Circuit Court for Baltimore City
Case No. 24-C-21-000799

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2361

September Term, 2023

JORGE MATA, ET AL.

v.

KAVITA KALRA, M.D., ET AL.

Arthur,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw, J.

Filed: June 27, 2025

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

This appeal arises from a medical malpractice action in the Circuit Court for Baltimore City. At a pretrial hearing, the trial court granted summary judgment in favor of Appellees, after determining that Appellants' sole expert's deposition, as to the standard of care, could not be used in lieu of trial testimony. Appellants appealed timely and raise one issue:

1. Was Judge Sampson's January 8, 2024 tribunal conducted in compliance with the Maryland Rules for Judges and Judicial Appointees' Codes of Conduct (Title 18), and the Attorneys' Professional Codes of Conduct (Title 19) to ensure public confidence in the judiciary, impropriety, impartiality, bias, ex-parte communications, misrepresentation of material facts, conflicts of interest, and the denial of due process?

For reasons that follow, we affirm the judgment of the circuit court.

BACKGROUND

On September 15, 2019, Appellant Jorge Mata fell and fractured his right hip. He was initially treated at Howard County Hospital and the next day he was transported to the University of Maryland Medical Center Midtown Campus ("Midtown"). A hip replacement surgery was performed, and on September 18, 2019, he was discharged. On September 30, 2019, Mr. Mata returned to the hospital, complaining of pain. He was diagnosed with hematemesis and hemorrhagic shock and hospitalized for five days.

In February 2021, Appellant Jorge Mata and his wife filed a civil complaint in the Circuit Court for Baltimore City against Midtown and Dr. Kavita Kalra, a hematologist at Midtown, who was consulted about Mr. Mata's medical care plan. They alleged medical malpractice and loss of consortium. Appellants designated Dr. Alexander Duncan as a qualified expert and Appellants notified Appellees that they planned to have Dr. Duncan

testify at trial. In preparation for the court proceedings, Appellees deposed Dr. Duncan on August 28, 2023. Trial was set for January 8, 2024.

On January 4, 2024, Appellants emailed the court and opposing counsel, requesting a postponement and advised them that Dr. Duncan would not be available to testify on the scheduled trial date. The email contained a text message from Dr. Duncan stating that he "[had] been off the grid in Africa with no phone off [sic] internet access[,]" and "I will not be back till [sic] the end of January. I will not be able to attend court next week." The following day, the court held a hearing to address the issue.

Appellees opposed the postponement request, arguing that it was untimely. The court asked Appellants when they first reached out to coordinate Dr. Duncan's appearance at the trial, and Appellants responded they communicated with Dr. Duncan on December 29th – ten days before trial. At the conclusion of the parties' arguments, the court denied the postponement request.

On January 8, 2024, the trial date, the court held a pre-trial hearing. The court asked, "Have we resolved the issue of the medical expert for Mr. Mata?" and Mrs. Mata responded: "Yes. Dr. Alexander Duncan, he is traveling overseas . . . I was not able to get hold of him in December to make is [sic] arrangements to be here. I did not know he left the country again. He does that quite often." The court then asked whether Appellants had another expert witness to testify, and Mrs. Mata responded "No…"

> THE COURT: Okay. What I was really trying to figure out is how we can get to the part of – the portion of causation without the doctor being present.
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> Mr. Mata and Ms. Mata, you want to address that issue?

> [MS. MATA]: Yes. Dr. Duncan did provide his medical expert testimony.
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> And we do have copies of that here. We can read them in his absence. Outside of that, that is the best we can do.

Appellees responded:

> [T]o the extent – Dr. Duncan gave a deposition in the case . . . [h]e is not under Rule 2-419 unavailable.
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> It is true that Dr. Duncan is out of state. I would suggest that the Plaintiffs are responsible for him not being here, by their own testimony, their own statements in front of Judge Nugent at postponement court, they only first reached out to Dr. Duncan on December 29th. I believe that is ten days before trial. They did not make any opportunity to put him up for a De Bene Esse Deposition, although that was a choice, and they certainly didn't contact him in sufficient time to be able to get him here for trial.

Appellees then argued that the testimony was hearsay and did not comply with any exception under Maryland Rule 5-804. In response, the court asked Appellants whether they had attempted to obtain Dr. Duncan's presence through any court process. Ms. Mata replied:

> I did not think that I had a problem. When I spoke with him on the phone, about the arbitration . . . I said, "Look, it looks like we're going to trial, that is the decision that was made," and I said, "I'll be in contact with you about getting your arrangements."

At the conclusion of the parties' arguments, the court ruled that the deposition testimony would not be admitted.

