Circuit Court for Prince George's County
Case No. CAL19-09079

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1110

September Term, 2024

JOAN ANTHROPO

v.

UNIVERSITY PLACE CENTER, LLC, *et al.*

Wells, C.J.,
Berger,
Lazerow, Alan C.
(Specially Assigned),

JJ.

Opinion by Lazerow, J.

Filed: November 26, 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 case arises from the Circuit Court for Prince George's County's entry of a directed verdict against Joan Anthropo ("Appellant") in a slip-and-fall negligence action she brought against University Place Center, LLC ("University Place") and Marva Properties, LLC ("Marva Properties," and together with University Place, the "Appellees"). Appellees moved for, and were granted, a directed verdict after the trial court concluded—without conducting a separate hearing—that Appellant was not competent to testify. This appeal followed.

Appellant presents three issues for our review, which we have recast and rephrased as follows[1]:

I. Did the trial court err in denying Appellant's motion for a mistrial after the trial court admitted certain photographs showing that there were "Landlord Only" signs close to where Appellant fell?

II. Did the trial court err in concluding that Appellant was not competent to testify?

III. Did the trial court err in entering a directed verdict in Appellees' favor after the trial court struck Appellant's testimony following the trial court's incompetency determination?

[1] Appellant phrased the issues as follows:

I. The Trial Court's Admission of Evidence in Violation of the Discovery Rules and its Failure to Grant a Mistrial Thereafter Constitutes Reversible Error.

II. The Trial Court's Erred in Finding Ms. Anthropo to be Incompetent.

III. The Trial Court Erred When It Granted the Appellees' Motion for a Directed Verdict.

As we explain more fully below, we answer these questions in the negative and, therefore, affirm.

BACKGROUND

Appellees own and operate the shopping center (and its parking lot) located at 1500 University Boulevard, in Langley Park, Maryland. On December 12, 2017, after visiting Appellees' shopping center with her friend, Ms. Mason, Appellant fell when stepping in an alleged depression in the parking lot as she approached her vehicle.

At trial, Appellant first called Nan Shrigley—the property manager of the premises that encompasses where Appellant fell. Shrigley testified regarding the layout of the parking lot, including the presence of "Landlord Only" parking signs that had allegedly been in place for at least a year before the incident. On Appellees' cross-examination of Shrigley, the trial court admitted photographs depicting these signs over Appellant's objection. Although Appellant's objection to those photographs was initially based solely on authentication grounds, about an hour later—and only after the trial court admitted the photographs—Appellant added to her objection that Appellees did not produce the photographs in discovery. After a lengthy discussion about whether Appellees produced the photographs, Appellant moved for a mistrial, which the trial court denied, explaining that Appellant's discovery-related arguments were "too late in the game."

Appellant next called Anthony Shinsky, whom Appellant offered and the trial court accepted as an expert in the field of architecture. Shinsky generally testified that the premises "included dangerous conditions" "that were of such nature that somebody walking there . . . could be injured."

At the end of the second day of trial, Appellant's testimony began. On direct examination, Appellant generally testified that she sustained serious injuries to her hip and ankle as a result of the fall. As explained more fully below, as Appellant's testimony continued over several hours and two trial days, her testimony revealed various memory issues, including her admission that she was "having some problems related to [her] memory . . . ." Certain portions of Appellant's testimony were inconsistent with her deposition testimony and Appellant exhibited considerable confusion during her testimony on cross-examination, even going so far as to question the accuracy of her deposition transcript.

Eventually, the trial court remarked that it was "having concerns" about Appellant's testimony and memory. After Appellant's testimony on cross-examination continued, Appellant's counsel conceded and agreed that Appellant was incompetent. Despite counsel's concession and agreement, Appellant nonetheless maintained that the trial court was required to conduct a separate competency hearing. The trial court disagreed, highlighting Appellant's counsel's agreement regarding her client's lack of competency and striking Appellant's testimony entirely. Despite Appellant not having finished presenting her case in chief, and in the face of Appellant's request for a mistrial, the trial court granted Appellees' motion for a directed verdict, over Appellant's objection.

Appellant noted this timely appeal. Additional relevant facts are supplied below.

