UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0931

September Term, 2014

REEMA DUNN

v.

JOHNS HOPKINS UNIVERSITY APPLIED PHYSICS LABORATORY, LLC, ET AL.

Graeff,
Kehoe,
Nazarian,

JJ.

Opinion by Kehoe, J.

Filed: July 1, 2016

Appellant Reema Dunn filed an action in the Circuit Court for Howard County against her former employer, Johns Hopkins University Applied Physics Laboratory LLC ("APL"). As we will explain, the circuit court disposed of several of Ms. Dunn's claims through pre-trial motions. The court conducted a jury trial on the two remaining claims, failure to accommodate and discrimination based on disability, and granted APL's motion for judgment, pursuant to Rule 2-519, at the close of Ms. Dunn's case-in-chief. Ms. Dunn presents two issues, which we have reworded:

> 1. Did the trial court err in dismissing Ms. Dunn's case on the basis that she was not a "qualified individual with a disability"?
>
> 2. Did the trial court err in finding that Ms. Dunn failed to provide APL with sufficient notice of her disability?

We shall affirm the judgment of the circuit court.

Background

Appellate courts review a trial court's grant of a motion for judgment *de novo*, "considering the evidence and reasonable inferences drawn from the evidence in the light most favorable to the non-moving party." *Thomas v. Panco Mgmt. of Md.*, 423 Md. 387, 393-94 (2011). We summarize the pertinent evidence presented to the jury accordingly.

For a period beginning in June 2008 and ending in April 2013, Ms. Dunn was employed as a Senior Administrative Specialist by APL in its Management Information Services Group. The Management Information Services Group provides financial management services to APL's Air and Missile Defense Department. Ms. Dunn's primary duties included preparing financial reports and requisitions, and performing

administrative tasks, including procuring office supplies, answering telephones, and responding to staff requests.

APL maintained a short-term disability program (the "STDP") as a fringe benefit for its employees. The STDP was "a salary continuation program for eligible employees who [we]re unable to work due to an illness or injury of more than 5 days." "Johns Hopkins University Applied Physics Laboratory Short Term Disability FAQS." APL bore the full cost of the program. *Id.* The STDP was administered by APL's disability insurer, in this case, the Life Insurance Company of North America, referred to at trial by the name of its corporate parent, Cigna. In order to qualify for the STDP, an employee must have been "continuously unable to perform all the material duties of [his or her] regular job because of an injury or illness." *Id.* And, most significant to the issues presented in this appeal, under the terms of the STDP, APL did not guarantee that employees whose short-term disability exceeded 90 days would be able to return to their positions when they were able to return to work.

Most of the events relevant to this case occurred while Ms. Dunn was on short-term disability leave. Before turning to those events, we will provide some information about Ms. Dunn's background. Ms. Dunn was diagnosed with, and began to receive treatment for, several psychiatric disorders, in 2002. Ms. Dunn was treated by a psychiatrist, Dr. George James, who assisted her in managing her disorders

pharmacologically. In 2009, Ms. Dunn also began to receive treatment from Dr. Diane Altscher, a psychologist, who provided her with individual psychotherapy.

As we have indicated, Ms. Dunn went to work for APL in June 2008. Unfortunately, in 2010, Ms. Dunn's condition worsened and she was placed on short-term disability twice in that year.

Ms. Dunn took her first leave of absence, and was placed on short-term disability, at the direction of Dr. James in June 2010. Her condition was not stabilized until September of that year. Throughout the time that Ms. Dunn was on short-term disability, Dr. James was required to submit periodic updates to Cigna. The documentation Dr. James provided to Cigna included an assessment of Ms. Dunn's condition and also provided for a return to work plan. Although the reports to Cigna included return to work dates, Dr. James testified that those dates were anticipatory and that he extended Ms. Dunn's return to work date at least once during her first leave of absence. Dr. James released Ms. Dunn to return to work in late September 2010, and she returned to work at that time.

Ms. Dunn's condition caused her to go out on short-term disability a second time, beginning on December 16, 2010. When Dr. James completed the initial report to Cigna, he identified a return to work date of December 27, 2010, and suggested that Ms. Dunn return to work part-time, rather than full-time. Cigna inquired as to whether APL could accommodate a part-time schedule for Ms. Dunn, but was informed, by APL, that such

an accommodation could not be made. Ms. Dunn was never released to return to work full-time in December 2010, and worked with her doctors throughout 2011 to stabilize her condition.

