Circuit Court for Anne Arundel County
Case No. C-02-CV-20-001980

UNREPORTED

IN THE APPELLATE COURT*

OF MARYLAND

No. 1844

September Term, 2021

RICH MORTON'S GLEN BURNIE
LINCOLN MERCURY, LLC
v.

JAMILA WILLIAMS-MOORE

Leahy,
Beachley,
Albright,

JJ.

Opinion by Albright, J.

Filed: January 12, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

** This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from the sale of a used 2018 Kia Sedona automobile ("minivan"). Appellant, Rich Morton's Glen Burnie Lincoln Mercury, LLC ("Rich Morton"),[1] sold the minivan to Appellee, Jamila Williams-Moore ("Ms. Williams-Moore"), after representing that it had "reconditioned" the minivan and could completely remove the odor Ms. Williams-Moore and her husband smelled in the minivan before Ms. Williams-Moore purchased it. After the sale, Rich Morton could not, as it had represented, remove the odor. Ms. Williams-Moore then took the minivan to an independent detail shop, which found mouse infestation inside the minivan, but could not remove the odor. Nor could a biohazard cleaning company that Ms. Williams-Moore hired. Ms. Williams-Moore then sued Rich Morton in the Circuit Court for Anne Arundel County, alleging violation of Maryland's Consumer Protection Act ("MCPA") and breach of the minivan's implied warranty of merchantability, among other claims.[2] Ms. Williams-Moore prevailed on these claims at a bench trial, securing a judgment for $11,029.00 in damages and a second for $14,786.25 in statutory attorney's fees and costs.

Here, Rich Morton raises the following three questions:

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[1] Appellee does business as Rich Morton Mazda.

[2] Ms. Williams-Moore's complaint contained five claims. She prevailed on Count I (Violation of MCPA) and Count III (Breach of Implied Warranty of Merchantability). At the close of her case, Ms. Williams-Moore withdrew her claim for revocation of acceptance in violation of Md. Code, Com. Law ("CL") §§ 2-608 and 2-711 (Count IV), and her unjust enrichment claim (Count V). The circuit court found against Ms. Williams-Moore on her claim for violation of the Magnuson-Moss Warranty Act in violation of 15 U.S.C. §§ 2-301 through 2-312 (Count II).

1. Did the circuit court err in finding a violation of the [MCPA]?

2. Did the circuit court err in finding Rich Morton breached the implied warranty of the vehicle?

3. Did the circuit court err in its award of attorney's fees to [Ms.] Williams-Moore?

For the reasons below, we affirm the judgments of the circuit court.

FACTUAL BACKGROUND

In August 2020, Ms. Williams-Moore purchased the minivan from Rich Morton. Before purchasing it, she and her husband noticed animal hair in the minivan's trunk and an odor inside the vehicle, and they notified the dealership of the odor. Ms. Williams-Moore purchased the minivan for $19,582.00. Incorporated into the purchase price was a "reconditioning" fee of $1,295.00. Including various other charges, the total due was $21,087.92. Ms. Williams-Moore financed the purchase with a $22,000.00 loan from an independent lender. As we discuss below, much of the case turned on various representations Rich Morton made to Ms. Williams-Moore and her husband at, and after, the time of the sale.

Two days after the purchase, Rich Morton shampooed the minivan's interior and exterior in an effort to remove the odor, but it remained. Mr. Moore then stopped driving the minivan because doing so left him with a headache and his clothes smelling. When an independent detail shop, Vega Motor Sports ("Vega"), could not eliminate the odor after one detail, Vega removed the vehicle's dashboard only to discover mouse infestation and mouse feces in the minivan's cabin air filter. Vega replaced the cabin air filter and

performed an ozone treatment on the minivan, but the odor remained. Ms. Williams-Moore then had a biohazard decontamination done on the minivan, but the odor remained. By September or October 2020, Ms. Williams-Moore also stopped driving the minivan. When Rich Morton would not confirm in writing its offer to take the minivan back for the price Ms. Williams-Moore paid for it, less taxes, Ms. Williams-Moore filed the instant suit.

About five months later, Ms. Williams-Moore traded the minivan in for a pre-owned car at another dealership, Sheehy Nissan of Waldorf ("Sheehy"). Sheehy gave Ms. Williams-Moore $16,000.00 in trade for the minivan. In turn, Sheehy paid the $21,300.00 Ms. Williams-Moore then owed on the minivan loan and added the $5,300.00 negative trade-in value of the minivan to what Ms. Williams-Moore borrowed to buy the pre-owned car.[3] Prior to this deal, Ms. Williams-Moore told Sheehy about the mouse infestation in the minivan.

At the ensuing bench trial, Ms. Williams-Moore testified, along with her husband, and Vega's operations manager, Darrel Commisiong. Ms. Williams-Moore recounted the representations Rich Morton's salesman made to her after she told him about the hair she

[3] Rich Morton's counsel asked Ms. Williams-Moore if Sheehy paid off the $22,000.00 loan she had on the minivan when she purchased the pre-owned car. After explaining that the difference between the loan payoff amount and the trade-in allowance was rolled over into a new loan, Ms. Williams-More responded "yes" to the payoff amount. Ms. Williams-Moore's Exhibit 10 shows that that payoff amount was $21,300.00. We assume that counsel's question and Ms. Williams-Moore's answer were estimates. The trial court's compensatory damages award was consistent with the figures in Exhibit 10.

saw and the odor she smelled in the minivan. On arriving at Rich Morton, Ms. Williams-Moore and her husband noticed ". . . dog hair, some type of animal hair" in the trunk, as well as an odor in the vehicle. After telling Rich Morton's salesman about the odor, the salesman told Ms. Williams-Moore "they could remediate the odor," adding that "this is their business. They're in the car industry. They get cars all the time with extremely bad odors, . . . smoke odors, all types of odors, and they could completely remove it."