Appellees then moved for summary judgment, arguing that expert testimony was required in order to establish the standard of care, whether there was a breach in the standard of care and whether that breach caused the claimed injury. The court asked the

Appellants to respond, and Mrs. Mata stated that they could "speak to the testimony that Dr. Duncan attested to in his expert summary" and the research that they conducted. At the conclusion of the hearing, the court granted Appellee's motion for summary judgment. Appellants timely noted this appeal.

STANDARD OF REVIEW

An appellate court analyzes a trial court's rulings regarding the admissibility of evidence utilizing an abuse of discretion standard. *Sail Zambezi, Ltd. v. Md. State Highway Admin.*, 217 Md. App. 138, 155 (2014) (quoting *Bernadyn v. State*, 390 Md. 1, 7 (1998)). "Under this standard, an appellate court does not reverse simply because the . . . court would not have made the same ruling. . . . Rather, the trial court's decision must be well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *Katz, Abosch, Windesheim, Gersham & Freedman, P.A. v. Parkway Neuroscience and Spine Inst.*, 485 Md. 335, 361 (2023) (internal quotation marks and citations omitted) (quoting *Devincentz v. State*, 460 Md. 518, 550 (2018)). A trial court's ruling on whether evidence is hearsay, however, is owed no deference. *See Smith v. State*, 259 Md. App. 622, 666–67 (2023). And as such, a determination of the applicability of an exception to the hearsay rules is reviewed *de novo*. *Id.* at 667 (citing *Hailes v. State*, 442 Md. 488, 499 (2015)).

The decision to grant summary judgment is reviewed without deference. *Bd. of Cnty. Comm'rs of St. Mary's Cnty. v. Aiken*, 483 Md. 590, 616 (2023). Summary judgment is proper when there is "no genuine dispute as to any material fact and [the movant] is entitled to judgment as a matter of law." Md. Rule 2-501(a). In reviewing a trial court's

summary judgment determination, "we conduct an independent review of the record." *Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 297 (2022).

DISCUSSION

I. Whether the circuit court judge's conduct was in compliance with the Maryland Rules for Judges and Judicial Appointees' Codes of Conduct (Title 18), and the Attorneys' Professional Codes of Conduct (Title 19) is not an issue that can be addressed by this court.

The Appellate Court of Maryland is a court of limited jurisdiction and its ability to review a case exists only where that power has been granted by the Legislature. *Rosales v. State*, 463 Md. 552, 563 (2019); *see also* Md. Code Ann., Cts. & Jud. Proc. § 12-307 (West). Our jurisdiction is restricted to "any *reviewable* judgment, decree, order, or other action of a circuit court." *Id.* (emphasis added). Appellants' sole question, on appeal, seeks to have this court address the propriety of the judge's conduct, which is beyond our statutory authority. Whether a judge's conduct is in compliance with the Maryland Code of Judicial Conduct is within the purview of the Judicial Disabilities Commission. Md. Const. art. IV, § 4B; *see also* Md. Rule 18-100 *et seq.* The conduct of attorneys is within the purview of the Attorney Grievance Commission. *See* Md. Rule 19-702 *et seq.* We, therefore, decline to address Appellant's question as it relates to the judge's conduct and/or the attorneys' conduct.

We observe, from Appellants' BRIEF SUMMARY, that they contend the court erred in granting summary judgment. The determination of this question is within our jurisdiction, and we shall address it.

II. The circuit court did not err in granting summary judgment.

Maryland Rule 2-419 governs the use, at trial, of depositions obtained during discovery. Specifically, Rule 2-419(a)(3) states:

> The deposition of a witness, whether or not a party, may be used by any party for any purpose against any other party who was present or represented at the taking of the deposition or who had due notice thereof, if the court finds:
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> (A) that the witness is dead; or
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> (B) that the witness is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or
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> (C) that the witness is unable to attend or testify because of age, mental incapacity, sickness, infirmity, or imprisonment; or
>
> (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
>
> (E) upon motion and reasonable notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

After a determination that a witness who has given deposition testimony has met any of the above conditions, the court is tasked with examining whether the evidence contained within the deposition is admissible. *Shives v. Furst*, 70 Md. App. 328, 334 (1987). If a witness is found to be "unavailable," their testimony can be admissible if there is an applicable hearsay exception. *See id.*; *see also* Md. Rule 5-804.

Maryland Rule 5-804 states, in pertinent part:

> The following [is] not excluded by the hearsay rule if the declarant is unavailable as a witness:
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> (1) Former Testimony. Testimony given as a witness in any action or proceeding or in a deposition taken in compliance with law in the

> course of any action or proceeding, if the party against whom the testimony is now offered . . . had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

Md. Rule 5-804(b). Where the court determines a witness is unavailable "due to the procurement" of the party offering the statement, the hearsay exception does not apply. Md. Rule 5-804(a)(5).

