

Circuit Court for Baltimore City
Case No. 24-C-22-002516

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1176

September Term, 2024

SABRINA BENJAMIN

v.

MARYLAND TRANSIT ADMINISTRATION, ET AL.

Graeff,
Arthur,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: November 10, 2025

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

Sabrina Benjamin shattered her ankle when she fell into the 15-inch gap between a MARC train and the station platform. She brought suit against the entities that administer and operate the MARC train service. The court granted summary judgment in the defendants' favor on the ground that Ms. Benjamin had assumed the risk of her injuries as a matter of law.

Ms. Benjamin appealed. We reverse. A reasonable jury could find that Ms. Benjamin did not voluntarily assume the risk of her injuries.

FACTUAL AND PROCEDURAL HISTORY

The pertinent facts, viewed in the light most favorable to Ms. Benjamin, the party who opposed summary judgment, are as follows:

For 18 months before June 4, 2019, Ms. Benjamin, who was about 50 years old at the time, commuted daily from her home in Laurel, Maryland, to her job in Arlington, Virginia. In the mornings, Ms. Benjamin caught the MARC train at the Laurel Railroad Station, alighted at Union Station in Washington, D.C., and took the Metro to Pentagon City, where she worked as a paralegal. In the evenings, Ms. Benjamin took the same route in reverse to get back to Laurel.

The MARC train is a commuter train with two different types of railcars: older, single-level cars and newer, double-decker cars. Ms. Benjamin was alighting from an older car when she shattered her ankle.

In exiting one of the older cars, a passenger must climb down two steep steps with uneven risers. The riser height for the first step is approximately 12 inches; the riser

height for the second step is approximately 11 inches. The industry standard requires consistent riser heights of between 7.0 inches and 9.5 inches.

There is a 15-inch horizontal gap between the platform of the Laurel Station and the bottom step of the older cars. The industry standard for horizontal gaps is 10 centimeters, which is less than four inches. Therefore, the gap at the Laurel Station is almost four times greater than the industry standard.

Each MARC train has four cars and usually has two conductors. Each car has two doors, but only one door on each car is open at a time. At each stop, one conductor opens the rear door of the first car and the front door of the second, while the other conductor opens the rear door of the third car and the front door of fourth. The conductors are charged with watching the passengers get on and off the train and with operating the train doors.

Typically, passengers have between 30 and 90 seconds to leave the train before the conductors close the doors and continue to the next stop.

The conductors have access to a step-box or stool that bridges part of the gap between the older trains and the platform. In the morning, the conductors would use the stool at the Laurel Station. In the afternoon, a different crew of conductors would not use the stool. The conductor on the afternoon train testified that he would use the stool only if a customer asked for it, and Ms. Benjamin did not know that she had the option of asking the conductor to use the stool. She testified: “[N]o one told me that I could ask for the stool.” She also testified that she had never “seen anyone ask for the stool.”

The trains have signs warning riders of the gap between the station and the platform. Ms. Benjamin saw those signs. The signs do not inform passengers that they can ask the conductor to use the stool.

Each seat-back pocket on the train contains a safety pamphlet, which cautions passengers to watch their step, warns them of the gap between the train and the platform, and advises them, in generic terms, to “ask a crew member” if they “need assistance.” The pamphlet does not mention the stool or inform passengers that a conductor might use it to assist them in bridging the gap between the station and the platform if they request it. Ms. Benjamin saw the pamphlet “when [she] began to ride the train” but did not remember whether she had read it.

The June 4, 2019, Incident

On her commute home from work on June 4, 2019, Ms. Benjamin rode in an older, single-level train car. She was wearing tennis shoes, had a light tote bag over her shoulder, and had nothing in her hands. She was in the rear car.

When the train pulled into Laurel, Ms. Benjamin joined the passengers waiting to disembark. A line of people was standing in the aisle waiting to get off. She watched the people in front of her “hop[]” over the gap between the train and the platform. There was only one conductor on the train, and he was watching the passengers disembark from the first two cars. No help was available.