When Rich Morton promised to give Ms. Williams-Moore a loaner car for the ride home so that it could remove the odor from the minivan, Ms. Williams-Moore went ahead with the purchase. Ms. Williams-Moore then completed the paperwork, one page of which was Rich Morton's acknowledgement that it owed Ms. Williams-Moore "reconditioning," which it itemized as "(Deodorize, Buff)." After the paperwork, though, Rich Morton told Ms. Williams-Moore that it no longer had a loaner available, but that it would bring a loaner to her home the next day and retrieve the minivan in order to clean it. As she drove home, Ms. Williams-Moore wondered if she had made the right decision in purchasing the minivan. But, she remembered the promise Rich Morton made to her – that it would clean the minivan and provide her with a loaner while the car was being cleaned.

The next day, Rich Morton did not pick up the minivan, and the minivan did not start.[4] According to Ms. Williams-Moore, her husband spoke to Rich Morton, who

[4] Ms. Williams-Moore and her husband were able to jumpstart the minivan the next day.

assured him that it would pick up the minivan the next day. [5] The next day, now two days after the purchase, a Rich Morton employee arrived at the Williams-Moore home with a loaner but Ms. Williams-Moore and the minivan were not there, as Rich Morton had not called ahead with a specific time. When Ms. Williams-Moore returned home, Rich Morton picked up the minivan, and gave Ms. Williams-Moore the loaner.

When Rich Morton returned the minivan to Ms. Williams-Moore two days later,[6] the odor remained, though it was fainter, and Ms. Williams-Moore would later observe hair in the vehicle. Ms. Williams-Moore testified, "[i]t smelled like it had just been cleaned, and there was still the faint odor of the dog smell or whatever it was . . . . It wasn't as strong, but it was still there. It wasn't as strong because they had just cleaned the car." In the minivan's back seat, Ms. Williams-Moore saw hair, "not that day but it was still there."

Mr. Commisiong testified about the mouse infestation Vega found in the minivan and Vega's efforts to remediate the odor. Vega detailed the minivan once, replaced the minivan's cabin air filter, and performed an ozone treatment.[7] On removing the minivan's existing cabin air filter, Mr. Commisiong found mouse infestation, mouse feces, and

[5] Rich Morton said it would mail Ms. Williams-Moore a lifetime warranty for her inconvenience, but she never got it.

[6] In addition to cleaning the minivan, Rich Morton replaced the battery and put gasoline in.

[7] Mr. Commisiong suggested that Ms. Williams-Moore get a new cabin air filter, which she did, and brought it to Vega to install.

mouse food, and could hear mice running inside the area of the filter. He photographed what he found, and, as he did so, noticed a sharp scent of urine. He sent the photographs to Ms. Williams-Moore and told her he had identified the source of the odor.

Later, when Ms. Williams-Moore notified Mr. Commisiong that the smell remained, he told her that with mouse infestation, there was nothing further Vega could do. Specifically, Mr. Commisiong told Ms. Williams-Moore that if the minivan had mouse infestation, Vega "cannot get in the back of the vehicle or into the clusters because mice run behind there. You know, it's [their] home. So if there's feces back there, if there's urine back there, we cannot get to it."[8]

Mr. Moore testified that the minivan's odor was such that he refused to drive the vehicle. Specifically, Mr. Moore testified that after Rich Morton returned the minivan to them, and in an attempt to find out what was causing the odor, he drove the minivan to an auto mechanic shop about an hour and fifteen minutes away. During the drive, the smell was so strong that Mr. Moore had to wear a mask and drive with the windows down. On arriving home, according to Mr. Moore, he had a headache, "didn't feel particularly well," and his clothes "had the odor in it." At that time, he told Ms. Williams-Moore that he would no longer drive the minivan.

Rich Morton called two witnesses, Sheehy employee Keith Tunney, and Rich Morton's general manager, Donald Burke, both of whom testified about what happens

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[8] It was at this point that Ms. Williams-Moore had the biohazard decontamination done on the vehicle.

when a used car is prepared for resale, among other things. Mr. Tunney testified that he was "familiar with used cars being reconditioned before sale," as that is what he did for Sheehy. During the "Sheehy Select" inspection,[9] it is "pretty standard" to replace a vehicle's air filters, cabin filters, wiper blades, all if needed, and change the vehicle's oil. Thereafter, the car goes to the detail department "and they scrub everything, the interior, the upholstery, outside the tires, shine and wax and everything." The detail department would "remove any hairs, [perform] body and paint repairs, [and] interior technology repairs[.]"

Mr. Burke testified that he was well-acquainted with the operations of a car dealership, having worked in the car business for almost 40 years and at Rich Morton for the last three years. Mr. Burke testified that inspecting a car cabin air filter was not something they "normally" do, adding that "the only time we do it" is as part of the certification process on a Mazda-certified vehicle. Instead, according to Mr. Burke, on this minivan, Rich Morton "completely shampooed the whole interior of the car," detailed the exterior, and returned the minivan to Ms. Williams-Moore.

After Rich Morton returned the minivan to Ms. Williams-Moore, Mr. Moore told Mr. Burke that "they still smelled something in the vehicle." Mr. Burke told Mr. Moore to "give it a day or so, let it dry out," and offered that if the smell continued, "to do it again." He added, ". . . whatever we have to do to make it right, I'll certainly do it."

[9] Mr. Tunney differentiated a "Sheehy Select" inspection from the Maryland State inspection, another step of the process that he also performs.

On cross-examination, Mr. Burke admitted that Rich Morton “incorporated” a $1,295.00 “reconditioning fee” into the sales price of this minivan. He also admitted that “reconditioning” “involves thorough cleaning and detailing[,]” and “removing odors from the vehicle . . . if they are noticed.”[10] When asked whether he “never noticed any odor in the vehicle,” Mr. Burke indicated that he “never personally got in the vehicle until it was brought back to me to clean.” He added that he was satisfied with the vehicle’s condition after it was “re-cleaned.”