In *Myers v. Estate of Alessi*, 80 Md. App. 124 (1989), this Court reviewed a trial court's exclusion of an unavailable witness' prior testimony in a medical malpractice case. *Id.* at 127. Following an unfavorable result before the Health Claims Arbitration Board, where several witnesses testified, including Dr. Younkin and Dr. Stevens, appellant appealed to the Circuit Court. *Id.* at 130. During that trial, appellant presented three different expert witnesses and sought to have the transcript from the Arbitration Board testimony of Dr. Younkin read to the jury. *Id.* at 130. Appellee objected arguing that the witness was not "unavailable," because appellant procured his absence. *Id.* The court agreed and excluded Dr. Younkin's testimony but allowed the appellee to offer Dr. Stevens' testimony into evidence, finding that he was unavailable, and that the appellee had "exercised reasonable diligence in attempting to obtain his presence at trial." *Id.* at 130, 136.

On appeal, the appellant argued that because Dr. Younkin was a resident of another state and outside of the subpoena powers of Maryland, she was entitled to submit his prior testimony. *Id.* at 137. We did not agree. We stated:

> [I]t is the responsibility of trial counsel to discuss fees for consultations, review of opposing experts' opinions and voluntary attendance at trial. If the expert is beyond the jurisdiction of the court to compel attendance at trial, it

> is the responsibility of the party offering the expert to ascertain the willingness and availability of the expert to appear at trial. The proponent of the expert must attempt to arrange a trial date at which the expert can appear. Since the expert is under the control of the offering litigant, due diligence must be used to secure the attendance of the witness at trial.

Id. at 138 (quoting *Thompson v. Merrell Dow Pharmaceuticals, Inc.*, 229 N.J. Super. 230 (A.D. 1988)). We held that, as to Dr. Younkin, appellant had procured his absence at trial, because "[she] alone [was] responsible for selecting an expert who resided in Washington. [She was] responsible for the decision not to pay him to attend trial." *Id.* at 139. We found that there was nothing to indicate that the doctor would not have appeared if he had been paid to do so. We held that the court did not err in excluding the testimony under Maryland Rule 2-419. *Id.*

With respect to Dr. Stevens, we also affirmed the court's ruling. *Id.* at 141. Dr. Stevens was not in Maryland at the time of trial, and when the appellee became aware of this, they repeatedly attempted to serve him with no success, they called his home and office, and they wrote a letter to him. *Id.* at 140–41. Dr. Stevens refused to return to testify. *Id.* at 141. We held that, under these circumstances, the witness was unavailable, and the appellee exercised reasonable diligence in avoiding his absence. We found that the court properly admitted his prior testimony. *Id.*

In *University of Maryland Medical System Corporation v. Malory*, 143 Md. App. 327 (2001), we addressed whether certain deposition testimony was properly admitted under Maryland Rule 2-419 and Maryland Rule 5-804. There, Appellee Malory, in a medical malpractice lawsuit against UMMS, sought to depose Dr. deArmas, a treating physician. *Id.* at 340. The parties agreed that "in the event [Dr. deArmas] was unable to

appear at trial, appellant would be able to take a more thorough trial deposition" and the first deposition was conducted. *Id.* A second deposition could not be conducted, and Dr. deArmas failed to appear at trial. *Id.* In her absence, the appellee offered her deposition testimony, and the court admitted it into evidence. *Id.* at 341.

On appeal, we reversed the decision of the trial court, holding that Dr. deArmas was available and did not meet the unavailability requirements under Maryland Rule 2-419. *Id.* We held that appellee had procured Dr. deArmas' absence, despite citing an outbreak of influenza as her reason for being unable to testify. *Id*. at 343–44. In addition, while the parties formerly agreed that a second deposition could be conducted upon request, when UMMS attempted on numerous occasions to schedule it, the appellee did not respond. *Id.* at 344. In reversing, we concluded that the appellee "had control over the witness and the circumstances surrounding her availability to testify either at trial or in another deposition." *Id.* at 345 (citing *Myers*, 80 Md. App. at 139). We held that her deposition testimony was improperly admitted.

In the case at bar, prior to trial, Appellants sought a postponement because their expert witness, Dr. Duncan, informed them that he was unavailable to testify on the scheduled trial date. Appellees objected to a postponement, and the court denied the request. On the trial date, Appellants indicated to the court that they would introduce at trial, a transcript of Dr, Duncan's deposition testimony in order to establish their claim. Appellees moved to exclude the deposition testimony, and the court granted the motion, finding that Dr. Duncan was not "unavailable" under Rule 2-419.