Ms. Benjamin descended the steep, uneven stairs, holding onto the handrails. When she reached the bottom, she attempted to hop over the 15-inch gap. She stepped

off with her left foot; her right foot was to follow. Her left foot reached the platform, but her right foot did not. She fell 26 inches down into the gap between the train and the platform. All of her weight landed on her right foot, which became wedged into the space between a railroad tie and the train track. She suffered a comminuted fracture of the talus bone in her right ankle.¹

Ms. Benjamin, who was in extreme pain, was taken from the station in an ambulance to a local hospital. In the following years, she had four corrective surgical procedures and dozens of physical therapy sessions to address her shattered ankle.

Action for Negligence

On June 2, 2022, Ms. Benjamin filed a complaint for damages against three defendants: the Maryland Transportation Authority, which administered the MARC train service; Bombardier Transportation Services USA Corporation, which operated the train under a contract with the Maryland Transportation Authority; and Alstom Transportation, Inc., which acquired Bombardier in 2021. Ms. Benjamin’s complaint alleged claims for negligence, negligent design and maintenance of the MARC station platform, and premises liability.

After discovery, the defendants moved for summary judgment, asserting that Ms. Benjamin was contributorily negligent or, in the alternative, that she had assumed the risk of her injury. In opposition to the defendants’ motion, Ms. Benjamin attached excerpts

¹ A “comminuted fracture” is one in which the bone is broken into several pieces. *Stedman’s Medical Dictionary* 415 (28th ed. 2006).

from her deposition testimony, the conductor’s deposition testimony, her expert witness’s deposition testimony, and her answers to interrogatories.

At a hearing, the circuit court denied the motion for summary judgment as to contributory negligence but granted the motion on the ground that Ms. Benjamin had assumed the risk of injury as a matter of law. The court entered judgment in favor of the defendants.

Ms. Benjamin filed a timely motion to alter or amend the judgment. The circuit court denied the motion.

Ms. Benjamin filed a timely notice of appeal to this Court.

QUESTION PRESENTED

Ms. Benjamin presents one question for review: “Did the circuit court err in ruling that [she] assumed the risk of her injury as a matter of law?”²

We answer the question in the affirmative. Although Ms. Benjamin concedes that she knew of and appreciated the risk of leaping over the 15-inch gap between the train and the platform, she presented enough evidence for a reasonable jury to conclude that she did not voluntarily assume the risk.

² The defendants phrase the question as follows: “Was the circuit court legally correct in granting summary judgment based on Ms. Benjamin’s deposition testimony demonstrating her knowledge, appreciation, and voluntary assumption of the risk that resulted in her injury?”

STANDARD OF REVIEW

This case reaches us after the trial court granted the defendants’ motion for summary judgment. In general, a court must enter summary judgment “if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.” Md. Rule 2-501(f).

We review the trial court’s grant of summary judgment de novo—without deference. *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 312-13 (2019) (citing *Koste v. Town of Oxford*, 431 Md. 14, 25 (2013)). We first “determine ‘whether the parties properly generated a dispute of material fact[.]’” *Blackburn Ltd. Partnership v. Paul*, 438 Md. 100, 107 (2014) (quoting *Myers v. Kayhoe*, 391 Md. 188, 203 (2006)). “[I]f not, [we then determine] whether the moving party is entitled to judgment as a matter of law.” *Id.* at 107-08 (quoting *Myers v. Kayhoe*, 391 Md. at 203). We view the facts “‘in the light most favorable to the nonmoving party and construe[] any reasonable inferences that may be drawn from the facts against the moving party.’” *Id.* at 108 (quoting *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 738-39 (1993)).

DISCUSSION

Assumption of the risk is an affirmative defense on which the defendant bears the burden of proof. *See, e.g., Imbraguglio v. Great Atlantic & Pacific Tea Co.*, 358 Md. 194, 212 (2000). “If established by the evidence, assumption of the risk functions as a

complete bar to recovery[.]” *See, e.g., Poole v. Coakley & Williams Constr., Inc.*, 423 Md. 91, 110 (2011).