On Ms. Williams-Moore’s MCPA claim, the trial court found that Rich Morton’s having charged Ms. Williams-Moore a “reconditioning fee” as part of the sales price was a false representation because the minivan had not been “reconditioned” or thoroughly cleaned before it was sold to Ms. Williams-Moore. As to the minivan’s implied warranty of merchantability, the trial court found that the mouse infestation, coupled with the odor, amounted to a breach of the automobile’s implied warranty of merchantability. Based on Ms. Williams-Moore’s having prevailed on her MCPA claim, the trial court indicated it would award attorney’s fees and costs to Ms. Williams-Moore on her submission of a supporting affidavit.

Ms. Williams-Moore then petitioned the trial court for $14,410.00 in attorney’s fees and $376.25 in costs and attached a five-page invoice to the petition. Rich Morton

[10] According to Mr. Burke, “reconditioning” could entail other steps “[d]epend[ing] on the vehicle[]” after “[y]ou look at” it. These steps could include taking care of scratches, replacing hubcaps, painting and redoing wheels, addressing holes in upholstery, shampooing and waxing the vehicle, and other minor cosmetic things.

opposed the petition, and, after a hearing, the trial court made oral findings and conclusions. The trial court granted Ms. Williams-Moore's petition in full.

Below, we will add more facts, and the trial court's findings, as needed.

STANDARD OF REVIEW

The Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)[11] has recently reiterated the applicable standards of review for actions tried without a jury, as this was. It said:

> Pursuant to Maryland Rule 8-131(c), '[w]hen an action has been tried without a jury, the appellate court will review the case on both the law and the evidence.' We will 'not set aside the judgment of the trial court on the evidence unless clearly erroneous,' giving 'due regard' to the trial court's opportunity to 'judge the credibility of the witnesses.' *Id.* A trial court's findings are not clearly erroneous 'if any competent material evidence exists in support of the trial court's factual findings[.]' *Webb v. Nowak*, 433 Md. 666, 678, 72 A.3d 587 (2013). 'When a trial court decides legal questions or makes legal conclusions based on its factual findings, we review these determinations without deference to the trial court.' *Plank v. Cherneski*, 469 Md. 548, 569, 231 A.3d 436 (2020) (citations and quotations omitted). 'Where a case involves the application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are legally correct under a de novo standard of review.' *Id*. (citations and quotations omitted).

Velicky v. Copycat Bldg. LLC, 476 Md. 435, 445–46 (2021).

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[11] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland….").

Ordinarily, we review the admission of evidence for abuse of discretion. *Johnson v. State*, 457 Md. 513, 530 (2018). "However, in some circumstances, the admissibility of a particular item of evidence is a legal question on which we accord no special deference to a trial court." *Id.*

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN FINDING A VIOLATION OF THE MARYLAND CONSUMER PROTECTION ACT ("MCPA")

Maryland's Consumer Protection Act ("MCPA") prohibits the use of "unfair, abusive, or deceptive trade practices" in the sale of consumer goods. *See* Md. Code, Com. Law ("CL") §13-303(1). A false or misleading representation that "has the capacity, tendency, or effect of deceiving or misleading consumers" is an "unfair, abusive, or deceptive trade practice." CL §13-301(1). Among the specific kinds of misrepresentations that the MCPA prohibits are those that consumer goods or services have a "characteristic," "standard," or "quality" that they do not have. CL §§ 13-301(2)(i) and (2)(iv). A "consumer good" or "consumer service" is a good or service "primarily for personal, household, family, or agricultural purposes." CL § 13-101(d)(1). A "service" means any "subprofessional service" or "repair of a motor vehicle," among other services. CL §§ 13-101(j)(2) and (j)(3).

A plaintiff need not prove that the defendant intended to mislead the plaintiff. Rather, whether a statement is misleading under the MCPA is adjudged from the point of view of a reasonable, but unsophisticated, consumer. *Allen v. Bank of Am., N.A.*, 933 F.

Supp. 2d 716, 730 (D. Md. 2013) (citing cases).[12] But, the plaintiff must prove that she relied on the misrepresentation, i.e. that the misrepresentation "'substantially induce[d] a consumer's choice[.]'" *Bank of Am., N.A. v. Jill P. Mitchell Living Trust,* 822 F. Supp. 2d 505, 532 (D. Md. 2011) (citing cases).

Rich Morton contends that there can be no MCPA violation here because its promise to eliminate the odor from the minivan was not a misrepresentation or a guarantee but merely a promise to do something in the future. This argument misses the mark.

The misrepresentation that the trial court found was not about Rich Morton's promise to remove the minivan's odor in the future.[13] Rather, Rich Morton's misrepresentation was that the minivan had been "reconditioned," a representation Rich Morton made when it "incorporated" a $1,295.00 "reconditioning fee" into the sales price. Even if "reconditioning' meant only a "thorough cleaning," Ms. Williams-Moore

[12] Here, the trial court "d[id] not believe that it was established that [Rich Morton] lied to [Ms. Williams-Moore] about remediating the odor in the car, as they indicated that they would, at the time of the sale." Whether the trial court was referring to Rich Morton's pre-purchase representation that it could remediate the odor, or to Rich Morton's post-purchase promise to bring the minivan back in in order to remediate the odor, is not clear.