In June 2011, Ms. Dunn filed a request for an accommodation with APL's Americans with Disabilities Act coordinator, Virginia Washburn. Ms. Dunn's request sought three accommodations – flexible work hours, full-time remote work from home, and re-assignment of certain "non-essential" duties that could not be performed remotely. Ms. Dunn also proposed that reassigned duties be supplemented with tasks that she could perform remotely. After receiving Ms. Dunn's request, Ms. Washburn sent it to the medical office for consideration by APL's physician, Dr. Gina Pervall. Thereafter, Dr. Pervall contacted Dr. James, who informed her that Ms. Dunn's condition was not stabilized and that she was not able to return to work at that time. Dr. Pervall then informed Ms. Washburn that "Ms. Dunn was not fit for duty in any capacity," and thus her request for accommodation could not be considered. Accordingly, Ms. Washburn informed Ms. Dunn via email that APL's physician was in agreement with her physician.

Ms. Dunn inquired as to the status of her position at APL in July 2011. Mary Cuddy-Mierzwa, APL's Air and Missile Defense Department Operation's Executive, advised Ms. Dunn of the status of her position via email. Ms. Cuddy-Mierzwa stated that because Ms. Dunn was on short-term disability for more than 90 days, and she had not notified APL of a potential date on which she would be able to return to work, APL

"posted" her position in an effort to fill it. Ms. Cuddy-Mierzwa also informed Ms. Dunn that if her doctor had released her to return to work, it might be possible for her to return to her position. Ms. Cuddy-Mierzwa inquired as to whether Ms. Dunn had a return to work date, and requested that Ms. Dunn notify her of that date immediately and provide a medical release to APL's physician. Ms. Dunn never provided Ms. Cuddy-Mierzwa with any information related to her return to work, and never returned to work at APL. Her employment was formally terminated by APL in April 2013.

The Present Action

On December 20, 2012, Ms. Dunn initiated the present action, filing an eight-count[1] civil complaint in the Circuit Court for Howard County. The two counts that are pertinent to this appeal are those that allege that APL violated State Government (SG) Article § 20-606 and Howard County Code §§ 12.200 and 12.208 by failing to provide Ms. Dunn with reasonable employment accommodations and discriminating against her on the basis of her disability.[2] After five days of testimony, APL moved for judgment,

[1]Ms. Dunn alleged a number of employment discrimination claims, pursuant to State Government (SG) § 20-606 and Howard County Code §§ 12.200 and 12.208, including failure to accommodate, discrimination based on a disability, disclosure of confidential medical information, hostile work environment, and retaliation. Ms. Dunn also alleged breach of express and/or implied contracts, negligent retention and supervision, and intentional infliction of emotional distress.

[2]All of Ms. Dunn's other claims, i.e., breach of contract, disclosure of confidential medical information, hostile work environment, retaliation, negligent retention and supervision, and intentional infliction of emotional distress, were resolved in APL's (continued...)

pursuant to Md. Rule 2-519, at the conclusion of Ms. Dunn's case, asserting that she failed to prove one of the elements necessary to establish a prima facie case for both claims – that she was a "qualified individual with a disability." After summarizing the relevant testimony of Dr. Altscher, Dr. James, and Ms. Dunn's husband, the court addressed whether Ms. Dunn was a qualified individual with a disability, as well as whether APL had notice of her disability, and granted APL's motion for judgment. The court regarded any differences between SG § 20-606 and Howard County Code §§ 12.200 and 12.208 as being insignificant for purposes of the motion, and thus addressed the claims pursuant to both provisions together.

The trial court concluded that the evidence presented was not sufficient to establish that Ms. Dunn was a qualified individual with a disability. The court stated: "[t]he evidence is clear that she was never medically cleared to return to duty." And, while the court expressed some uncertainty as to whether the law requires medical clearance, the court was clear that the law required that Ms. Dunn present evidence that she was capable of regular performance of the essential functions of her job, and that it was evident from her doctors' testimony that she was not capable of doing so.

Moreover, the court found that neither the fact that Ms. Dunn was out on short-term disability in June 2010 nor the fact that she had communicated to a supervisor in an

[2](...continued)
favor prior to trial. On appeal, Ms. Dunn does not challenge the trial court's disposition of these claims.

email that she was suffering from PTSD was sufficient to provide APL with legally sufficient notice of her disability. The court did not find persuasive Ms. Dunn's contention that, because Cigna was aware of Ms. Dunn's diagnosis and treatment, APL was too. On this point, the court explained that: "there is no evidence that, that I'm aware of, that that form actually was shared from Cigna to APL. Cigna is third party provider. They may have no duty to disclose, in fact there's probably confidentiality issues that might impact their ability to disclose further information."