DISCUSSION

I. THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MISTRIAL MOTION[2]

A. THE PARTIES' CONTENTIONS

Appellant contends that the trial court erred in admitting photographs depicting "Landlord Only" parking signs, which she asserts were not produced in discovery. Appellant argues that once the jury became aware of these photographs—which Appellant contends do not accurately depict the premises on the date of Appellant's fall—the only appropriate remedy was to grant a mistrial, given that "[t]he admission of these photographs amounts to a trial by ambush" and "[i]t is impossible to un-ring the bell."

Appellees respond that the trial court did not abuse its discretion in denying the mistrial motion because (i) Appellant "did not even raise the alleged discovery violation until *after* the evidence had been admitted," and (ii) Appellant "cannot argue that she was prejudiced" by the admission of the photographs.

B. STANDARD OF REVIEW

We review a trial court's decision to deny a mistrial request for an abuse of discretion. *See Owens-Corning Fiberglas Corp. v. Garrett*, 343 Md. 500, 517 (1996) ("In reviewing the trial judge's denial of a mistrial motion, we will not disturb the ruling absent

[2] Although we uphold below the trial court's determination that Appellant was incompetent and its entry of a directed verdict in Appellees' favor, *see infra* Parts II and III, we nonetheless address Appellant's mistrial arguments given that the mistrial issue arose before the trial court's incompetency-related rulings. That is, had the trial court granted Appellant's mistrial motion and ended the proceedings at that time, Appellant would not have suffered the later adverse rulings relating to her competency and the entry of a directed verdict against her.

a clear showing of abuse of discretion."). "Our first question in determining abuse of discretion in denying a mistrial motion is if and to what extent the movant was prejudiced by the denial." *Id.* at 518.

"The unavoidable question of whether a trial has, distressingly, encountered a patch of rough water or has, more direly, actually struck an iceberg is one that unavoidably must be made by the captain of the ship." *Mason v. State*, 258 Md. App. 266, 274 (2023). A mistrial is indeed a dramatic step for a trial court to take. *See id.* at 275 (holding that, to support the grant of a mistrial, "[t]he record must compellingly demonstrate clear and egregious prejudice to the defendant to warrant such a dramatic measure") (internal quotation marks omitted).

C. ANALYSIS

Appellant's arguments regarding a mistrial are premised on her contention that the trial court erred in admitting the photographs of the "Landlord Only" signs. Her arguments fail, both because she waived any discovery-based objection to the photographs' admissibility, and because, in any event, she cannot show prejudice so substantial as to warrant a mistrial.

i. Appellant Waived Any Discovery-Related Arguments by Only Raising Authentication Before the Trial Court Admitted the Photographs

Rule 2-517(a), sometimes coined the "contemporaneous objection rule," provides: "An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." *See Reed v. State*, 353 Md. 628, 629 (1999) (discussing the

contemporaneous objection rule).[3] Because the Rule further provides that "[t]he grounds for the objection need not be stated unless the court . . . so directs," it is well-settled that "a general objection is sufficient to preserve all grounds which may exist." *See Cromartie v. State*, 490 Md. 297, 309 (2025) (quoting *von Lusch v. State*, 279 Md. 255, 262-63 (1977)). Importantly, however, "a general objection can transform into a specific one where the objecting party 'voluntarily offers specific reasons for objecting to certain evidence.'" *Cromartie*, 290 Md. at 309 (quoting *von Lusch*, 279 Md. at 263). Put differently, "[w]hen a party specifies particular grounds for an objection, it is deemed to have waived all other grounds not mentioned." *Pitt v. State*, 152 Md. App. 442, 463 (2003).

Here, after Appellees' counsel showed Appellant the photographs at issue, Appellant's counsel objected, and the trial judge called the parties to the bench. Appellant's counsel's only argument then was that "we don't know when those pictures were taken, if we've ever taken that." Appellant's counsel was thus objecting on authentication grounds. *See Washington v. State*, 406 Md. 642, 652 (2008) (recognizing that "[p]hotographs may be admissible as probative evidence . . . so long as sufficient foundational evidence is presented to show the circumstances under which it was taken"). After the bench conference concluded, Appellees' counsel asked additional foundational questions of Appellant and then moved the photographs into evidence. Appellant's counsel

[3] Much of the caselaw discussing the contemporaneous objection rule is from the criminal context, in which Rule 4-323(a) applies. The relevant provisions of Rules 2-517(a) and 4-323(a) are identical. *See Reed*, 353 Md. at 636 n.5 ("Maryland Rule 2-517 applies to civil cases in the circuit court and . . . contains the same provisions with respect to contemporaneous objections found in Maryland Rule 4-323.").

raised the "[s]ame objection," "just for the record," after which the trial court admitted the photographs.

