Circuit Court for Prince George's County
Case No. CAL16-29080

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2566

September Term, 2017

KAREN H. JOHNSON

v.

FRANCES MCMANUS, ET AL.

Kehoe,
Shaw Geter,
Wilner, Alan M.
(Specially Assigned, Senior Judge),

JJ.

Opinion by Shaw Geter, J.

Filed: April 3, 2019

This is an appeal of a judgment and award of damages in the Circuit Court for Prince George's County arising from a three-vehicle collision involving Appellant, Karen Johnson, Cross-Appellant, Frances McManus, and Appellee, Duane Halliburton. On July 24, 2013, McManus was a passenger in her vehicle, which was being driven by an unknown driver. McManus's vehicle attempted to make a left turn at the intersection of Martin Luther King, Jr. Boulevard and Annapolis Road when it struck a curb and went airborne and, according to Halliburton, struck Halliburton's vehicle. The Halliburton vehicle then entered the intersection, crossed the center line, and struck Johnson's vehicle, which was stopped for a red light on the opposite side of the intersection.

Johnson filed a negligence action against Halliburton and McManus, alleging personal injuries as a result of being struck by Halliburton's vehicle. Throughout the case, Halliburton maintained he was rendered unconscious as a result of being struck by the McManus vehicle, and that his incapacitation led him to strike Johnson's vehicle.

Prior to trial, the parties stipulated to a high/low agreement, which provided that Johnson would recover a minimum of $30,000, regardless of whether McManus was found negligent. Johnson could recover up to $82,500 if Halliburton were also found liable.

On January 24, 2018, following three days of trial, the jury found both McManus and Halliburton were negligent. However, the jury found Halliburton's negligence was excused by his sudden and unforeseen incapacity. The jury returned a verdict against McManus in the amount of $50,000. Based on the parties' prior agreement, a consent

judgment was entered against McManus in the amount of $30,000. Johnson and McManus timely appealed and presented the following questions for our review:[1]

1. Did the court err by allowing Halliburton to allege an affirmative defense without supporting evidence?

2. Did the court err by admitting expert testimony via deposition unsupported by any factual basis?

3. Did the court err by allowing the jury to hear impermissible questioning of Johnson?

4. Did the court err by improperly striking portions of Johnson's medical expert's testimony?

5. Can Johnson raise an appeal if all parties entered into a consent agreement?

6. Did the court err in finding McManus negligent for the actions of the driver of her vehicle?

BACKGROUND

On July 24, 2013, Frances McManus left work and attended a Baltimore restaurant bar. At the bar, she met a man who introduced himself as David.[2] While socializing at the bar, McManus consumed several alcoholic beverages. McManus did not see David drink any alcohol. After some time, the two contemplated traveling to Prince George's County. McManus believed she was unable to drive her vehicle safely, and, believing David was not intoxicated, gave her keys to David to operate her vehicle. During the drive, David began driving at an excessive rate of speed and in an erratic fashion. McManus demanded

[1] Johnson presents questions one through four, and McManus presents questions five and six for our review.

[2] After the accident, the man known as David, fled the scene and was never identified.

that David slow down and stop the vehicle but, despite her repeated pleas, he did not alter his dangerous driving.

McManus's vehicle traveled southbound on Annapolis Road toward its intersection with Martin Luther King, Jr. Boulevard, while being pursued by police. According to Johnson's testimony on direct-examination, as McManus approached the intersection, Johnson was stopped at the intersection for a red traffic light in the far left-turn-only lane of westbound Annapolis Road. Halliburton was stopped for the same traffic light, located in the middle lane of eastbound Martin Luther King, Jr. Boulevard opposite of Johnson, with cars stopped on either side of his vehicle.[3] Johnson explained that McManus' vehicle attempted to turn right onto Martin Luther King, Jr. Boulevard, but, while turning, struck the median and became airborne. Johnson stated that, after becoming airborne, McManus's vehicle traveled over three vehicles, including Halliburton's, and crashed front first onto the far-right side of street. Johnson further testified that, after McManus' vehicle finally came to a stop, Halliburton then accelerated through the intersection, hit the median, and struck the front driver's side of her vehicle. Johnson indicated that she could not determine whether Halliburton was unconscious as his vehicle approached her vehicle. Additionally, Johnson claimed she could not recall how much time passed from when she first observed McManus' vehicle go airborne until Halliburton's vehicle entered the intersection and struck her vehicle.

[3] Annapolis Road becomes Martin Luther King, Jr. Boulevard on the eastern side of the intersection.

During cross-examination, counsel for Halliburton questioned Johnson about the basis for her testimony of not having observed any contact between McManus's and Halliburton's respective vehicles. The following examination occurred:

HALLIBURTON: Now, remember being sworn in on August 2, 2017 weeks after you signed the answers to interrogatories?

JOHNSON: For the deposition? My deposition yes.

HALLIBURTON: Okay. And counsel, page 26, line 1. Part of that deposition was: Question, "You heard sirens and were you able to tell where these sirens were coming from? Answer: They were coming from the same direction that the car that hit the other cars were coming from."