Additional information will be provided as necessary to our analysis below.

Standard of Review

Appellate courts undertake the same analysis as does a trial court in reviewing a decision to grant a Md. Rule 2-519 motion for judgment. *Thomas v. Panco Mgmt. of Md.*, 423 Md. 387, 394 (2011). In *Thomas*, the Court of Appeals explained:

> when a defendant moves for judgment based . . . upon the legal insufficiency of the plaintiff's evidence, the trial judge must determine if there is "any evidence, no matter how slight, that is legally sufficient to generate a jury question," and if there is, the motion must be denied and the case submitted to the jury. It is only when the "facts and circumstances only permit one inference with regard to the issue presented," that the issue is one of law for the court and not one of fact for the jury.

Id. (internal citations omitted).

Analysis

As stated above, the only two counts identified in Ms. Dunn's complaint to proceed to trial were her claims for failure to accommodate and disability discrimination.

These are statutory causes of action. Ms. Dunn relies on the Maryland Fair Employment Practices Act, codified at State Government (SG) Article § 20-601 *et seq*., and Howard County Code §§ 12.200 and 12.208 as the legal bases for her claims. We will discuss the statutes separately.

I. The Maryland Fair Employment Practices Act

We believe that a brief discussion of the Maryland Fair Employment Practices Act will be helpful in assessing Ms. Dunn's assertions of error. Our discussion relies in large part upon two thorough and very scholarly analyses of the Fair Employment Practices Act as it relates to claims by persons with disabilities. The first is Judge Adkin's opinion in *Peninsula Reg'l Med. Ctr. v. Adkins*, ___ Md. ___, No. 68, Sept. Term, 2015, 2016 WL 3024119 (filed May 26, 2016) ("*Adkins II*"), which affirmed the second, i.e., Judge Leahy's opinion for this Court in *Adkins v. Peninsula Reg'l Med. Ctr.*, 224 Md. App. 115, 130-35 (2015) ("*Adkins I"*).

In SG § 20-606(a), the General Assembly set out a variety of prohibited employment practices. We are concerned with SG § 20-606(a)(1)(i), which provides that "[a]n employer may not fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to the individual's compensation, terms, conditions, or other privileges of employment because of the individuals . . . disability unrelated in nature and extent so as to reasonably preclude the performance of the employment[.]" Additional guidance is provided to employers through COMAR § 14.03.02.04, which identifies

specific unlawful employment practices where an employer is presented with a qualified individual with a disability. *See Adkins II,* 224 Md. App. at 130-35 (providing a detailed discussion of the development of the legislation prohibiting disability discrimination under Maryland law).

The General Assembly has also required employers to provide "reasonable accommodations" for disabled employees, stating at SG § 20-606(a)(4) that "[a]n employer may not fail or refuse to make a reasonable accommodation for the known disability of an otherwise qualified employee." While "reasonable accommodation" is not defined, COMAR § 14.03.02.05(A) provides the following:

> A covered entity (1) [s]hall make a reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability; (2) [i]s not required to provide an accommodation, if it demonstrates that the accommodation would impose undue hardship on the operation of its business or program; and (3) [m]ay not deny an employment opportunity to a qualified individual with a disability, if the basis for the denial is the need to accommodate the individual's physical or mental limitations, and this accommodation, if attempted, would be reasonable.

See also COMAR § 14.03.02.05(B) (identifying specific examples of reasonable accommodations).

Judge Leahy explained in *Adkins I*, the plain language of these provisions establish that "an employee must be 'a qualified individual with a disability' to prevail in either a disability discrimination claim under SG § 20-606(a)(1) or a failure-to-accommodate claim under SG § 20-606(a)(4)." 224 Md. App. at 135. The necessity of a

"qualified individual with a disability" is further illustrated by a comparison of the *prima facie* elements that must be established for each claim. In *Adkins I*, we set forth the elements of a *prima facie* case for both claims as follows:

> To establish a *prima facie* case for a failure-to-accommodate claim, the employee-plaintiff must show: (1) that he or she was an individual with a disability; (2) that the employer had notice of his or her disability; (3) that with reasonable accommodation, he or she could perform the essential functions of the position (in other words, that he or she was a "qualified individual with a disability"); and (4) the employer failed or refused to make such accommodations.
>
> * * *
>
> To assert a *prima facie* case for disability discrimination, a plaintiff must show three elements: (1) that he or she has a disability; (2) that notwithstanding that disability, he or she was otherwise qualified for the employment with or without reasonable accommodation; and (3) he or she was excluded from employment on the basis of his or her disability.

