UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1198

SEPTEMBER TERM, 2014

WILLIAM CHAFFMAN

v.

YURI V. ESTRADA-BERNALES

Eyler, Deborah, S.,
Graeff,
Hotten,

JJ.

Opinion by Eyler, Deborah, S., J.

Filed: November 17, 2015

In the Circuit Court for Baltimore County, William Chaffman, the appellant, brought an automobile tort action against Yuri Estrada-Bernales, the appellee.[1] The court granted partial summary judgment in favor of Chaffman on negligence, and denied summary judgment on causation and damages. The case was tried to a jury, which found that Chaffman had not suffered any injury in the automobile accident. From the judgment entered in favor of Bernales, Chaffman appeals, presenting two questions, which we have rephrased:

> I. Did the circuit court err by not granting Chaffman's motion for summary judgment on the issues of causation and damages when Bernales failed to timely respond to requests for admission?
>
> II. Did the circuit court err by not permitting Chaffman's counsel to rebut a misleading closing argument made by counsel for Bernales?

For the following reasons, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

On June 19, 2011, Chaffman was driving his Toyota 4Runner SUV in Westminster, in Carroll County. His wife Jeanine Chaffman ("Jeanine") was a front seat passenger. Chaffman was stopped at a red light when his SUV was struck from behind by a car driven by Bernales. Chaffman called the police, but the parties decided to exchange information and leave before the police arrived.[2]

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[1] Although the appellee's last name is hyphenated, the parties refer to him only by the name "Bernales." We shall do the same.

[2] According to Chaffman, the police were involved in an emergency and advised him it would be several hours before they could respond.

Chaffman claimed that, later that evening, he began experiencing stiffness in his right side, neck, and lower back. The next day, he went to his primary care physician, who referred him to a chiropractor at Lewis Family Chiropractic. After four to six weeks of chiropractic treatment, Chaffman returned to his primary care physician. At that time, she referred him to Raj Jari, M.D., a pain management specialist at Smart Pain Management. Chaffman was treated by Dr. Jari for many months and ultimately underwent a surgical procedure on his back to attempt to alleviate the pain. The surgery was successful, but according to Chaffman it only afforded him temporary relief. He anticipated future surgeries to treat his pain.

On February 15, 2013, the Chaffmans filed suit against Bernales. They alleged that Chaffman had sustained "severe[] and permanent[] . . . injuries to his mind, body and back" and that the injuries had damaged their marital relationship.[3] (The Chaffmans subsequently stipulated to the dismissal, with prejudice, of their loss of consortium claim.)

Ten days after suit was filed, and before Bernales was served, Chaffman filed a motion for summary judgment on liability, arguing that Bernales had admitted fault at the scene of the accident and that there was no dispute of material fact on that issue.

The next day, February 26, 2013, Bernales was served with process.

[3] Jeanine did not allege that she sustained any injuries in the collision, and she is not a party to the instant appeal.

Eight days later, on March 6, 2013, Chaffman mailed written discovery, including sixty-nine requests for admission, to Bernales. Bernales's response to the requests for admission was due on April 12, 2013.[4]

On April 8, 2013, Bernales answered the complaint, generally denying liability and raising various affirmative defenses.

By order entered April 12, 2013, the circuit court denied Chaffman's motion for summary judgment because it was filed before Bernales was served.

On April 16, 2013, Chaffman filed a second motion for summary judgment.[5] As relevant here, he alleged that Bernales had not responded to the requests for admission that were due four days earlier and, pursuant to Rule 2-424(b), all the requested admissions were deemed admitted. According to Chaffman, the matters deemed admitted included, as pertinent:

- That Chaffman was operating his vehicle non-negligently.
- That Chaffman's vehicle had come to a complete and legal stop.
- That Bernales's vehicle struck Chaffman's vehicle from behind.
- That Chaffman incurred lost wages in excess of $48,000.
- That Chaffman incurred current and past medical expenses in excess of $20,000.