It was sixty-some transcript pages and over an hour later[4] when Appellant's counsel informed the trial court that she "just want[ed] to put on the record additional to [her] previous objection with regard to the . . . photos," going on to highlight "the fact that those [photographs] were not provided in discovery." The trial court exclaimed: "Well, you didn't say that an hour ago." And later, after denying Appellant's mistrial motion, the trial court again emphasized that Appellant's counsel "didn't say anything about discovery violations until really too late in the game."

Attorneys or litigants who make specific objections do so at their own peril, as they risk waiving any unraised objections. Such was the case here, when Appellant's counsel's single initial objection to the photographs was that they had not been properly authenticated. By making the discovery-related arguments and objections over an hour later, and after the trial court had admitted the photographs in evidence, Appellant waived the later objections, and that issue was not preserved for appellate review. *See, e.g.*, *Dyce v. State*, 85 Md. App. 193, 196 (1990) ("Ordinarily, improper admission of evidence will not be preserved for appellate review unless the party asserting error objected at the time the evidence was offered or as soon thereafter as the grounds for the objection became apparent."); *see also Beghtol v. Michael*, 80 Md. App. 387, 394 (1989) (referencing Rules

[4] Although there are not timestamps on every page of the transcript, there are timestamps provided when something was marked as "indiscernible." The timestamps show that Appellant's counsel objected on authentication grounds at roughly 11:17 a.m., and later raised the discovery-related arguments at roughly 12:24 p.m.

2-517 and 8-131 and holding that "[t]he result of [certain] omissions is the waiver of the objections and a failure to preserve the issue for our review"). And if Appellant has waived her discovery-related arguments relating to the admission of the photographs, then she has similarly waived her argument that the trial court erred in denying the mistrial request based on the admission of those photographs. *See, e.g.*, *Cooley v. State*, 385 Md. 165, 176 n.4 (2005) (noting that a mistrial motion should be "promptly made, *i.e.*, at an early opportunity after the alleged grounds were made known to counsel").

ii. Waiver Aside, Appellant Was Not Prejudiced So Severely as to Warrant a Mistrial

Appellant contends that "the admission of the photographs by the trial court was a miscarriage of justice . . . ." We disagree.

Appellant elected to call Shrigley—presumably as an adverse witness—as her first witness. Appellant's counsel asked if, "on that guard rail, are there any types of signs," to which Shrigley responded that "[t]here's a sign [that] says landlord parking only . . . ." Shrigley further testified that the signs were installed before Appellant's fall, noting that "[t]hey've been there a very long time," and "[a]t least a year" before. Thus, the trial court's later admission of the photographs with the "Landlord Only" signs only provided pictorial evidence of something the trial court had already received evidence about, *i.e.*, that there were "Landlord Only" signs on the premises before Appellant's fall. Although Appellant contends that, with the admission of the photographs, "[i]t is impossible to un-ring the bell," it was Appellant who was playing the bells by eliciting testimony from Shrigley that the signs had been in place for at least a year before the incident. *See, e.g.*,

Rainville v. State, 328 Md. 398, 408 (1992) (quoting *Guesfeird v. State*, 300 Md. 653, 659 (1984)) (listing, among the factors "to be considered in determining whether a mistrial is required," "whether a great deal of other evidence exists"). Under the circumstances, Appellant was not meaningfully prejudiced by the admission of the photographs, "much less the kind of extreme prejudice that would warrant a mistrial." *See Reed v. Balt. Life Ins. Co.*, 127 Md. App. 536, 568 (1999). The trial court properly denied Appellant's request for a mistrial.

II. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN FINDING APPELLANT INCOMPETENT

A. THE PARTIES' CONTENTIONS

Appellant contends that the trial court made multiple errors in finding her incompetent. *First*, Appellant argues that a competency hearing is required before the trial court makes a finding that a witness is incompetent to testify. Appellant cites *In re Lee*, 132 Md. App. 696 (2000), and a provision of the Estates and Trusts Article in support of her argument that a hearing on competency "cannot be waived and must always be held for petitioner to establish by 'clear and convincing evidence' that the alleged disabled person is in need of a guardian." *Second*, Appellant argues that the trial court erred in making its ultimate decision that she was incompetent, asserting that her confusion and inconsistent statements during cross-examination were largely limited to the introduction of Appellees' photographs of the premises.