In Maryland, a defendant must prove three elements to establish the defense of assumption of the risk: “(1) the plaintiff had knowledge of the risk of the danger; (2) the plaintiff appreciated that risk; and (3) the plaintiff voluntarily confronted the risk of danger.” *See, e.g., Thomas v. Panco Mgmt. of Maryland, LLC*, 423 Md. 387, 395 (2011) (citing *ADM Partnership v. Martin*, 348 Md. 84, 90-91 (1997)). “Ordinarily, it is for the jury to determine whether a plaintiff knew of the danger, appreciated the risk, and acted voluntarily.” *Warsham v. James Muscatello, Inc.*, 189 Md. App. 620, 640 (2009).

Ms. Benjamin concedes that she knew of and appreciated the risk of falling into the gap between the train and the platform. At issue in this case is the third element—whether a reasonable jury was compelled to find that Ms. Benjamin voluntarily choose to encounter the risk.

An “important limitation upon the defense of assumption of risk is that the plaintiff is not barred from recovery unless [the] choice is a free and voluntary one.” *Thomas v. Panco Mgmt. of Maryland, LLC*, 423 Md. at 405 (quoting *Rountree v. Lerner Dev. Co.*, 52 Md. App. 281, 284 (1982)). The plaintiff must “consent to relieve the defendant of the obligation of reasonable conduct.” *Id.* (quoting *Rountree v. Lerner Dev. Co.*, 52 Md. App. at 284). “It is not every deliberate encountering of a known danger which is reasonably to be interpreted as evidence of such consent.” *Id.* (quoting *Rountree v. Lerner Dev. Co.*, 52 Md. App. at 284).

In *Rountree v. Lerner Development Co.*, 52 Md. App. at 284, this Court held that “there was at least a jury issue” as to whether the plaintiff freely and voluntarily assumed the risk of her injuries when she fell on an icy sidewalk. In that case the plaintiff was required to work on a Saturday morning in January. *Id.* at 283. There had been freezing rain the night before, but when the plaintiff had come home that evening, the steps outside of her apartment were not covered with ice. *Id.* She had had no trouble going down the steps leading from the road to her apartment building. *Id.*

On Saturday morning, as she prepared to leave for work, the plaintiff “noticed an accumulation of ice and snow.” *Id.* “From her apartment, however, she could not see the steps on which she ultimately fell but only the buildings behind her apartment and the lower sidewalk leading to the rear parking lot.” *Id.*

After she left her apartment, she encountered some steps. *Id.* She saw that the steps were “slick and icy,” but she had to use them because there was a “steep” and “impassable” bank next to the steps on both sides. *Id.* “[T]here was no handrail or grip to aid her in ascending the stairs[,]” “[t]he steps were wide and elongated[,]” and they slanted downward. *Id.* The plaintiff safely traversed two steps, but she slipped as she tried to climb another. *Id.* She fractured her shoulder and suffered extensive damage to the cartilage in one of her knees. *Id.* at 282.

On those facts, this Court, in an opinion by Judge Charles E. Moylan, Jr., stated that “there may have been clear and decisive evidence of a ‘deliberate encountering of a known danger’ but that fact, even if assumed to be true, is not dispositive of the issue of

assumption of risk.” *Id.* at 285. We reasoned that “the tenant had a right to egress from her apartment” and that “[t]here was evidence that there was no alternative route of egress from [her] apartment.” *Id.*

In reaching our decision, this Court found Prosser’s comments to be “highly pertinent”:

Even where the plaintiff does not protest, the risk is not assumed where the conduct of the defendant has left him no reasonable alternative. Where the defendant puts him to a choice of evils, there is a species of duress, which destroys all idea of freedom of election. Thus . . . *a tenant does not assume the risk of the landlord’s negligence in maintaining a common passageway when it is the only exit to the street.* In general, the plaintiff is not required to surrender a valuable legal right, such as the use of his own property as he sees fit, merely because the defendant’s conduct has threatened him with harm if the right is exercised. . . . By placing him in the dilemma, the defendant has deprived him of his freedom of choice, and so cannot be heard to say that he has voluntarily assumed the risk.

