniodis*, *Reagan* and other related cases.

III. The circuit court did not err in excluding text messages concerning the March and November 2019 incidents.

Generally, a prior statement made by a witness that is offered for its truth is inadmissible hearsay. *See* Md. Rule 5-801(c). It may, however, be admitted as an exception to hearsay if its proponent can establish that it is:

> (b) a statement that is consistent with the declarant's testimony, if the statement is offered to rebut an express or implied charge against the declarant of fabrication, or improper influence or motive[.]

Md. Rule 5-802.1(b).

Under Maryland Rule 5-616(c), prior consistent statements may be admissible so long as they are not offered for their truth. *See Mohan v. State*, 257 Md. App. 65, 93 (2023). A witness whose credibility has been attacked may be rehabilitated by:

> (2) Except as provided by statute, evidence of the witness's prior statements that are consistent with the witness's present testimony, when their having been made detracts from the impeachment.

Rule 5-616 provides examples of the type of evidence that would "open the door" to rehabilitation, stating:

> (a) The credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at:
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> ***
>
> (2) proving that the facts are not as testified to by the witness;
> (3) proving that an opinion expressed by the witness is not held by the witness or is otherwise not worthy of belief;
> (4) proving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has motive to testify falsely . . .

Appellant argues the circuit court erred in denying the admission of text messages concerning two abuse incidents. She contends the texts were admissible under Maryland Rule 5-616(c) to rehabilitate her credibility, which was attacked during opening statements. Appellee responds that the texts were inadmissible hearsay, and the court did not abuse its discretion in denying their admission.

During opening statements, Appellee's counsel remarked on Appellant's anticipated testimony:

> Ms. Ottolenghi will tell you that she was strangled by her husband on the night of March 2019. What Mr. Ottolenghi will say is what really happened. No strangling. So you will be asked to decide what is more credible.

In her case-in-chief, Appellant did testify and, during the course of her testimony, her attorney requested that certain text messages be admitted into evidence. In the messages, Appellant told a friend that "[t]hings been [sic] escalating with …. Turned physical." Appellant, also, while communicating with her sister via text, stated, "he hurt me…he took his hand and strangled me and put the machine over my face." Appellee objected to the text messages, and the court sustained the objection. The court concluded:

> So what I see is that the – a potential motive to fabricate, as [Appellee is] alleging, it would have existed at the time [the statements were made], but I do think that these statements, nonetheless, would have the tendency to be rehabilitative if her credibility is attacked on cross.

Appellant's counsel then responded, and the following ensued:

> [APPELLANT'S COUNSEL]: May I just point out, under 5-802.1, even strict, or narrow, or not, where does it say that the person who's attacking the credibility, or the voracity [sic], or accuracy of the . . . witness' testimony is the one who decides when [the motive begins]?
>
> ***
>
> THE COURT: It's an evidentiary question and I decided under, I think, 5-104 . . . their theory is that she was discussing and having long phone conversations with somebody another gentleman that she – they're proffering, or that she was in contact with a divorce lawyer . . . there is evidence that
>
> ***
>
> –subsequent to, in a short period of time, in less than 10 months from that point in time, that she had [] relations with this gentleman, so that all of that points to – it doesn't mean necessarily that it happened, it means that there's at least a motivation there that existed at the time [the text messages were sent].

> [APPELLANT'S COUNSEL]: Shouldn't your decision be based on evidence of some sort, not just somebody standing in court and saying, this is what we think.
>
> THE COURT: No, because the whole point of doing this is you're rebutting the implied charge of fabrication, if the reasons that they're setting forth for the implied reasons for the fabrication existed prior to the prior consistent statement, then under 5-802.1, it doesn't come in.
>
> Well, whether it can come in under the rehabilitation rule, that's what Holmes talks about, that it may well come in under that . . . for rehabilitation.
>
> ***
>
> But rehabilitation would come on redirect, after she's been crossed.

In our view, the trial judge did not err or abuse his discretion. The judge ruled, initially, that the text messages did not pass the "pre-motive rule" outlined by Rule 5-802.1 and could not be offered as substantive evidence. Appellant has not raised an error concerning admissibility under Rule 5-802.1, and as such, we decline to address the issue. The judge next held that Appellant's credibility had not yet been attacked and thus, the messages were not admissible under Rule 5-616(c). We agree. Appellee's opening statement did not "open the door" to Appellant's credibility. The opening statement was not evidence, and Appellee did not attack Appellant's statements, but rather, he explained to the jury its responsibility in determining credibility. *See Johnson*, 408 Md. at 226. We note, also, that Appellant sought admission of the text messages, during her direct examination. Appellant, following cross-examination, did not seek to admit the text messages. Appellant's credibility had not been attacked during direct-examination, nor did it come into question. And as such, rehabilitation under Rule 5-616(c) was not available as a means to admit the hearsay evidence when requested by Appellant.

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