JOHNSON: Okay.

HALLIBURTON: What car hit what other car that (sic) you are referring to in your deposition?

JOHNSON: What I saw and what I observed after the accident is (sic) two different things. What I saw was McManus traverse and nose dive. After the accident, I spoke with the persons that were there and I did see damage on their cars. That is not what I saw.

. . .

HALLIBURTON: Okay. And you knew when you watched this vehicle go airborne and go over these cars that there was a rather significant incident across the street that you had fortunately avoided, correct?

JOHNSON: Yes.

. . .

HALLIBURTON: Do you remember, Ms. Johnson, indicating that in your answers to interrogatories, that you believe that Mr. Halliburton was – answer to interrogatory number 8. You indicate, "I was dumbfounded because the danger had ended" the danger to my client's [(Halliburton's)] vehicle

getting struck by Ms. McManus's car had ended, right?

JOHNSON: Correct.

During his cross-examination of Johnson, Halliburton's counsel also asked her questions relating to how much time passed between McManus' vehicle becoming airborne and Halliburton's collision with her vehicle. The following took place:

HALLIBURTON: And you were asked a few moments ago by your attorney how long—how much time went by for [sic] when you see the vehicle go airborne to when Mr. Halliburton's vehicle enters the intersection, hits the median and hits your car. And recall testifying just a few moments ago you didn't know how long that was?

JOHNSON: Yes.

HALLIBURTON: Okay. Do you recall when you testified to (sic) at your deposition Ms. Johnson and what did you testify to at your deposition? Page 6—page 21 counsel, line 1. The—here I will show it to you. Then within I think—

JOHNSON: Objection.

THE COURT: Basis?

JOHNSON: It is just the—

THE COURT: Overruled.

JOHNSON: You can't use a deposition to refresh someone's recollection, he is testifying.

THE COURT: Overruled.

HALLIBURTON: Okay, you say, "Then within I think it was a minimum of five minutes it may have been less but it seemed like it was longer, is when you see this other vehicle you describe accelerates and barrels into you" remember giving that testimony under oath?

JOHNSON: Yes.

Halliburton was unable to offer many details regarding the accident because, according to him, he lost consciousness as a result of the impact of McManus' vehicle. However, Halliburton testified that prior to the accident, he was traveling eastbound on Annapolis Road and stopped for a red traffic light at its intersection with Martin Luther King, Jr. Boulevard, and that cars were stopped on either side of him. Halliburton could not recall the events that took place after stopping at the light. Halliburton's first recollection was awaking in an ambulance en route to the hospital. He sustained several lacerations to the top of his head, and photographs depicting injury to his scalp were entered into evidence. Hospital records, which documented his loss of consciousness and concussion diagnosis, were submitted to the court. Several photographs of Halliburton's vehicle, depicting extensive damage to the roof and minor damage to the front of the vehicle, were also admitted.

Dr. Clifford Hinkes testified, via *de bene esse* deposition, to the timing and cause of Halliburton's loss of consciousness. Dr. Hinkes opined "with a reasonable degree of certainty" that Halliburton suffered a head injury and was rendered unconscious as a result of the impact from McManus' vehicle. During the deposition, the following took place:

HALLIBURTON:	And did you rely on those records and photographs in the formulation of your opinions in this case?
DR. HINKES:	I did.
HALLIBURTON:	Now let me ask you a couple of questions about the hospital records for Mr. Halliburton. He was, according to the records, treated on the same day of the accident?
DR. HINKES:	That's correct.

HALLIBURTON: And what was Mr. Halliburton's documented condition at the hospital?

DR. HINKES: Well, he came in. He did not recall the events. It says he had a loss of consciousness. He had a laceration noted to the scalp and a soft tissue injury to the scalp at the top of the head. He was complaining of head pain from that. And there was an open cut with bleeding.

. . .

HALLIBURTON: And what treatment was rendered concerning the head?

DR. HINKES: He was evaluated. By the time he got to the emergency room, he was back with it, alert and oriented. Stitches were placed in the scalp. He had a variety of radiographic studies, the most of which was the CAT scan of the brain. There was no internal damage to the brain, no skull fracture, no internal damage to the brain. But there was a laceration of the scalp and the damage to the soft tissue outside the skull.

. . .

HALLIBURTON: And you reviewed those records and you relied upon this as well, correct—

DR. HINKES: That's correct.

HALLIBURTON: —in forming your opinion? I was asking you about the hospital treatment. What about diagnosis—what diagnosis was rendered to Mr. Halliburton by the physicians at the hospital?

DR. HINKES: Motor vehicle accident, of course. Medical diagnoses are a closed head injury, a brain concussion, a scalp laceration, and then strains of the neck and lower back.

HALLIBURTON: Now, as a result of your review of the photographs in this case, the medical records, your experience, your education and expertise in diagnosing and treatment of head injuries such as concussion, have you formulated an opinion, within a reasonable degree of medical

probability, as to what, if any injuries the defendant, Duane Halliburton, sustained concerning his head?