In response, Appellees argue that no separate competency hearing was required and that the trial court properly found Appellant incompetent, highlighting both the fact that

Appellant's counsel agreed that Appellant was incompetent and the considerable span of Appellant's confused and devolving testimony. We review both issues in turn.

B. STANDARD OF REVIEW

We review a trial court's determination of witness competency for an abuse of discretion. *See Perry v. State*, 381 Md. 138, 148 (2004) (holding that competency determinations are "within the sound discretion of the trial judge"). "In determining whether a witness is competent to testify, the trial court, in its discretion, should determine whether an individual witness has sufficient capacity to observe, recollect, and recount pertinent facts and whether that individual demonstrates an understanding of the duty to tell the truth." *Cruz v. State*, 232 Md. App. 108, 112 (2017) (cleaned up).

C. THE TRIAL COURT DID NOT ERR IN DETERMINING THAT A COMPETENCY HEARING WAS NOT REQUIRED

i. Competency Hearings Are Not Always Required

Taking first whether the trial court was required to conduct a competency hearing before determining that Appellant was incompetent, we agree with Appellees that there is no such absolute requirement.

"At early common law, many groups of people, including parties to a civil or criminal action, their spouses, other persons financially interested in the outcome of a suit, and all convicted felons were barred from testifying, because it was believed that their testimony would have been so suspect as to be worthless in advancing the search for truth."[5]

[5] In certain places and at certain times, women were deemed incompetent to testify. *See, e.g.*, *Baker v. Brown*, 36 So. 539, 540 (Miss. 1904).

Lynn McLain, *Maryland Evidence, State & Federal* § 601:1, *available on Westlaw*. Not so anymore. *See id.* ("Today almost all persons are competent to testify, and the facts that previously would have caused a person to be found incompetent now simply may be brought out to impeach that witness's credibility."); *see also Pegg v. Warford*, 7 Md. 582, 603 (1855) (recognizing "[t]he legal presumption being in favor of the competency of every witness"). Under Rule 5-601, "[e]xcept as otherwise provided by law, every person is competent to be a witness." Rule 5-104(a), in turn, requires trial courts to determine "[p]reliminary questions concerning the qualification of a person to be a witness . . . ."

In *Perry*, 381 Md. at 141, our Supreme Court "granted *certiorari* on the single issue of whether the trial court was required to hold a separate *voir dire* hearing, outside the presence of the jury, to determine if a seven-year-old child is competent to testify." In addressing this question and answering it in the negative, the Supreme Court looked to federal cases involving Rule 5-104's federal analog. The Court looked chiefly to *United States v. Odom*, 736 F.2d 104, 112 (4th Cir. 1984), in which "defendants challenged the competency of some of the Government's witnesses (on the basis of mental incompetence) and argued that the trial court should have held an *in camera* hearing to determine their competency." *Perry*, 381 Md. at 146 (citing *Odom*, 736 F.2d at 109). Rejecting this argument, the Fourth Circuit "cited cases decided before the adoption of the Federal Rules of Evidence to support its conclusion that holding a hearing outside the presence of the jury to determine witness competency is not required." *Perry*, 381 Md. at 147 (citing *Odom*, 736 F.2d at 111); *see also Perry*, 381 Md. at 147 (quoting *United States v. Gerry*, 515 F.2d 130, 137 (2d Cir. 1975)) ("When competency is questioned there is no legal requirement

that the trial judge conduct a formal hearing."). In *Perry*, in holding that a separate hearing is not required absolutely, the Supreme Court explained "that the procedure that should be employed to determine . . . competency is, in the first instance, . . . within the trial court's discretion." *Perry*, 381 Md. at 157.