[13] To be sure, in assessing whether a statement amounts to common law fraudulent or negligent misrepresentation, "the general rule is that predictions or 'statements which are merely promissory in nature and expressions as to what will happen in the future are not actionable as fraud.'" *Miller v. Fairchild Indus., Inc.*, 97 Md. App. 324, 342 (1993) (citing *Finch v. Hughes Aircraft Co*., 57 Md. App. 190, 232 (1984)). Here, however, and as we discuss, Rich Morton's representation about its ability to "completely remove" the minivan's odor was not merely a promise to do something in the future.

saw animal hair in the vehicle at the dealership, an observation that led the trial court to conclude that the minivan had *not* been "thoroughly cleaned" prior to sale. The trial court found:

> But where I think the Defendant runs into some trouble with regards to this count is the charge that was attributed in the sale price for reconditioning the vehicle. If I consider Mr. Tunney's testimony, the Defendant's own witness, his testimony was that changing cabin air filters for – is Sheehy's standard practice when you recondition a vehicle. He indicated also, pursuant to questioning, that it was an industry standard.
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> And even if I don't use that industry standard for this particular case, and I just rely on Mr. Burke's testimony today, Mr. Burke's testimony went into detail what they – what Morton did as a result of a reconditioning of a vehicle. It went into whether they would – talked about buffing out scratches, dealing with upholstery, and steam cleaning, and tires. And, in it, in his testimony, he indicated that a reconditioning certainly comprised of a very – of a thorough cleaning.
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> * * *
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> But what was testified to that was uncontradicted was that, when Mr. and Mrs. Williams-Moore was – were at the dealership hair, was present in that car after they were charged for reconditioning of the vehicle. And Mr. Burke defined reconditioning as a thorough cleaning.
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> And I did find that the level of detail that was provided to the court for reconditioning of the vehicle, the Court finds that it is highly unlikely. And I think enough evidence, by preponderance, of the evidence, that a thorough cleaning was not in fact done on this vehicle. The Plaintiffs were charged for it. And I do find that this is a false representation during the course of the sale of this vehicle.

Thus, the misrepresentation was about a characteristic -- "reconditioned" meaning "thoroughly cleaned" -- that the minivan did not have.[14]

Moreover, Rich Morton's statements to Ms. Williams-Moore about its ability to remediate the minivan's odor were not mere promises to do something in the future. Instead, when Rich Morton represented that it "could remediate the odor," and touted its expertise to Ms. Williams-Moore in providing that service, it made statements about the standard or quality of a repair service that the service did not have. And perhaps, if Rich Morton had "reconditioned," i.e. "thoroughly cleaned," the minivan before selling it to Ms. Williams-Moore, Rich Morton (like Vega) would have discovered the source of the odor, and realized (as Vega did) that it could not "completely remove" the odor.

Rich Morton next argues that Ms. Williams-Moore did not rely on its promise to remediate the odor because she purchased the minivan knowing of the odor. Reliance on a misrepresentation occurs when one is "substantially induced . . . to act" by the misrepresentation. *Nails v. S & R, Inc.*, 334 Md. 398, 416–17 (1994). Here, the

[14] Rich Morton's reconditioning fee was not the focus of Ms. Williams-Moore allegations concerning her MCPA claim. Instead, her allegations centered on the "false or misleading statement" that Rich Morton promised to "eliminate the odor when Plaintiff was considering purchasing the [minivan]." Nonetheless, Ms. Williams-Moore alleged the purchase price of the minivan (a price that Rich Morton knew included its reconditioning fee), and Rich Morton's failure to remove the odor. Further, as we understand, Rich Morton is not challenging on appeal any variance between Ms. Williams-Moore's allegations and her proof, nor is it suggesting any lack of substantial agreement between Ms. Williams-Moore's pleadings and proof or that Rich Morton was not on notice of her allegations. As such, we do not perceive a variance problem that would affect our analysis here. *See Tshiani v. Tshiani*, 436 Md. 255, 270 (2013) ("The primary purpose behind our pleading standards is notice . . ., and there need only be substantial agreement between what is pleaded and what is proved.") (citations omitted).

competent, material evidence shows that while Ms. Williams-Moore knew about the odor before purchasing the minivan, it was Rich Morton's misrepresentation that it could "completely remove" the odor that "substantially induced" Ms. Williams-Moore to make the purchase. Ms. Williams-Moore told Rich Morton about the odor before purchasing the vehicle. As discussed above, Rich Morton represented it could "completely remove" the odor. Before Ms. Williams-Moore purchased the vehicle, Rich Morton told her a loaner was available so that Rich Morton could remove the odor before Ms. Williams-Moore drove the minivan home. And when she arrived home in the minivan, she feared she had made a mistake.

Rich Morton next argues that Ms. Williams-Moore had no provable damages and suffered no injury because Ms. Williams-Moore was able to recover the minivan's full value when she traded it in to Sheehy. Under the MCPA, an actionable violation can occur even without any damage to a consumer. *See* CL §§ 13-302 and 13-408. Of course, a private plaintiff must show some injury or loss to recover for it, *see* CL § 13-408(b), but Ms. Williams-Moore's recovery under the MCPA here is not limited to impairment of the minivan's value: the MCPA also entitles her to reasonable incidental and consequential damages arising from Rich Morton's actions. *See Mercedes-Benz of N. Am., Inc. v. Garten*, 94 Md. App. 547, 567 (1993) (awarding damages for rental car,

reinstallation of car phone and radar detector, automobile insurance, and interest expense).[15]

We do not review the bulk of the trial court's award for incidental and consequential damages, as Rich Morton raises no argument here about most of the items for which the trial court compensated Ms. Williams-Moore.[16] The exception is the trial court's inclusion of the $5,300.00 difference between what Sheehy paid Ms. Williams-Moore in trade for the minivan and the full amount she still owed on the loan she took out

[15] Rich Morton raises this same challenge in regard to damages for its breach of the minivan's implied merchantability. With the exception of its award for attorney's fees and costs, the trial court did not differentiate between the MCPA violation and the merchantability claim in its damages award. Nonetheless, Ms. Williams-Moore was also entitled to incidental and consequential damages on her merchantability claim. *See* CL §§ 2-714(3) ("In a proper case any incidental and consequential damages under the next section may also be recovered.") and 2-715 (setting out what "incidental" and "consequential" damages include).

[16] The trial court awarded $2,485.00, which represented seven months of $355.00 per-month payments on the car loan Ms. Williams-Moore took out to purchase the minivan; $800.00 for the biohazard decontamination; $344.00 for the first detail Vega performed; $228.00 for the second detail Vega performed; $492.00 in car insurance Ms. Williams-Moore carried on the minivan from September 2020 to the beginning of March 2021; $85.00 in prorated car insurance for March 2021; and $1,295.00 for reconditioning.