Id. at 139, 160.

As we explained above, the trial court granted APL's motion for judgment because it concluded that Ms. Dunn failed to present evidence that she was a qualified individual with a disability. The court also noted that Ms. Dunn had not produced evidence sufficient to establish that APL had notice of her disability. Ms. Dunn challenges the court's ruling on both grounds. Because our *de novo* review of the evidence causes us to conclude that the trial court was correct as to the first issue, we need not reach the court's consideration of the second.

Was Ms. Dunn A "Qualified Individual with a Disability"?

Ms. Dunn contends that the trial court erred in granting APL's motion for judgment because she satisfied her burden of proving that she was a qualified individual with a disability at the time she made her requests for reasonable accommodations. In support of this contention, Ms. Dunn asserts that her doctors released her to return to work, contingent upon APL's approval of her requests for accommodations, and that her requested accommodations would have enabled her to perform the essential functions of her position. APL counters that the trial court's grant of its motion for judgment was proper because Ms. Dunn failed to establish that she was an "otherwise qualified" employee. APL is correct.

A "qualified individual with a disability," as applicable to SG §§ 20-606(a)(1) and (4), is defined at COMAR § 14.03.02.02(B)(10)(a) as "an individual with a disability who [w]ith or without reasonable accommodation can perform the essential functions of the job in question."

Among federal courts, it is well-settled that "an individual who has not been released to work by his or her doctor is not a 'qualified individual with a disability.'"[3] *Kitchen v. Summers Continuous Care Ctr.*, 552 F. Supp. 2d 589, 594 (S.D. W.Va. 2008). *See also Crow v. McElroy Coal Co.*, 290 F. Supp. 2d 693, 696-97 (N.D. W.Va. 2003), *aff'd*, 77 F. App'x 649 (4th Cir. 2003), ("Because Crow failed to obtain a release to work

[3]Ms. Dunn, citing to the quoted language, concedes this point in her brief.

from his doctor, Crow has not shown that he can perform the essential functions of the job with or without reasonable accommodation."); *Gantt v. Wilson Sporting Goods Co.*, 143 F.3d 1042, 1047 (6th Cir. 1998) ("[B]ecause [Plaintiff] was not released by her doctor to return to work, she has not met the second requirement that she be qualified to perform the essential functions of the job.").[4] Because the ADA and COMAR definitions of "qualified individual with a disability are "'nearly identical,'" *Adkins I*, 224 Md. App. at 137 n.12 (quoting *Caire v. Conifer Value Based Care, LLC*, 982 F. Supp. 2d 582, 599 (D. Md. 2013)), we turn to the federal courts for guidance in interpreting Maryland law. *See also Adkins II,* ___ Md. at ____, 2016 WL 3024119, at *9 ("Although we cannot use case law construing federal statutes as a 'surrogate for analysis' of the meaning of Maryland law, we can look to federal decisions interpreting ADA provisions for guidance in construing similar clauses in FEPA.").

The significance of a medical release resides in the fact that, in most instances, attendance is necessary for an employee to perform the essential functions of his or her position. *See Kitchen*, 552 F. Supp. 2d at 595 ("[B]ecause Plaintiff was not released by her doctor to return to work, as a matter of law, she was unable to perform her essential job functions with even minor assistance from her co-workers."); *Tyndall v. Nat'l Educ. Ctr., Inc. of Cal.*, 31 F.3d 209, 213 (4th Cir. 1994) ("An employee who cannot meet the

[4] In *Hawkins v. Rockville Printing & Graphics, Inc.*, 189 Md. App. 1, 15 (2009), we acknowledged this principle, but concluded it was factually inapposite.

attendance requirements of the job at issue cannot be considered a 'qualified' individual protected by the ADA.").

In her brief, Ms. Dunn directs us to the trial testimony of Dr. James, Dr. Altscher, and herself as the evidentiary basis from which the jury could conclude that she had been released to return to work. We shall address them in order.