Id. at 285-86 (quoting William Prosser, *The Law of Torts* 451 (4th ed. 1971)) (emphasis added by the *Rountree* Court).³

This Court continued: “If there had been evidence in this case that there was a reasonable and safe alternative route of egress open to the appellant and that she

³ More recently, Maryland courts have quoted a later edition of the same treatise:

[E]ven where the plaintiff does not protest, the risk is not assumed where the conduct of the defendant has left him no reasonable alternative. Where the defendant puts him to a choice of evils, there is a species of duress, which destroys the idea of freedom of election.

ADM Partnership v. Martin, 348 Md. at 92-93 (quoting W. Page Keeton, *Prosser and Keeton on the Law of Torts* § 68 at 490-91 (5th ed. 1984)); accord *Thomas v. Panco Mgmt. of Maryland, LLC*, 423 Md. at 403.

deliberately chose the shorter but more dangerous route, that might well establish as a matter of law that she was guilty of having assumed the risk.” *Id.* at 286. There was, however, “no evidence of any ‘reasonably safe alternative open[.]’” *Id.* Thus “there was, at the very least, a jury issue with respect to the ‘voluntary assumption’ restriction on the defense of assumption of risk.” *Id.* Accordingly, this Court reversed the entry of judgment in the defendant’s favor.

In *Thomas v. Panco Management of Maryland, LLC*, 423 Md. at 405, the Court applied *Rountree*’s reasoning in reversing a circuit court’s decision that, as a matter of law, a plaintiff had assumed the risk of slipping and falling on black ice when she exited her apartment building. In *Thomas* the lower courts had reasoned that the plaintiff voluntarily encountered the risk because she could have chosen to stay in her apartment. *Id.* at 413-14. In rejecting that proposition, the Court wrote: “If this were the law in the landlord-tenant context, it would mean that a tenant, faced with a danger brought on by the landlord’s negligence in failing to maintain a reasonably safe means of ingress to and egress from the leased premises, will have consented to relieve the landlord of this duty solely by exercising his or her right of access.” *Id.* at 414. Citing *Rountree*, the Court added: “A tenant may not be forced to surrender such a valuable legal right simply because the landlord’s negligence has threatened him with harm if the right is exercised.” *Id.*

By contrast, the Court recognized that, if “‘a reasonable and safe alternative route of egress’” were “‘open to the [plaintiff],’” but “‘she deliberately chose the shorter but

more dangerous route, that might well establish as a matter of law that she was guilty of having assumed the risk.”” *Thomas v. Panco Mgmt. of Maryland, LLC*, 423 Md. at 406 (quoting *Rountree v. Lerner Dev. Co.*, 52 Md. App. at 286). Thus, for example, in *Schroyer v. McNeal*, 323 Md. 275, 288-89 (1991), the Court held that the plaintiff assumed the risk of her injuries as a matter of law when she chose to walk across an ice- and snow-covered parking lot because it was closer to her hotel room than a less convenient path that had been cleared. Similarly, in *ADM Partnership v. Martin*, 348 Md. at 101, the Court held that a delivery driver voluntarily assumed the risk of slipping and falling on ice and snow, because “there [was] not a shred of evidence” that she would lose her job if she declined to make the delivery. *Thomas* and *Rountree* establish, however, that a person does not voluntarily assume the risk of an injury by exercising the right of egress if the person has no alternative means of egress.