[4] Rule 2-424(b) provides that response to requests for admission is due 30 days after service of the request for admission or 15 days after the initial pleading is due, whichever is later. Here, April 12, 2013, was the later of those two dates.

[5] Eight days later, on April 24, 2013, Chaffman moved for an order of default. By order entered May 2, 2013, the motion was denied.

- That Chaffman would incur in excess of $300,000 in future medical bills and expenses.

- That Bernales breached a duty of care owed to Chaffman and that his negligence was the proximate cause of these damages.

Chaffman argued that, as a result of these deemed admissions, there were no disputes of material fact, and he was entitled to judgment as a matter of law. He asked the court to enter a judgment in his favor in the amount of $368,000.

On April 26, 2013, Bernales filed an opposition to the motion for summary judgment and served counsel for Chaffman with a response to the requests for admission. A copy of the response, which was 14 days late, was attached to his opposition to the motion for summary judgment. Bernales explained in his opposition that the requests for admission were received by him before the time for him to file an answer and before he was represented by counsel. His attorney only learned of their existence when the second motion for summary judgment was filed. Bernales asserted that there would be no prejudice to Chaffman if the late response was allowed because the case had just "gotten underway." He further argued that the majority of Chaffman's requests for admission sought admission of "ultimate issues of fact," such as the amount of damages proximately caused by the collision, and were not appropriate for a request for admission. Therefore, he argued, his failure to file a timely response did not result in deemed admissions. He asked the court to exercise its discretion to not deem the requests admitted.

In his response to the requests for admission, Bernales objected to all of the requests on the bases that they were served on an unrepresented party, "violate[d] the

spirit of discovery and the intent of Rule 2-424," and sought to "reach determinations of ultimate facts by attempting to shift the burden of proof on such issues, as opposed to narrowing issues prior to trial." Without waiving those objections, Bernales admitted that he rear-ended Chaffman and that he owed a duty of care to Chaffman, but otherwise denied the requests.

By order entered June 7, 2013, the court granted in part and denied in part Chaffman's motion for summary judgment. The court entered judgment in favor of Chaffman on liability (*i.e.*, that Bernales breached a duty of care owed to Chaffman), but stated that "[d]amages remains [sic] as an issue for decision by the court." The court ruled that, although whether a party breached a duty of care often is a factual dispute capable of resolution on summary judgment, the "[i]njuries sustained and damages are more often than not, a matter of opinion – not fact, and therefore inappropriate for a summary judgment finding."

On June 11 and 12, 2014, a jury trial went forward on causation and damages. In his case, Chaffman testified and played Dr. Jari's *de bene esse* deposition. He adduced evidence that he had suffered an injury to his lower back in the accident that had caused him mental anguish and physical pain, required him to miss work, and prevented him from engaging in his normal activities. He moved medical bills and photographs of the rear of his SUV and the front of Bernales's car into evidence. The photographs showed a small dent in the bumper of the SUV. Chaffman testified that Bernales's car was not

damaged in the accident.[6] He sought $13,700 in past medical expenses, $22,000 in future medical expenses, $15,760 in lost wages over 25 weeks, and an unspecified amount for pain and suffering.

In his case, Bernales testified that he rear-ended Chaffman while traveling at a speed of between 5 and 10 miles per hour. He explained that the only damage to the front end of his car was that the license plate had been bent. Bernales's counsel argued that Chaffman was not injured in the accident at all; and, to the extent that he suffered any injury as a proximate result of the accident, the injury was minor. Moreover, Chaffman failed to prove that the majority of the medical bills and lost wages were causally related to the accident.

The case was sent to the jurors on a special verdict. The jurors answered "No" to the first question—"Do you find that the Plaintiff, William Chaffman was injured in the accident?"—and thus did not reach the damages issues. This timely appeal followed.

DISCUSSION

I.

As discussed, on March 6, 2013, Chaffman served sixty-nine requests for admission on Bernales. Twenty-nine of the requests sought admissions relative to proximate causation and damages.[7] We set them forth in full:

[6] There was substantial chipped paint on the front of Bernales's car, but the parties were in agreement that this damage was not caused by the accident.