We acknowledge that the $1,295.00 reconditioning fee was likely counted twice. The reconditioning fee was incorporated into the minivan's sales price, which, in turn, was financed by a loan. But, Ms. Williams-Moore was fully compensated for having taken out the loan. Specifically, she received her monthly loan payments, the trade-in value of the minivan that was applied toward the loan balance, and the loan balance that remained after the trade-in.

Because Rich Morton does not challenge the inclusion of the reconditioning fee in the trial court's award, we do not disturb it.

to purchase the minivan. Rich Morton argues that this part of the trial court's damages award was improper as it required expert testimony, of which there was none, rather than Ms. Williams-Moore's lay testimony, about "how Sheehy did the deal." We are not persuaded by this argument, as Rich Morton fails to cite to any specific portion of the record to support it. And further, from our review of the record, the trial court's reliance on lay testimony appears to be, at most, error invited by Rich Morton itself.

Under Md. Rule 5-103(a), appellate error "may not be predicated upon a ruling that admits . . . evidence unless the party is prejudiced by the ruling, and . . . [i]n case the ruling is one admitting evidence, a timely objection or motion to strike appears of record[.]" Moreover, an appellate brief must contain reference "to the page of the record extract or appendix" that support an appellant's contentions. Md. Rule 8-504(a)(4). Here, Rich Morton does not specify with page numbers where it objected to, or moved to strike, the lay evidence it now challenges.

This failure is significant because the record discloses at least one occasion where Rich Morton appears to have invited, and thus waived its ability to challenge here, the trial court's reliance on lay, rather than expert, testimony as to how Sheehy structured Ms. Williams-Moore's pre-owned car purchase. Under the "invited error" doctrine, "'a defendant who h[im]self invites or creates error cannot obtain a benefit – mistrial or reversal – from that error.'" *Molina v. State*, 244 Md. App. 67, 144 (2019) (quoting *Smith v. State*, 218 Md. 689, 701 (2014)). After lodging no objection to Ms. Williams-Moore's introducing her installment sales contract with Sheehy, a document that showed

(1) the trade-in allowance for the minivan ($16,000.00), (2) the amount Ms. Williams-Moore still owed on the minivan loan ($21,300.00), (3) and the "negative net trade in" on the minivan (-$5300.00), Rich Morton cross-examined Ms. Williams-Moore, eliciting nearly the same information: that Sheehy paid off the $22,000.00 loan she took out to purchase the minivan, gave her $16,000.00 in trade for the minivan, and that Sheehy "rolled the difference over." If the above pieces of evidence are what Rich Morton is challenging as lacking expert testimony, Rich Morton has invited, and thus waived, any error. Rich Morton has not pointed us to any portion of the record that would support a different conclusion.

In any event, to the extent that Rich Morton is challenging the sufficiency of the evidence to support the trial court's inclusion of $5,300.00 in its damage award, the above evidence (the installment sales contract and Ms. Williams-Moore's testimony) satisfies us that there was material competent evidence to support the trial court's decision. After Rich Morton could not eliminate the minivan's odor, and Ms. Williams-Moore traded the minivan in for a pre-owned car, she was left with a loan on the pre-owned car that included $5,300.00 rolled over from the minivan loan. We see no error in the trial court's conclusion that this amount was a reasonable incidental or consequential damage arising from Rich Morton's actions.

Rich Morton next argues that Ms. Williams-Moore's MCPA claim fails because she did not offer expert testimony about the applicable standard of care for vehicle cleanings or that Rich Morton violated that standard of care. In support of its contention,

Rich Morton quotes *Jones v. State*, 425 Md. 1 (2012), which itself cites *Schultz v. Bank of Am.*, 413 Md. 15, 28 (2010), for the proposition that "'[w]here the plaintiff alleges negligence by a professional, expert testimony is generally necessary to establish the requisite standard of care owed by the professional.'"

Ms. Williams-Moore's MCPA claim, however, is not a claim for common law, tort-based, negligence. To be sure, a negligence claim would involve the "familiar elements of negligence: duty, breach, causation, and harm." *See Barton v. Advanced Radiology, P.A.*, 248 Md. App. 512, 533 (2020); *Univ. of Md. Med. Sys. v. Gholston*, 203 Md. App. 321, 330 (2012) (explaining that the element of "duty" in medical negligence cases is "standard of care"). But, Rich Morton supplies no legal pathway for concluding that the MCPA—a statute that includes different elements, and that does not mention establishing the contours of a legal duty or showing a breach of that duty—should be construed to require proof of a standard of care. Under Md. Rule 8-504(a)(6), appellate briefs must contain "[a]rgument in support of the party's position on each issue," meaning that "[a]n appellant is required to articulate and adequately argue all issues the appellant desires the appellate court to consider in the appellant's initial brief." *Oak Crest Vill., Inc. v. Murphy*, 379 Md. 229, 241 (2004). Here, Rich Morton supplies no substantial argument for why (or where) a tort-based negligence standard should be read into the MCPA. As such, we decline to address this argument further.

For similar reasons, we also do not take up Rich Morton's argument that expert testimony was required to prove what "reconditioning" means, or that "reconditioning"

was not done in this case. Again, Rich Morton does not specify with page numbers where it objected to the lay testimony offered on these matters. And, from what we can tell, it lodged no objection.

From our review of the record, it appears that Ms. Williams-Moore testified that at the dealership, she noticed "dog hair, some type of animal hair [in the minivan's trunk]." Later, on cross-examination of Mr. Burke about what "reconditioning" entailed, Rich Morton lodged only an unsuccessful "scope" objection.[17] Mr. Burke then admitted that "reconditioning" "involves thorough cleaning and detailing."[18] With no objection that

[17] In its reply brief, Rich Morton challenges the trial court's overruling of this scope objection and its admission of the evidence that followed. Because this argument appears for the first time in Rich Morton's reply brief, we do not address it. *See* Md. Rule 8-504(a)(5); *Chang v. Brethren Mut. Ins. Co*., 168 Md. App. 534, 550 n.7 (2006) (citing *Beck v. Mangels*, 100 Md. App. 144, 149 (1994)).