The reports Dr. James provided to Cigna, together with his trial testimony, indicate that Ms. Dunn had, in fact, not been released to return to work. We will first place Dr. James's reports in context. Under the terms of APL's short-term disability program, Ms. Dunn's physician, Dr. James, was required to provide periodic updates to Cigna, informing Cigna of the status of Ms. Dunn's condition. The documentation Dr. James was required to submit contained two sections relevant to the issue before us. The first – "Return to Work Plan" – contained a series of questions regarding the patient's future ability to return to work, including: "What is the date your patient may return to work?"; "Is your patient able to return to work full time?"; "If your patient can not return to work full time, can your patient return to work on a part time or gradual basis? If not, please describe any restrictions and limitations you are placing on your patient and provide the clinical observations and test results to support these findings." The second – "Alternative Work Setting" – concerned the patient's present ability to perform his or her duties, asking "[c]an your patient currently perform his or her job duties in an alternative work setting? Please Explain[.]"

In her brief, Ms. Dunn contends that she was released to return to work in December 2010 by Dr. James. In his December 16, 2010, report to Cigna, Dr. James provided a return to work date of December 27, 2010, and recommended that Ms. Dunn return to work only part-time. Cigna, thereafter, inquired as to whether part-time work would be available to Ms. Dunn, and was informed that it was not. Nonetheless, there was no evidence that Ms. Dunn was released to return to work on December 27, 2010. And, Dr. James repeatedly testified at trial that December 27 was an *anticipated* return to work date.

Dr. James provided a second report to Cigna in January 2011. The second report, dated January 21, 2011, was based on his assessments of Ms. Dunn on December 21, 2010, and January 20, 2011. In this report, Dr. James stated that Ms. Dunn's return to work date was February 21, 2011. At trial, Dr. James testified that February 21 was an anticipated return to work date. Further, Dr. James's report stated "[c]urrent symptoms and situational stressors do not allow patient to return to work at this time."

With regard to Dr. Altscher's testimony, Ms. Dunn directs us to the following:

> I was in favor of her returning on a part time basis. I felt that even though there's some fluctuations and mood and that she was struggling some with the changes of medications that it would be better for her to return to work so as to not lose too much ground employment wise.
>
> And also the structure, the structure of work is some times very helpful.

First, Dr. Altscher's opinion that it would be beneficial for Ms. Dunn to return to work is by no means the same as medically clearing her to return to work. Second, Dr. Altscher's opinion regarding Ms. Dunn's ability to return to work needed to be provided to Cigna or APL, and Ms. Dunn does not direct us to any evidence suggesting that Dr. Altscher provided this information to either entity. Third, at best, this statement suggests that Ms. Dunn's healthcare providers disagreed as to whether she was able to return to work in December 2010. Ms. Dunn directs us to no authority that an employee should be considered a qualified individual with a disability where the treating health care providers disagree about the patient's ability to return to work.

Finally, as to Ms. Dunn's testimony, her belief that she was able to return to work is not a basis on which the jury could conclude that she was a qualified individual with a disability. *See Alexander v. Northland Inn*, 321 F.3d 723, 727 (8th Cir. 2003) ("[T]he employee's belief or opinion that she can do the function is simply irrelevant. The ADA does not require an employer to permit an employee to perform a job function that the employee's physician has forbidden.").

We now turn to Ms. Dunn's June 2011 request to APL for reasonable accommodations so that she could return to work. The record is clear that, in June 2011, Dr. James did not expect that Ms. Dunn would be in any condition to return to work until at least October 2011. When Dr. James was asked what period of time he recommended Ms. Dunn remain out of work in June 2011, he testified as follows: "I suggested her

return to work date, an *anticipated* return to work date in October 2011." (Emphasis added.) Moreover, a review of Dr. James's June 14, 2011, report to Cigna reveals that Dr. James indicated a return to work date of October 1, 2011, but also stated that Ms. Dunn's "symptoms prevent her from working any job at this time." Further, APL's physician, Dr. Pervall, testified that when she contacted Dr. James in July 2011, he had not released Ms. Dunn to return to work, or to work from home on a part-time basis. Because Ms. Dunn had not been released to return to work in any capacity in June 2011, she was not a qualified individual with a disability at that time.

Ms. Dunn has failed to direct us to anything in the record that could serve as a reasonable basis for the jury to infer that she had been released to return to work. The trial court did not err in granting judgment on the basis that she was not a qualified individual with a disability.