9. William Chaffman has incurred lost wages in excess of $48,000.00 as a result of the Collision.

10. William Chaffman has incurred current and past medical expenses in excess of $20,000.00 as a result of the Collision.

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12. William Chaffman will incur in excess of $300,000.00 in future medical bills and expenses as a result of the Collision.

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29. William Chaffman was severely and permanently injured in the Collision.

30. The sole cause of William Chaffman's injuries related to the Collision was Defendant's negligence.

31. William Chaffman sustained injuries to his mind, body and back as a direct or proximate result of the Collision.

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46. The Defendant's negligence proximately caused William Chaffman's injuries about his body and back and to suffer mental anguish, lost wages, medical and other expense.

47. The Defendant's negligence proximately caused William Chaffman's injuries about his body.

48. The Defendant's negligence proximately caused William Chaffman to suffer mental anguish.

49. The Defendant's negligence proximately caused William Chaffman to suffer lost wages.

(…continued)

[7] Five other requests for admission pertained to proximate causation and damages relative to the loss of consortium claim. As mentioned, that claim was dismissed with prejudice.

50. The Defendant's negligence proximately caused William Chaffman to incur medical expense.

51. The Defendant's negligence proximately caused William Chaffman pain and suffering.

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53. The Plaintiffs' total damages in this action exceed $5,000.00.

54. The Plaintiffs' total damages in this action exceed $10,000.00.

55. The Plaintiffs' total damages in this action exceed $20,000.00.

56. The Plaintiffs' total damages in this action exceed $30,000.00.

57. The Plaintiffs' total damages in this action exceed $40,000.00.

58. The Plaintiffs' total damages in this action exceed $50,000.00.

59. The Plaintiffs' total damages in this action exceed $60,000.00.

60. The Plaintiffs' total damages in this action exceed $75,000.00.

61. The Plaintiffs' total damages in this action exceed $100,000.00.

62. The Plaintiffs' total damages in this action exceed $150,000.00.

63. The Plaintiffs' total damages in this action exceed $175,000.00.

64. The Plaintiffs' total damages in this action exceed $200,000.00.

65. The Plaintiffs' total damages in this action exceed $5,000.00.[8]

66. The Plaintiffs' total damages in this action exceed $100.00.

67. The Plaintiffs' total damages in this action exceed $500.00.

[8] This request is identical to request number 53.

68. The Plaintiffs' total damages in this action exceed $2,000.00.

69. The Plaintiffs' total damages in this action exceed $1.00.

Chaffman contends the circuit court had no discretion to "[i]gnore [these] [a]dmissions" because, when Bernales failed to timely respond, they were deemed admitted by operation of Rule 2-424(a). Therefore, the circuit court erred as a matter of law by concluding that there was a genuine dispute of material fact on the issues of causation and damages.

Bernales responds that the majority of Chaffman's requests for admission were improper because they "encompassed ultimate issues of fact which were clearly in dispute and/or contained facts of which [Bernales] could not have possibly had any knowledge." It follows, according to Bernales, that his failure to timely respond to those requests could not result in a deemed admission. He argues, further, that to hold that an untimely response to a request for admission conclusively establishes a disputed fact on an ultimate issue in the case would amount to a "pseudo default judgment," which is not the purpose of Rule 2-424.

Rule 2-424 governs "Admission of facts and genuineness of documents." A party may serve on his or her opponent "one or more written requests . . . for the admission of . . . *the truth of any relevant matters of fact* set forth in the request." Md. Rule 2-424(a) (emphasis added). "Each matter of which an admission is requested shall be deemed admitted unless" a timely response is filed. Md. Rule 2-424(b). The party propounding requests for admission may "file a motion challenging the timeliness of the response or

the sufficiency of any answer or objection." Md. Rule 2-424(c). "If the court determines that the response was served late, it may order the response stricken." *Id.*

"Any matter admitted under [Rule 2-424] is conclusively established unless the court on motion permits withdrawal or amendment." Md. Rule 2-424(d). The court may permit withdrawal or amendment of a previously admitted matter if "the court finds that it would assist the presentation of the merits of the action" and would not prejudice the party that obtained the admission "in maintaining the action or defense on the merits." *Id*.