The court stated:

> Witnesses are recalcitrant, numerous times, and because of that, and because we never know when witnesses are going to be available or will be available, despite what they say they're going to do.
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> You issue them a summons for their personal appearance, subpoena duces tecum for their records, in the even [sic] that they're not going to be present, that is what you would do when you – as a general course of business, generally. Not that some witnesses – witnesses are going to say they're going to be available and then they're not going to be available, especially in medial [sic] malpractice case [sic], because they may find another case that's more lucrative for them the [sic] appear in front, appear for.
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> And then, if there's a subpoena . . . the Court can take efforts to go and get them. But when there isn't . . . that witness . . . is not considered to be unavailable under the rules, period.
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> So, the witness is not unavailable and even if the witness was considered to be unavailable, you would have to prove certain things under the rule to find that the Court be able to use their deposition.
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> You haven't proved any of those things. . . . As a matter of fact, the Court's making a finding that the witness is, in fact, available under the rules.
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> But even if the Court made a determination that the witness was unavailable, you haven't filed [sic] the requirements of . . . the hearsay rules under Maryland Rule 5-804[(a)(5)]. So the Court can't use that deposition at all in making a determination in this matter.

We hold that the trial court did not err. It is undisputed that Appellants did not attempt to summons Dr. Duncan or otherwise formally secure his appearance at trial. Under these circumstances, the conditions delineated in Rule 2-419(a)(3) were not met, and the court could not find that the witness was unavailable.

Appellants also assert that the grant of summary judgment was error. They contend that opposing counsel did not state with particularity its reasons for requesting summary

judgment and that the court should have considered other evidence, including Appellants' research, in making its decision. Appellees argue "this case involved complex medical issues related to platelet levels, VTE prophylaxis, and treatment with aspirin . . . Thus, this case required testimony by a hematology specialist." We agree that an expert opinion was necessary.

In a medical malpractice action, a plaintiff must prove: "(1) the defendant's duty based on an applicable standard of care, (2) a breach of that duty, (3) that the breach caused the injury claimed, and (4) damages." *Frankel v. Deane*, 480 Md. 682, 699 (2022) (quoting *Am. Radiology Servs., LLC v. Reiss*, 470 Md. 555, 579 (2020)). Expert testimony is essential to establishing a breach of the standard of care and causation. *See Jacobs & Jacobs v. Flynn*, 131 Md. App. 342, 354 (2000); *Stickley v. Chisholm*, 136 Md. App. 305, 313 (2001); *Frankel*, 480 Md. at 699; *Jabbi v. Adventist Healthcare, Inc.*, 264 Md. App. 659, 668 (2025) (citing *Reiss*, 470 Md. at 562).

Here, Dr. Duncan's testimony was properly excluded based on the court's ruling that he was available. Appellants, having no other expert witness, were, then, unable to prove medical malpractice as a matter of law. *See Reiss*, 470 Md. 555. Appellants' argument that the court should have taken judicial notice of their research of "highly recognized publications" is without merit. *Am. Radiology Servs., LLC v. Reiss* is instructive. 470 Md. 555 (2020). There, in a medical malpractice action, the appellants did not present a medical expert and they argued that there were other facts that sufficiently established the standard of care, namely statements made by other experts. *Id.* at 584–85. The Maryland Supreme Court, in rejecting this argument, stated that, "generalized statements 'did not address the

specific circumstances that the [doctors] confronted in their treatment of Mr. Reiss.'" *Id.* at 587 (quoting *Am. Radiology Servs., LLC v. Reiss*, 241 Md. App, 316, 338 (2019)). The Court stated:

> Juries are not permitted to simply infer medical negligence in the absence of expert testimony because determinations of issues relating to breaches of standards of care and medical causation are considered to be beyond the ken of the average layperson. The resolution of such issues involves knowledge of complicated matters such as "human anatomy, medical science, operative procedures, areas of patient responsibility, and standards of care."

Id. at 580 (quoting *Orkin v. Holy Cross Hosp.*, 318 Md. 429, 433 (1990)). The Court held that without expert testimony showing "to a reasonable degree of medical probability" that the physician breached the standard of care, appellants could not establish medical malpractice. *See id.* at 587.

Here, Appellants' research was insufficient to establish the required standard of care. Their claim required proof of matters that were not within the public's general knowledge but instead required highly specialized knowledge and analysis. *See Jabbi*, 264 Md. at 668. We note, in addition, that Appellees were not required to delineate every potential argument in support of the motion for summary judgment. Based on the record in this case, we hold that the court did not err.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.