II. The Howard County Code

Ms. Dunn also challenges the trial court's grant of APL's motion for judgment as to her claim for employment discrimination under the Howard County Code. She contends that the court erred in applying the Americans with Disabilities Act (ADA) standard, which requires a person to be a "qualified individual with a disability" and provide his or her employer with notice of the disability in order to make a *prima facie*

case of discrimination, to Howard County Code §§ 12.200 and 12.208.[5] Ms. Dunn cites to *Meade v. Shangri-La P'ship*, 424 Md. 476 (2012), to support her contention that a separate test for liability, different than those tests employed by the federal courts in ADA cases, and which the Court of Appeals has applied in cases brought under the Maryland Fair Employment Practices Act, should be applied in this case. *Meade* is of very little assistance to Ms. Dunn.

At issue in *Meade* was whether a pre-school violated Howard County Code § 12.210(II) through its refusal to accommodate Ms. Meade's latex allergy by eliminating the use of powdered latex gloves, and requesting that she withdraw her child from the school because she had requested an accommodation. 424 Md. at 479-82. Litigation ensued and the jury returned a special verdict, in Ms. Meade's favor, that her latex allergy was a physical condition that "substantially limited one or more of [her] major

[5] Howard County Code § 12.200 establishes that discrimination based on disability is contrary to public policy in Howard County, but does not create a cause of action. Section 12.208, on the other hand, identifies unlawful employment practices, and is at least arguably applicable to matter before us.

Section 12.200(II) provides, in pertinent part: "Discrimination practices based upon . . . disability . . . are contrary to the public policy of Howard County." And, pursuant to § 12.208(II)(a), "It shall be unlawful if, because of discrimination, an employer: (1) Discharges a person; or (2) Refuses to hire a person; or (3) Acts against a person with respect to compensation or other terms and conditions of employment; or (4) Limits, segregates, classifies or assigns employees."

We quote from the current version of the Howard County Code. In its brief, APL asserts that the Howard County Code was amended in 2014 and the term "disability" was substituted for the term "handicap." Neither party argues that there is any pertinent difference between the current version and the former version.

life activities.'" *Id.* at 484. This Court reversed the judgment, concluding that because "there is no significant difference between the definition of 'handicap' under the [Howard County Code] and 'disability' under the ADA . . . . the two statutes should be construed in the same manner." *Shangri–La v. Meade*, 181 Md. App. 127, 135 (2008). We concluded that "[no] jury could reasonably have concluded that the major life activities that supported Meade's claim of being handicapped were the activities of socialization and parenting." *Id.* at 143.

The Court of Appeals reversed. To the extent that its analysis is pertinent to the issues before us, the Court concluded that: (1) the term "handicap," as used in the Howard County Code, was more encompassing than the term "disability" as used in the ADA; and (2) the remedial breadth of § 12.210(II) was broader than that of the ADA. 424 Md. at 488-89.

The Court of Appeals' analysis in *Meade* does not persuade us that the trial court erred in granting APL's motion for judgment. *Meade* was not an employment case. And, APL does not contest that Ms. Dunn's ailments constitute a "disability," for purposes of the Maryland Fair Employment Practices Act, or a "handicap," for purposes of the Howard County Code. Ms. Dunn points to nothing in *Meade* or in the pertinent provisions of the Howard County Code that suggests that an employer discriminates against an employee by failing to provide a job when the employee has not been released

to return to work by his or her physician. That is the dispositive as to her local law claim.[6]

THE JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.

[6]There are a few loose ends. Pending before this court are two motions filed by APL.

The first is a motion to correct the record extract. APL takes issue with five documents that were provided in Ms. Dunn's record extract, contending that the documents in question were either not part of the trial record or that what is in the extract is not the entire exhibit presented at trial. APL moves to strike the documents that were not part of the trial record, and to supplement the documents that were not provided in their entirety with the actual trial exhibits. Our decision on the merits moots this motion.

The second motion, filed July 17, 2015, is a motion to correct the record and the record extract. APL asserts that the transcript forwarded to us by the circuit court contains transcription errors so that the transcript does not accurately reflect the trial court's ruling on APL's motion for judgment. We grant this motion.

Finally, after the conclusion of trial, APL moved for attorneys' fees and litigation expenses in the amount of $557,742. The trial court deferred ruling on the motion until the present appeal is resolved. We express no views on APL's motion for fees and expenses.