Although *Thomas* and *Rountree* involve the obligations of a landlord to a tenant, their principles apply equally to the defendants in this case, which are common carriers. A common carrier “owes its passengers the highest degree of care to provide safe means and methods of transportation for them.” *Todd v. Mass Transit Admin.*, 373 Md. 149, 156 (2003). Just as a landlord has a duty “to maintain a reasonably safe means of ingress to and egress from the leased premises,”⁴ a common carrier’s “heightened duty” to its passengers requires the carrier “to provide a safe means of boarding and exiting the

⁴ *Thomas v. Panco Mgmt. of Maryland, LLC*, 423 Md. at 414.

conveyance.” *Washington Metro. Area Trans. Auth. v. Reading*, 109 Md. App. 89, 101 (1996).

On the facts of this case, viewed in the light most favorable to Ms. Benjamin, a jury could reasonably find that she believed that she had no choice but to attempt to jump over the gap between the train and the platform. Thus a jury could reasonably find that Ms. Benjamin did not voluntarily assume the risk of falling into the gap.

Ms. Benjamin certainly had no choice but to get off the train, both because she had to get home to her family and because her ticket did not allow her to ride any farther. She had 90 seconds, at most, to make it to the platform. While she waited to descend the steep, uneven stairs and then to make the 15-inch leap from the train to the platform, she was in line with other commuters, who were undoubtedly anxious or impatient to get off the train. She did not know that she could ask the conductor to use the stool, because no one had told her that she could ask for it and because she had never seen anyone ask for it. As far as she knew, the stool was available only at the discretion of the conductors, and the conductors on the afternoon train opted not to make it available.

Furthermore, even if Ms. Benjamin knew that she could ask the conductor to employ the stool—which, for purposes of this motion, we must assume she did not—she had no one to ask. The train was short-staffed, and the lone conductor was watching the passengers who were disembarking from the first two cars. No one could have assisted Ms. Benjamin with the stool even if she knew that she had the option of asking for assistance (and even if the conductor would have assisted had she asked).

On these facts, a jury could find that the defendants “‘left [Ms. Benjamin] no reasonable alternative.’” *Rountree v. Lerner Dev. Co.*, 52 Md. App. at 285 (quoting William Prosser, *The Law of Torts*, *supra*, at 451). Specifically, a jury could find that, as far as Ms. Benjamin knew, if she wanted to get off the train, which she was required to do, she had no choice but to leap over the 15-inch gap. Her only option was to jump. For that reason, a jury could reasonably find that Ms. Benjamin did not voluntarily assume the risk of her injuries.

In their brief, the defendants do not cite, much less discuss, *Rountree* and *Panco*, the leading authorities on whether a plaintiff voluntarily assumed the risk by exercising a right of egress. Instead, the defendants stress Ms. Benjamin’s knowledge and appreciation of the risk. Those factors are not in dispute and, thus, have no bearing on the present appeal.

In arguing that Ms. Benjamin voluntarily assumed the risk of her injuries as a matter of law, the defendants observe that she knew that it was difficult to get off the train, but that she did not request assistance. But according to Ms. Benjamin, whose testimony we must accept as true for purposes of summary judgment, she did not request assistance because she had no idea that she could request assistance. She did not know that she could ask the conductors use the stool, nor had she ever seen anyone ask them to use it. She had been led to believe that she had no choice.

In defending the grant of summary judgment, the defendants stress the generic statements in the safety pamphlet that is stowed in the back of the seats. On the basis of

those statements, a jury might well find that Ms. Benjamin had notice that the conductor would assist her, perhaps by deploying the stool, if she asked him to do so. Ms.

Benjamin, however, could not voluntarily assume the risk of leaping over the 15-inch gap unless she had actual knowledge of a safe and reasonable alternative but deliberately chose a more dangerous route. *See Thomas v. Panco Mgmt. of Maryland, LLC*, 423 Md. at 406 (quoting *Rountree v. Lerner Dev. Co.*, 52 Md. App. at 286). Because Ms. Benjamin could not recall whether she had ever even read the pamphlet, there is, at the very least, a genuine dispute of material fact about whether she knew (or even should have known) that she could request assistance.