"'The primary function of a request for admissions is to avoid the necessity of preparation, and proof at the trial, of matters which either cannot be or are not disputed.'" *Wilson v. John Crane, Inc.*, 385 Md. 185, 197 (2005) (quoting *Mullan Contracting Co. v. IBM Corp.*, 220 Md. 248, 260 (1959)) (alteration in *Wilson* omitted). "'The purpose of the rule is not to press known discovery requests[,] . . . [but] to eliminate from trial those matters over which the parties truly have no dispute.'" *St. James Constr. Co. v. Morlock*, 89 Md. App. 217, 230 (1991) (quoting Neimeyer and Richards, *Maryland Rules Commentary* 234-35 (1984)).

In *Gonzales v. Boas*, 162 Md. App. 244 (2005), this Court examined the breadth of the circuit's court's discretion to permit withdrawal or amendment of deemed admissions under Rule 2-424(d). There, the plaintiff's complaint set forth three counts of civil battery. The defendant filed a motion to dismiss and a motion for more definite statement, and also served the plaintiff with requests for admission. Counsel for the

plaintiff inadvertently failed to respond to the requests for admission within the time period required by Rule 2-424(b). Shortly thereafter, the defendant filed a motion for summary judgment, arguing that the deemed admissions resulted in there being no dispute of material fact and his being entitled to judgment as a matter of law.

The plaintiff then filed a response to the requests for admission, denying all of them. Her response was 8 days late. She also filed an opposition to the motion for summary judgment, arguing that, although her response to the requests for admission was filed late, it only could be stricken on motion by the defendant; that because she denied all the requested admissions, there were genuine disputes of material fact precluding summary judgment; and, to the extent the court found that she had made admissions, she was asking to withdraw those admissions. The defendant countered by moving to strike the plaintiff's response to his requests for admission, which the plaintiff opposed.

The circuit court granted the defendant's motion to strike the plaintiff's late-filed response to the requests for admission and granted summary judgment in favor of the defendant. On appeal from that judgment, this Court reversed.[9] Explaining that our "holding . . . [was] very fact dependent," we emphasized six critical facts: 1) the

[9] Initially, we reversed the grant of summary judgment in an opinion filed on December 29, 2004. *Gonzales v. Boas*, 160 Md. App. 462 (2004). Thereafter, the Court of Appeals granted *certiorari* and, in a *per curiam* order, vacated the judgment of this Court and remanded for reconsideration in light of *Wilson v. John Crane Inc*, 385 Md. 185 (2005). *Boas v. Gonzales*, 386 Md. 179 (2005) (per curiam). On reconsideration, we again reversed the circuit court judgment. *Gonzales v. Boas*, 162 Md. App. 344, *cert. denied*, 388 Md. 405 (2005).

plaintiff's response was just 8 days late; 2) the late response was inadvertent; 3) the case had been pending for only three months and was not near trial; 4) the requests for admission were directed to "core facts underlying the claim" on which there was "substantial dispute"; 5) there was no showing of prejudice to the defendant; and 6) the "sanction imposed by the circuit court for the late filing was, as a practical matter, summary disposition of the claim." *Id*. at 350.

We held that, in these circumstances, the circuit court had abused its discretion by not permitting the plaintiff to withdraw her deemed admissions. We reasoned that the court is vested with "a great deal of discretion in deciding how to handle the situation when an untimely or insufficient response to a request for admission is filed." *Id*. at 357. It has discretion to deny a motion to strike an untimely response. Moreover, it has discretion to permit withdrawal or amendment of deemed admissions. We pointed out that courts interpreting Federal Rule 36(b)—the federal counterpart to Rule 2-424—have held that admissions brought about by an untimely response to a request for admissions should be "'avoided when to do so will aid in the presentation of the merits of the action and will not prejudice the party who made the request.'" *Id*. at 358 (quoting 8A Wright, Miller & Marcus, *Federal Practice and Procedure: Civil*, § 2257, pg. 543 (2d ed. 1994)). We concluded that, because the deemed admissions prevented a trial on the merits of the plaintiff's claims, there was substantial dispute over the facts that were deemed admitted, and there was no showing that the defendant would suffer any prejudice if the plaintiff's

deemed admissions were withdrawn, the court had abused its discretion by denying the plaintiff's request to withdraw those admissions and by striking her response as untimely.