[18] Mr. Burke's testimony was:

> [MR. BURKE]: It depends on the vehicle. I mean, you look at the vehicle. If there's scratches that need to be done, you take care of the scratches. If the hubcaps are bad, you replace the hubcaps. If the wheels are, you know, scraped up, we usually paint the wheels or have the wheel guy, what we call the wheel guy, the wheel repair guy, come and redo the wheels. If there's burn holes in the upholstery; you know, the car's shampooed; it's waxed. I mean, what – you know –
>
> [MS. WILLIAMS-MOORE'S COUNSEL]: Uh-huh.
>
> [MR. BURKE]: – minor cosmetic things –
>
> * * *

either witness was unqualified to offer this testimony, we do not review Rich Morton's challenge on this basis. Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"); Md. Rule 5-103(a); *Anderson v. Litzenberg*, 115 Md. App. 549, 569 (1997) (where specific grounds for an objection are stated, either voluntarily or at the trial court's request, all other grounds are waived.)

Finally, to the extent that Rich Morton's challenge is to the sufficiency of the lay evidence that was offered on Rich Morton's failure to have "reconditioned" the minivan before selling it to Ms. Williams-Moore, there was competent material evidence to support the trial court's findings. Ms. Williams-Moore testified that she noticed dog or some type of animal hair in the minivan's trunk. Mr. Burke testified that "reconditioning" involved a "thorough cleaning and detailing." Taken together, these facts support the trial court's inference that "a thorough cleaning was not in fact done on this vehicle."

II. THE CIRCUIT COURT DID NOT ERR IN FINDING A BREACH OF THE MINIVAN'S IMPLIED WARRANTY OF MERCHANTABILITY OR IN AWARDING DAMAGES FOR THAT BREACH.

Rich Morton argues that it was entitled to a second chance to remediate the minivan's odor, a chance it did not get because Ms. Williams-Moore failed to tell Rich Morton that the odor remained after Rich Morton's first attempt to remediate it. As a

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> [MS. WILLIAMS-MOORE'S COUNSEL]: – part of reconditioning, that involves a thorough cleaning and detailing, correct?
>
> [MR. BURKE]: Yeah.

consequence, says Rich Morton, the trial court erred in finding a breach of the minivan's implied warranty of merchantability. Again, we disagree.

We start with a brief review of the pertinent provisions of Maryland's Uniform Commercial Code -- Sales ("UCC"), which code appears at Title 2 of the Commercial Law Article. Goods that "conform" to a contract "are in accordance with the obligations under the contract." UCC § 2-106(2). A seller of goods may, through a variety of means, create an "express warranty" on goods. UCC § 2-313. In addition to express warranties, a warranty that "goods" are "merchantable" is "*implied* in a contract for their sale" if the seller is a merchant of those kinds of goods. UCC § 2-314(1) (emphasis added).[19] To be "merchantable," goods must be at least "fit for the ordinary purposes for which such goods are used[,]" among other things. UCC §2-314(2)(c).

When faced with tender of a "nonconforming" good, a buyer may "reject" or "accept" it.[20] UCC § 2-601. "Acceptance" of a nonconforming good with knowledge of the nonconformity "precludes" subsequent rejection of the good, unless the buyer reasonably assumed that the nonconformity "would be seasonably cured." UCC §2-607(2). Nor does "acceptance . . . itself impair any other remedy" for nonconformity. *Id.* If the nonconformity "substantially impairs" the good's value to the buyer, she may revoke her acceptance under two circumstances: (1) when the nonconformity was not

[19] In some circumstances not applicable here, an implied warranty may be excluded or modified. UCC §2-314.

[20] Not relevant here, UCC § 2-601 also permits the buyer to partially accept or reject commercial unit(s). *See* UCC § 2-105(6).

"seasonably cured;" or (2) if the nonconformity was unknown at the time of acceptance and acceptance was "reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances." UCC §§ 2-608(1)(a)-(b). "Seasonably" means taking an action "at or within the time agreed" or, if none, "within a reasonable time." UCC § 1-205(b). Determining whether an action is taken within a "reasonable time" depends on "the nature, purpose, and circumstances of the action." UCC § 1-205(a). "[A]ctions [to] be taken within a 'reasonable' time are to be applied in the transactional context of the particular action." UCC § 1-205 cmt. 1.

To recover for breach of implied warranty of merchantability, an aggrieved buyer must (as a predicate) notify the seller of the breach, "within a reasonable time after [s]he discovers or should have discovered" it. UCC §2-607(3)(a). The notification must "inform the seller that the buyer has revoked, identify the particular goods as to which he has revoked[,] and set forth the nature of the nonconformity." *Lynx, Inc., v. Ordnance Prod.,* 273 Md. 1, 16 (1974). But, the notice need not be as specific as what would be required to support a buyer's "rejection" of a good. Instead, notice of a breach of the good's implied warranty of merchantability "need merely be sufficient to let the seller know that the transaction is still troublesome and must be watched." UCC §2-607 cmt. 4. The buyer's failure to notify the seller within the timeframe bars the buyer "from any remedy." UCC § 2-607(3)(a).

Ultimately, in order to prevail on a claim for breach of a good's implied warranty of merchantability, the plaintiff must show "not only the existence of the warranty but the

fact that the warranty was broken and that the breach of the warranty was the proximate cause of the loss sustained." UCC § 2-314 cmt. 13. *See also Sheeskin v. Giant Food, Inc.,* 20 Md. App. 611, 620-621, *aff'd* 273 Md. 592 (1975).[21]

Returning to this case,[22] we see no clear error in the trial court's conclusion that Rich Morton was not entitled to a second opportunity to cure the mouse damage, and the resulting odor, in the minivan. When Ms. Williams-Moore accepted the minivan, it was a "nonconforming" good for which Ms. Williams-Moore expected a seasonable cure.