Citing *ADM Partnership v. Martin*, 348 Md. at 96, the defendants argue that Ms. Benjamin voluntarily assumed the risk because she knew of the risk posed by the gap but “voluntarily ch[ose] to put up with the situation.” That argument assumes what the defendants must need to prove—specifically, that Ms. Benjamin “voluntarily chose” something. If Ms. Benjamin was unaware that she had any alternative, as she claims, she could not have “chosen” anything.

The defendants argue that Ms. Benjamin could have exited the train from the car where the lone conductor was standing. To do so, however, she would have been required to walk through another train car before she reached the exit. A jury could reasonably find that, with only 90 seconds (at most) to get off the train, Ms. Benjamin would not have had enough time to reach the exit where the conductor was standing. In any event, the conductor would not have been using the stool (because the conductors on

the afternoon train never used it), and Ms. Benjamin did not know that she could ask him to use it. Moreover, we have no idea whether the conductor would actually have used the stool had Ms. Benjamin known to ask for it. In short, the presence of a conductor at a different exit does not prove that Ms. Benjamin voluntarily assumed the risk of her injuries as a matter of law.

In another effort to establish that Ms. Benjamin voluntarily assumed the risk of her injuries, the defendants argue that she did not believe that she needed the stool. This argument seems to be designed to prove that the short-staffing of the train and the absence of a conductor made no difference—i.e., to prove that even if a conductor had been at the door of Ms. Benjamin’s car, as he was supposed to be, she would not have asked him to deploy the stool. The argument does not establish that Ms. Benjamin voluntarily assumed the risk as a matter of law, because it does not address the more fundamental problem that, according to Ms. Benjamin, she had no idea that she could ask the conductor to use the stool. Furthermore, the evidence shows that Ms. Benjamin used the stool when the conductors actually made it available, which suggests that she would have used it had the conductor made it available on the day when she fell into the gap and shattered her ankle.

In a final effort to show that Ms. Benjamin assumed the risk as a matter of law, the defendants argue that she did not need to wait until the train stopped in Laurel before requesting assistance—she could, they say, have asked for assistance during the 30-minute train ride from Union Station to Laurel. Again, however, Ms. Benjamin testified

that she did not know that she could ask for assistance. She was under the impression that she had no choice but to jump over the gap. Ms. Benjamin did not voluntarily assume the risk of her injuries by failing to request an accommodation that she did not know she had a right to request.

In summary, Ms. Benjamin was “not required to surrender a valuable legal right,”⁵ such as the right to a “safe means of . . . exiting the [train],”⁶ “merely because the defendant’s conduct has threatened [her] with harm if the right is exercised.” *Rountree v. Lerner Dev. Co.*, 52 Md. App. at 285 (quoting William Prosser, *The Law of Torts*, *supra*, at 451). If the law were otherwise, a passenger, “faced with a danger brought on by the [common carrier’s] negligence in failing to maintain a reasonably safe means of ingress to and egress from the [conveyance], will have consented to relieve the [common carrier] of this duty solely by exercising [the] right of access.” *Thomas v. Panco Mgmt. of Maryland, LLC*, 423 Md. at 414.

The facts in this case do not point to the lone conclusion that Ms. Benjamin “consent[ed] . . . to relieve the defendant[s] of [their] obligation of conduct toward [her]” and that she elected “to take [her] chances from harm from a particular risk.” *ADM Partnership v. Martin*, 348 Md. at 91 (quoting *Rogers v. Frush*, 257 Md. 233, 243

⁵ *Rountree v. Lerner Dev. Co.*, 52 Md. App. at 285 (quoting William Prosser, *The Law of Torts*, *supra*, at 451).

⁶ *Washington Metro. Area Trans. Auth. v. Reading*, 109 Md. App. at 101.

(1970)). Therefore, the circuit court erred in granting the defendants' motion for summary judgment.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY REVERSED.
CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
APPELLEES.**