Appellant's arguments to the contrary—citing *In re Lee*, *supra*, and Md. Code Ann., Est. & Trusts § 13-705—are misplaced. In *In re Lee*, this Court held that, *in certain guardianship matters*, "a hearing on competency cannot be waived . . . ." *In re Lee*, 132 Md. App. at 714. Notably, the *Lee* Court did not as much cite Rule 5-601. The case at bar, of course, is not a guardianship matter, and Est. & Trusts § 13-705—a guardianship statute—is of no relevance here. What is relevant is Rule 5-601, and *Perry* holds that competency hearings are not required absolutely under the Rule.

ii. A Competency Hearing Was Not Required Here, and the Trial Court Did Not Err in Finding Appellant Incompetent

Having determined that trial courts are not, in every case, required to conduct a competency hearing before making a competency determination, we next turn to whether a hearing was required here and, relatedly, whether the trial court erred in its incompetency determination. We hold that the trial court erred on neither score, both because counsel conceded that Appellant was incompetent, and because the trial court had witnessed Appellant's seemingly confused and devolving testimony over a lengthy stretch of time.

Throughout her testimony, Appellant displayed significant confusion and difficulty responding coherently. Near the outset of her testimony on direct examination, Appellant apologized to her counsel, stating: "I'm sorry. I'm slowing down. You have to bear with

me." When her counsel later showed her a photograph of the premises, Appellant expressed that she could not recognize it.

Appellant's testimony also revealed various memory issues. Appellant could not recall when she was seen for an independent medical evaluation. Later, Appellant shared that she was "having some problems related to [her] memory and they come and go." Appellant could not recall where she was living at the time of the incident. Much of Appellant's testimony was inconsistent with her deposition testimony. Take this interaction, for instance:

> [COUNSEL FOR APPELLEES:] Now, yesterday you said that it was a gray day, that it was about to snow and, in fact, it started snowing while you were on your way to the hospital. Do you remember telling us that?
>
> [APPELLANT:] Yes. That's exactly what I recall.
>
> [COUNSEL FOR APPELLEES:] Do you recall telling us in your deposition that it was a clear day?
>
> [APPELLANT:] I, in the deposition, I believe I was responding to the day started out as a clear day. I remember that very vividly.
>
> [COUNSEL FOR APPELLEES:] Very vividly about your deposition. Right?
>
> [APPELLANT:] Well, the day did start out as a clear day.
>
> [COUNSEL FOR APPELLEES:] Okay. Question on page 59. Question, "What was the weather like that day other than cold?" Answer, "It was clear." Question, "Was there any precipitation on the ground?" "No."

Our review of the record illustrates Appellant's visible confusion during cross-examination. More than the inconsistent recollections, Appellant challenged the accuracy of her own deposition transcript:

[COUNSEL FOR APPELLEES:] And you didn't realize that until after you had fallen, correct?

[APPELLANT:] No.

[COUNSEL FOR APPELLEES:] That's not correct?

[APPELLANT:] No.

[COUNSEL FOR APPELLEES:] Okay. Again. Same thing that I just read to you, Question, "What happened to your right foot, ankle, leg when you fell or what happened to cause you fall?" Answer, "Well, it was like I stepped in a big hole, but I didn't realize it at the time of my fall. I realized it when I looked back, and I looked at my surroundings after my fall, that there was a big hole there." Was that your sworn testimony with your attorney sitting right next to you on August the 19th of 2019?

[APPELLANT:] I'm not sure.

[COUNSEL FOR APPELLEES:] Okay. Well, you don't have any reason to doubt the transcript, do you?

[APPELLANT:] Yes, I do.

[COUNSEL FOR APPELLEES:] Oh you do?

[APPELLANT:] Yes.

[COUNSEL FOR APPELLEES:] Because the Court reporter just messed everything up?

[APPELLANT:] All I can tell you is the version that I have of that transcript reads differently.

As the testimony progressed, the trial judge remarked that she was "having concerns" about Appellant's testimony and memory. Notably, Appellant struggled when presented with a copy of her deposition transcript that, while identical in substance to her

own, had different formatting,[6] leading her to believe that it was not the same document. To assuage Appellant's concerns, the trial judge allowed Appellant to retrieve her own copy of the transcript from her car, but even then, Appellant's confusion mounted. As the cross-examination continued, and after Appellant could not recognize photographs introduced the day before, the trial court remarked:

> [THE COURT:] Honestly, I don't know, but I'm going to find out if I can just stop this. I don't think she remembers much.
>
> . . .
>
> [THE COURT:] I don't know if we should keep putting her through this. She's 77 years old. She doesn't remember. That's the bottom line.