We return to the case at bar. Procedurally, this case is strikingly similar to *Gonzales*. Bernales's response to the requests for admission was filed 14 days late, inadvertently. At that time, the case had been pending for just over two months and trial was not imminent.[10] The majority of the requested admissions went to the core facts underlying Chaffman's claim and, certainly with respect to causation and damages, were in substantial dispute. There was no showing by Chaffman that he would be prejudiced in the presentation of his case if the late responses were allowed. Finally, had the court granted the relief requested by Chaffman, the result would have been "summary disposition of the claim." *Id*. at 350. We think it plain that, like in *Gonzales*, denial of a motion to withdraw the deemed admissions in this case would have been an abuse of discretion.

Chaffman contends, however, that Bernales did not file a motion to withdraw the deemed admissions. We disagree. In *Gonzales*, the plaintiff made his request to withdraw deemed admissions in his opposition to the motion for summary judgment. Likewise, it was implicit in Bernales's opposition to Chaffman's motion for summary judgment, coupled with the filing of his untimely response to the requests for admission,

[10] A scheduling order issued on April 18, 2013, stated that an agreed trial date would be selected at the November 19, 2013 settlement conference (if the case did not settle) and the trial would have to take place before August 14, 2014.

that he was seeking to withdraw any deemed admissions, at least with respect to causation and damages. Bernales expressly argued that the deemed admissions went to "ultimate issues of fact that should be reserved for trial" and that Chaffman would not be prejudiced by allowing the late response; he thereby satisfied the two prerequisites for the withdrawal of an admission under Rule 2-424(d).[11] We conclude that the circuit court's ruling granting in part and denying in part Chaffman's motion for summary judgment effectively granted the request to withdraw the deemed admissions pertaining to causation and damages. For the reasons already explained, this was not an abuse of discretion.

II.

In closing argument, Chaffman's attorney emphasized that Bernales had not called an expert witness to rebut Dr. Jari's testimony that Chaffman's injuries resulted from the accident. He argued that this was a hole in the defense case because Dr. Jari was the only witness at the trial who was "qualified to even render [an] opinion" on the issue of causation.

[11] Notably, Chaffman did not move to strike Bernales's response as untimely. The court stated in its ruling that it had no discretion to allow a late response absent a "proper motion filed with specific facts stated under affidavit" and noted that no such motion had been filed in this case. This is incorrect. Rule 2-424 gives the court discretion to strike an untimely response on motion of the requesting party *and* gives the court discretion to permit withdrawal or amendment of "[a]ny matter admitted" under the Rule if the court finds it would "assist the presentation of the merits of the action" and that there would be no prejudice to the opposing party.

In his closing, Bernales's attorney responded to this argument by stating that it would have been a waste of money to hire a defense expert:

> Do I really want to go out and pay for a doctor and *my client pay for a doctor* to have a doctor come in here and testify and give opinions about this case? First of all, his claim based on the physical evidence and based on the testimonial evidence is ludicrous to begin with. So it's completely not necessary.
>
> Secondly, if I were to hire an expert to come in and testify, what is the first thing they are going to say? How much are you being paid by [defense counsel] to testify here today. How much are you being paid for your examination in this case. How much are you being paid to look at the medical records. Then I wind up looking like somebody who is trying to be slick . . . .

(Emphasis added.)