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[21] The United States District Court for the District of Maryland has stated:

> Courts often employ the word 'defect,' which does not appear in § 2–314, in merchantability cases as a means to describe a discrete problem with a product that renders it unfit for its ordinary purpose, and thus, not merchantable. *See Ford Motor Co. v. Gen. Acc. Ins. Co.,* 365 Md. 321, 326–27, 333–34, 779 A.2d 362, 365, 369 (2001) (holding, in a case in which the plaintiff alleged that a design defect in a truck rendered it unfit for its ordinary purpose under § 2–314(2)(c), that the plaintiff must prove "a specific product defect ... to maintain a claim for breach of the implied warranty of merchantability").

Bailey v. Atl. Auto. Corp., 992 F. Supp. 2d 560, 574 n.18 (D. Md. 2014).

[22] Rich Morton does not seriously contend that the presence of mouse infestation in the minivan, and the odor from it, was not a breach of the minivan's implied warranty of merchantability. One bolded subheader in Rich Morton's opening brief says, "[t]he circuit court erred in finding Rich Morton breached the implied warranty of merchantability because of a lack of adequate notice and opportunity to cure any issue of vehicle odor or mouse damage and a lack of a defect that substantially impairs the value of the vehicle." Beyond this mention, however, Rich Morton makes no argument about the sufficiency of the evidence to support the trial court's finding of a breach of the minivan's implied warranty of merchantability. Accordingly, we do not address this contention. *See* Md. Rules 8-504(a)(6) and (c).

"Seasonable" meant within a "reasonable time," UCC § 1-205(b), as determined by "the nature, purpose, and circumstances of the action." UCC § 1-205(a).[23] The trial court considered the "totality of the circumstances," made extensive factual findings that Rich Morton does not challenge and concluded that Rich Morton's one opportunity to cure was reasonable.

> And if I look at the totality of the circumstances, what happened in this relationship is as follows. First, they were – when they were the Williams-Moore were – Williams-Moores – I guess, Williams-Moores, were about to enter into the contract, or negotiating to enter into the contract to purchase this vehicle, they were promised that this odor would be fixed, and that they would receive a loaner car that night to go home.
>
> It wasn't until after – the testimony the Court has is it wasn't until after the paperwork was signed that the – was the first time that they were told they were not going to get a loaner vehicle that evening, and, they, in fact, had to drive this car with the odor, off the lot. They were also told at that time that someone would be down the very next day to fix it. The person did not come the next day. They came two days later.
>
> When they did arrive, the testimony is that the employee was hostile, was cursing, was clearly inappropriate. And when – but when the vehicle was returned back to them,

[23] "Seasonably" could also mean "at or within the time agreed." UCC § 1-205(b). Here, arguably, there were three time periods in which the parties agreed Rich Morton would cure the minivan's nonconformity by completely removing the odor. These were (1) *before* Ms. Williams-Moore drove the minivan off the lot, an agreement facilitated by the suggestion that a loaner would be provided for Ms. Williams-Moore to drive home; (2) when a loaner was not available and Ms. Williams-Moore drove the minivan home, the *day after* the purchase; and (3) *two days after* the purchase, when Rich Morton did not appear with a loaner on the first day afterward. Nonetheless, the trial court proceeded under the alternative, UCC § 1-205(b) and determined whether a cure had occurred "within a reasonable time."

> after that, the testimony was that there was still hair, and that there was still an – still hair present and there was still an odor that was present. They contacted Mr. Burke, whose response was to just give it more time and to see if it went away. I also understand that Mr. Burke said he would continue to work on it. But his initial – the testimony was that he said just give it more time.
>
> The other aspect of this relationship was that they were never given full paperwork. And, via some of those text messages, there was clearly discussions about getting – understanding all of the terms of the paperwork. The fact and the condition that it was returned, after they were alleged to have fixed it, certainly would not give – the testimony is they didn't have confidence in them, and they were not trusting in their relationship with the Defendant's company. I can wholly understand when the Plaintiff says, at that point, I'm done dealing with them.
>
> And so, I don't believe that, under the law, there's an obligation imposed upon Plaintiffs that they have to continue to deal with a company in which they are having questions about both honesty and about capabilities. And so, for that reason I do find that they've afforded the opportunity, the one reasonable opportunity, to remedy the situation. And I will find for the Plaintiff on a breach of implied warranty.

In an attempt to overcome the trial court's conclusion, Rich Morton argues that "a buyer cannot justifiably revoke acceptance without giving a seller a second opportunity to cure a product defect[,]" and cites a handful of cases from other jurisdictions.[24] But these cases are distinguishable. In three of them, the reasonableness of a second chance to cure never came up because the seller had no chance to cure or the result turned on a different

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[24] Rich Morton also cites the Maryland Lemon Law, CL § 14-1502(d)(1), as being "instructive" in establishing a presumption that a reasonable number of attempts at repair is four. Here, Ms. Williams-Moore's claims were not based on the Maryland Lemon Law.

issue. *See Atchole v. Silver Spring Imports, Inc*., 379 F. Supp. 2d 797 (D. Md. 2005) (seller had no chance to cure); *Carl v. Spickler Enter., Ltd*., 165 Wis. 2d 611 (1991) (seller had no chance to cure); *Pratt v. Winnebago Indus., Inc*., 463 F. Supp. 709 (W.D. Pa. 1979) (result turned on whether defects substantially impaired motor home's value to buyer). In two other cases, there was a track record of success in past or ongoing repair attempts such that it was unreasonable to deny more attempts. *See Abele v Bayliner Marine Corp.,* 11 F. Supp. 2d 955 (N.D. Ohio 1997) (applying Ohio law, the court concluded that the seller was entitled to a second chance to cure a boat engine's failure where the second failure occurred one year, and 110 hours of use, after the seller successfully replaced the engine (for a different problem) following the first failure); *Tucker v. Aqua Yacht Harbor Corp*., 749 F. Supp. 142 (N.D. Miss. 1990) (applying Mississippi law, the court granted summary judgment to a boat engine manufacturer when the boat buyer sued while engine repairs (ultimately successful ones) were ongoing).