Later still, Appellant asked to "pause for a minute," stating that she "just need[ed] to think for a minute" and "talk to [her] attorneys." The foregoing reflects that the trial court witnessed Appellant's confusion, memory problems, and combativeness over several hours and over two days of testimony.

Beyond the trial court witnessing Appellant's devolving testimony over many hours and over two days of testimony, however, perhaps more critical is that Appellant's counsel herself conceded that Appellant was incompetent. After witnessing and being involved in much of the above-cited colloquy, the trial court read from Rule 5-601, stating that it was "close" to making an incompetency determination "unless you can convince me

[6] Apparently, the transcript Appellant reviewed was a "full" version of the transcript, *i.e.*, with one page of the transcript printed on each page, whereas at trial, counsel presented her with a "mini" version of the transcript, *i.e.*, with four pages printed on each page.

otherwise," because it "just d[id]n't think she's competent." In response, Appellant's counsel expressed that she did not know "how to go forward at this point."

After some back-and-forth regarding whether the appropriate outcome in the event of an incompetency determination was a directed verdict in Appellees' favor or a mistrial, the trial court allowed Appellees to continue their cross-examination of Appellant. After Appellant expressed yet further confusion, the trial court again raised the competency issue. Appellant's counsel stated that she "understood [the trial court]'s inclination" as to competency, and they were "not necessarily disagreeing with that." The trial court referenced an apparent in-chambers meeting, stating that "[w]hen we were in my chambers before, [Appellant's counsel] said we're not disagreeing with [the trial judge]," to which Appellant's counsel concluded, "[o]n the issue of competency." Appellant's counsel again stated that they "didn't . . . disagree" as to competency, concluding: "There's no -- I don't think there's a dispute about the . . . issue of competency. That's clear."

Again, *Perry* establishes that, although a competency hearing is not required absolutely, "if a *substantial question* regarding competency is raised, the court should ordinarily conduct a *voir dire* outside the presence of the jury." *Perry*, 381 Md. at 151. Here, whatever "substantial question" Appellant's confusing and devolving testimony raised vis à vis her competency was answered by her counsel when she conceded that her client was incompetent. Indeed, in denying Appellant's request for a competency hearing, the trial court stated: "We're not having a hearing on her competency because [Appellant's counsel] agreed that [Appellant]'s incompetent," to which Appellant's counsel replied,

"Okay." At that point, there was no longer a "substantial question"—the question had been answered.

It is important to reiterate that, "[t]oday almost all persons are competent to testify, and the facts that previously would have caused a person to be found incompetent now simply may be brought out to impeach that witness's credibility." McLain, *supra* § 601:1. On a different record, *i.e.*, one in which trial counsel did not concede the issue of competency and one in which the trial judge did not have a lengthy opportunity to observe the witness's "capacity to observe, recollect, and recount pertinent facts," *see Cruz*, 232 Md. App. at 112, our decision may well be different. But given Appellant's counsel's concession as to competency and the prolonged opportunity—stretching over two days—the trial court had to observe Appellant's capacity, a competency hearing would have served no purpose. As a result, we hold that the trial court did not abuse its discretion in rejecting Appellant's calls for a competency hearing and in finding Appellant incompetent.

III. THE TRIAL COURT DID NOT ERR WHEN IT GRANTED APPELLEES' MOTION FOR A DIRECTED VERDICT AFTER THE TRIAL COURT DETERMINED THAT APPELLANT WAS INCOMPETENT AND STRUCK HER TESTIMONY

A. THE PARTIES' CONTENTIONS

Appellant, citing Rule 2-519(a), contends that the trial court erred in granting Appellees' motion for a directed verdict before the close of Appellant's case in chief. Appellant contends that she intended to play her expert's *de bene esse* deposition, further arguing that both Shrigley and Shinsky testified "as to their knowledge and inferences

regarding the Premises and [Appellant]'s injuries," and that testimony "is more than enough evidence to generate a jury question . . . ."

Appellees argue that the trial court did not err, highlighting that, after the trial court struck Appellant's testimony following its incompetency determination,[7] Appellant could not have presented any evidence of how the accident occurred. Without evidence to prove the elements of Appellant's negligence claim, Appellees argue that the trial court correctly granted their motion for a directed verdict.