Immediately after defense counsel concluded his argument, Chaffman's counsel asked to approach the bench. The following ensued:

> [PLAINTIFF'S COUNSEL]: Your Honor, Counsel argued that his client didn't want to spend money on an expert witness.
>
> THE COURT: Yes.
>
> [PLAINTIFF'S COUNSEL]: The insurance company is going to spend that money. Not him. So I think he has opened the door for me to counteract that by saying it's the insurance company who is going to pay for that. Not him.
>
> THE COURT: No, I disagree. You cannot argue that.
>
> [PLAINTIFF'S COUNSEL]: Even though – I just want to be clear. Even though he brought it up that his client is going to pay for the expert?
>
> THE COURT: I know he brought it up. There was no objection at that time.
>
> [PLAINTIFF'S COUNSEL]: I didn't want to interrupt him.

> THE COURT: I understand, but there was no objection. I'm not going to – I don't believe it opens the door.
>
> [PLAINTIFF'S COUNSEL]: Okay. I hear your ruling. Thank you, m'am.

In this Court, Chaffman contends the trial court abused its discretion by denying his request "to address the fact that State Farm was going to pay for Bernales's expert, not Bernales personally." He asserts that defense counsel's statement that Bernales did not want to "pay for a doctor" to testify as a defense expert was highly prejudicial because it communicated to the jurors, falsely, that Bernales was uninsured.

Bernales responds that his lawyer's single, isolated remark in closing about the cost of hiring a defense expert did not communicate to the jurors that he was uninsured. In any event, he asserts that there was no evidence that the jury was misled or that it considered insurance coverage in finding that Chaffman had not been injured in the accident.

"Maryland follows the majority rule that evidence of insurance on the part of a defendant is generally inadmissible." *Morris v. Weddington*, 320 Md. 674, 680 (1990). As the *Morris* Court explained,

> The rule against admitting evidence regarding insurance is for the protection of both parties. If the amount of insurance coverage is high, reference to it may prejudice the defendant because the jury may consider the fact that the defendant will not be personally liable for any damages, and therefore be overly generous in an award to the plaintiff. Conversely, if the limits of coverage are low, or if coverage is nonexistent, the award may be smaller than justified because the jury may limit the award to what it believes the defendant can personally afford regardless of the actual damages proved.

Id. at 681.

In *Morris*, a witness inadvertently remarked on cross-examination that the defendant did not have insurance. The plaintiff moved for a mistrial, which was denied. On appeal, this Court held that the trial court did not err by denying the mistrial motion because it was highly unlikely that the plaintiff was prejudiced by the single, isolated remark. The Court of Appeals disagreed and reversed. It emphasized that the jurors posed several questions to the court during deliberations that made clear that the issue of insurance was a primary consideration and that the "the jury came back with an award well below the damages [requested by the plaintiffs]." *Id.* In light of these facts, the Court held that the "mere mention" of the defendant's lack of insurance was prejudicial error requiring reversal of the jury verdict. *Id.* at 682.

We return to the case at bar. Unlike in *Morris*, where a fact witness stated during the evidentiary phase of the proceedings that the defendant was uninsured, here, defense counsel made an ambiguous reference during closing argument to the cost of hiring a defense expert. The statement, in context, was clearly intended to convey to the jurors that any cost incurred to hire a defense expert would have been a waste of money because there was no evidence that Chaffman was injured in the accident. On this basis alone, we hold that the trial court did not abuse its discretion by denying Chaffman's request to apprise the jury of Bernales's insurance status on rebuttal. *See, e.g., Ingram v. State*, 427 Md. 717, 727 (2012) ("a trial judge has broad discretion to control the scope . . . of counsel's closing argument in order to ensure fairness").

Moreover, also unlike in *Morris*, where the jurors awarded reduced damages, the jurors here found that Chaffman did not suffer any injury in the accident. Thus, the very risk of prejudice identified by the *Morris* Court occasioned by the mention of a lack of insurance—the danger that an "award may be smaller than justified"—could not have occurred in this case. 320 Md. at 681. The jurors also did not pose any questions to the trial court indicating that they were considering Bernales's insurance status. In light of these facts, we also would hold that any error by the court in not permitting Chaffman to address the issue of insurance coverage was not prejudicial error requiring reversal.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.