Here, by contrast, after undertaking the fact-specific assessment of the transaction that UCC § 1-205(a) requires, the trial court found, given the "totality of the circumstances," that Ms. Williams-Moore had questions about Rich Morton's honesty and capabilities. In other words, there was no track record of success such that the trial court could conclude that it was unreasonable for Ms. Williams-Moore to have denied

Rich Morton another attempt at completely eliminating the minivan's odor.[25] On the facts of this case, we cannot conclude that the trial court's conclusion was clearly erroneous.

III. THE CIRCUIT COURT DID NOT ERR IN AWARDING MS. WILLIAMS-MOORE ATTORNEY'S FEES AND COSTS.

The trial court awarded Ms. Williams-Moore $14,786.25 in attorney's fees and costs after she prevailed on her MCPA claim. Rich Morton argues that the circuit court failed to apply the "lodestar" methodology correctly, failed to provide a complete explanation of the factors it considered, and failed to account for Ms. Williams-Moore' degree of success in the suit.[26] Again, we disagree.

[25] Before the trial court, the parties agreed that Rich Morton had one opportunity to remediate the odor in the minivan. Nonetheless, our review of the evidence suggests that Rich Morton had at least four opportunities. These were (1) the day after the sale when Rich Morton did not appear at Ms. Williams-Moore's home; (2) the second day when Rich Morton appeared and provided Ms. Williams-Moore a loaner vehicle; (3) when Ms. Williams-Moore notified Rich Morton that the smell remained in the minivan and Rich Morton simply told her to wait a few days; and (4) when Ms. Williams-Moore offered to return the minivan at full price and purchase a new vehicle from Rich Morton. Rich Morton agreed to this arrangement, provided that Ms. Williams-Moore pay the taxes. When Rich Morton refused to put this offer in an email as Ms. Williams-Moore requested, their negotiations stalled.

[26] Rich Morton also argues that because Ms. Williams-Moore should not have prevailed on her MCPA claim, the trial court should not have awarded her attorney's fees and costs. Given our conclusion that the trial court did not err in finding an MCPA violation, this argument is foreclosed.

Determining a fee award under the MCPA[27] requires the trial court to undertake, and explain,[28] several steps. These are (1) "the lodestar methodology," which requires multiplying the number of hours expended by an attorney by the reasonable hourly rate, followed by a careful consideration of the Md. Rule 2-703(f)(3) factors to determine whether any adjustments are appropriate;[29] and (2) a weighing of the fees requested in light the result achieved to decide whether an upward or downward adjustment in the award is warranted. *Monmouth Meadows Homeowners Ass'n v. Hamilton*, 416 Md. 325, 333-34 (2010)).

Having reviewed the trial court's oral findings and conclusions, we see no error or abuse of discretion in the trial court's lodestar methodology. The trial court considered Ms. Williams-Moore's counsel's hourly rate and the number of hours counsel expended. The trial court then considered, and explained its consideration of, all of the Rule 2-703(f)(3) factors. We do not recite all of the trial court's findings in this regard, but we note that Rich Morton did not challenge the reasonableness of Ms. Williams-Moore's counsel's $275.00 hourly rate. Thus, the trial court found that the rate "f[e]ll at least within, if not slightly below, what is customary." With regard to the 52.4 hours Ms.

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[27] Under the MCPA, a plaintiff that receives a damage award may, in addition, be awarded reasonable attorney's fees. CL § 13-408(b).

[28] *Hyundai Motor Am. v. Alley,* 183 Md. App. 261, 277 (2008).

[29] Md. Rule 2-703(f)(3), Committee Note (citing *Monmouth Meadows Homeowners Ass'n v. Hamilton*, 416 Md. 325, 333-34 (2010)).

Williams-Moore's counsel expended, the trial court found that counsel took a "relatively conservative approach" in case preparation. After noting that trial lasted for 13 or 14 hours over two days, and that "after mediation we're getting, you know, even lower, closer to 35 hours[,]"[30] the trial court found that the "amount of time that was required by this case [was] fairly reasonable." The trial court added that Ms. Williams-Moore's counsel was not "trying to jack up billing . . . [b]y going down roads that were unnecessary by this case or the strictures of this case." The trial court then concluded that "time and labor" was 52.4 hours.

Nor do we see any abuse of discretion in the trial court's award of Ms. Williams-Moore's full request for attorney's fees and costs even as it ruled against Ms. Williams-Moore on one of her claims. For excellent results, a fee award should "normally" include all hours reasonably expended on the case." Partial success, however, may warrant a downward adjustment. *Hyundai v. Motor Am. v. Alley*, 183 Md. App. at 277 (citing *Garcia v. Foulger Pratt Dev., Inc.* 155 Md. App. 634, 673-74 (2003)). Nevertheless, "[w]here the lawsuit consists of related claims, a plaintiff who has achieved substantial results should not have [her] attorney's fees reduced simply because the court did not adopt each contention raised." *Id.* (citing *Garcia*, 155 Md. App. at 673-74).

Here, the trial court found that the case required some creativity on the part of Ms. Williams-Moore's counsel, that counsel "was certainly prepared," and made "an

[30] According to her invoice, Ms. Williams-Moore's counsel charged 2.5 hours to attend mediation.

excellent presentation to the Court." The trial court also noted that after Ms. Williams-Moore withdrew two counts, there were three viable counts left, and Ms. Williams-Moore "won 66% of them." The trial court also found that Ms. Williams-Moore's counsel "got what [Ms. Williams-Moore] asked for[.]" The trial court then concluded that for Ms. Williams-Moore, "there was some success here." There being no clear error in these findings, we do not disturb the trial court's award.

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