B. STANDARD OF REVIEW

We review a trial court's decision to grant a motion for judgment[8] in a civil case de novo. *See District of Columbia v. Singleton*, 425 Md. 398, 406 (2012); *see also Lowery v. Smithsburg Emergency Med. Serv.*, 173 Md. App. 662, 682-83 (2007). "We review the grant of a motion for judgment under the same standard as we review grants of motions for judgment notwithstanding the verdict." *Tate v. Bd. of Educ. of Prince George's Cnty.*, 155 Md. App. 536, 544 (2004). The Court assumes "the truth of all credible evidence on the

[7] In her brief, Appellant does not fault the trial court for striking Appellant's testimony following its incompetency determination. At oral argument, however, Appellant argued—for the first time—that the trial court could have accepted certain of Appellant's testimony and struck other portions. Putting aside that Appellant has waived the argument by failing to raise it in her papers, *see Anderson v. Litzenberg*, 115 Md. App. 549, 570 (1997), it is well-settled that "the trial judge does not have discretion to admit the testimony of a witness who is not competent to testify." *See Jones v. State*, 410 Md. 681, 699 (2009). Appellant's testimony was thus an all-or-nothing proposition.

[8] Below, the trial judge and counsel referred to the procedure as a "directed verdict" instead of a "motion for judgment." "What used to be called a 'directed verdict' is known now as a 'motion for judgment' under Maryland Rule 2-519." *Brendel v. Ellis*, 129 Md. App. 309, 314 n.2 (1999); *see also Barrett v. Nwaba*, 165 Md. App. 281 288 n.4 (2005).

issue" and any "inferences therefrom" in the light most favorable to the nonmoving party. *Id.* "Consequently, if there is any evidence, no matter how slight, that is legally sufficient to generate a jury question, the case must be submitted to the jury for its consideration." *Id.* at 545.

C. THE TRIAL COURT DID NOT ERR IN GRANTING APPELLEES' MOTION FOR A DIRECTED VERDICT AFTER FINDING APPELLANT INCOMPETENT AND STRIKING HER TESTIMONY

Rule 2-519 provides that "[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." Although the Rule uses the phrase "at the close of the evidence," because there was no evidence that Appellant could offer that would create sufficient evidence to send the case to the jury and resuscitate her case, the trial court did not err.

As for the fifty-two-minute *de bene esse* deposition of Appellant's medical expert that Appellant intended to play, the medical expert could not have testified to the who, what, where, when, why, or how the incident occurred. Indeed, in its briefing and at oral argument, Appellant did not argue how the *de bene esse* video would have produced evidence sufficient to send the case to the jury.

Further, even setting aside the fact that she was not available to testify at trial, Appellant's friend, Ms. Mason, similarly would not have aided Appellant. That is, Appellant agreed on cross-examination that she and Ms. Mason "split when [they] got closer to the car," with Appellant testifying that Ms. Mason "did not" see her fall. Thus,

just as Appellant's medical expert could not testify as to what happened during the incident, neither could Ms. Mason.[9,10]

Because allowing Appellant to put on the rest of her case would not have generated evidence sufficient to send the case to the jury, the trial court did not err in entering a directed verdict in Appellees' favor.

CONCLUSION

To recap, the trial court did not abuse its discretion in denying Appellant's request for a mistrial after admitting photographs Appellant alleged were not produced in discovery. The trial court also did not abuse its discretion in determining that a separate competency hearing was unnecessary after Appellant's counsel conceded the issue. Finally, because allowing Appellant to put on the rest of her case would not have generated evidence sufficient to send the case to the jury, the trial court did not err in entering a directed verdict in Appellees' favor. For these reasons, we affirm.

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

[9] Relatedly, Appellant's counsel conveyed that she intended to recall Shrigley. Shrigley—as the property manager—similarly would have been unable to testify to what happened during the incident.

[10] At oral argument, Appellant offered another possibility: Appellant could have offered her deposition testimony. Even putting aside the unfairness that would ensue from allowing Appellant to admit her deposition testimony without Appellees being able to cross-examine her, Appellant did not argue to the trial court that it should accept her deposition testimony, nor did Appellant argue in her brief before this Court that the trial court erred in not doing so. As a result, we do not consider this belated argument. *See* Md. Rule 8-131(a); *see also Anderson*, 115 Md. App. at 570 ("Objections or arguments not raised in a brief are deemed waived.").