DR. HINKES: I have.

HALLIBURTON: And what are those opinions, Doctor?

DR. HINKES: He had a concussion. He had a brain injury. He had a loss of consciousness.

HALLIBURTON: And do you have an opinion, within a reasonable degree of medical certainty, whether that concussion, brain injury, and loss of consciousness created a medical emergency for him?

MCMANUS: Objection.

JOHNSON: Objection.

MCMANUS: Foundation.

DR. HINKES: I do have an opinion.

HALLIBURTON: And what is that opinion?

DR. HINKES: A concussion is a medical emergency. Yes.

. . .

HALLIBURTON: Now, in page 2 of your report, you put Mr. Halliburton was rendered unconscious as a result of an impact by a striking vehicle.

DR. HINKES: Yes.

HALLIBURTON: This rendered him unable to control his own vehicle due to a medical injury?

DR. HINKES: Correct.

On cross-examination, counsel for Johnson questioned Dr. Hinkes regarding his ultimate opinion regarding Halliburton's loss of consciousness:

JOHNSON: Fair to say that one hundred percent of your understanding about how this collision occurred came from Mr. Goodman, the attorney for Mr. Halliburton?

DR. HINKES: That's correct. I'm not a witness to the accident.

. . .

JOHNSON: Is there anything in the medical record that tells you how the collision happened between either Mr. Halliburton's vehicle and Ms. McManus' vehicle or Mr. Halliburton's vehicle and Ms. Johnson's vehicle.

DR. HINKES: Not exactly from a liability standpoint, no. It's just recorded as a motor vehicle accident.

. . .

JOHNSON: I understand, if you accept Mr. Halliburton's attorney's hypothetical, that it leads you to one conclusion. What I want to ask you though, is there any fact, piece of evidence in the record that you could point out to the jury that would tell them which impact, either Ms. McManus's vehicle and Mr. Halliburton's vehicle or Mr. Halliburton's vehicle and Ms. Johnson's vehicle—which of those impacts actually caused a concussion or head injury to Mr. Halliburton?

DR. HINKES: Most likely, it's the McManus vehicle landing on top of Mr. Halliburton's car.

JOHNSON: And your understanding of that idea that Ms. McManus' vehicle landed on top of Mr. Halliburton's car, where did that come from?

DR. HINKES: The photographs would be consistent with that. And defendant counsel for Mr. Halliburton has given me that theory. I'm relying upon the information that's been provided. I'm not a witness to the accident.

Dr. Andrew Siekanowicz testified, via *de bene esse* deposition, regarding the nature, extent, and permanency of the Johnson's alleged injuries, and the future medical treatment necessary for such injuries. Prior to trial, Halliburton moved to strike portions of Dr. Siekanowicz's testimony concerning his opinions as to (1) Johnson's future medical treatment of steroid injections, (2) Johnson's veracity, (3) Johnson's unrelated medical condition of cardiogenic pulmonary edema ("CPE"), and (4) the permanency of Johnson's

alleged injuries. Halliburton argued that Dr. Siekanowicz lacked the proper foundational knowledge and expertise to render an opinion on such issues, and contended that it was improper for a medical expert to testify to the veracity of a patient. The court granted the motion and struck the contested portions of Dr. Siekanowicz's *de benne esse* deposition.

Before the case was submitted to the jury, the parties entered into a high/low agreement in which McManus would pay to Johnson $30,000, regardless of whether she was found liable. If Halliburton were also found liable, Johnson could recover a maximum of $82,500.

The case was submitted to a jury, which found that both McManus and Halliburton negligently caused the motor vehicle collisions, but that Halliburton's negligence was excused by a medical emergency. A consent judgment was entered against McManus in the amount of $30,000, consistent with the parties' stipulation. Johnson and McManus then timely appealed.

DISCUSSION

I. Whether the court erred in allowing Halliburton's defense of sudden incapacity to be submitted to the jury.

Johnson claims the court erred in instructing on and submitting to the jury the affirmative defense of sudden incapacity because "there [was] no factual evidence in the record to explain when or how [] McManus injured his head." Halliburton contends there was sufficient and substantial evidence that he suffered a sudden incapacity prior to striking Johnson's vehicle justifying the issue being submitted to the jury.

"When a defendant asserts an affirmative defense, the defendant has taken the affirmative of an issue and therefore assumes the burden of production and the burden of persuasion as to the elements of that defense." *Board of Trustees, Community College of Baltimore County v. Patient First Corp.*, 444 Md. 452, 470 (2015). The defendant "need only adduce evidence sufficient to raise a fact issue for the jury." *Moore v. Presnell*, 38 Md. App. 243, 248 (1977) (citations omitted).

An individual may establish the affirmative defense of sudden incapacity to defend against a claim of negligence resulting from a motor vehicle collision by showing "that there was a sudden and unforeseen incapacity that rendered him or her unable to avoid or prevent the accident causing the injury." *Cooper v. Singleton*, 217 Md. App. 626, 630 (2014) (quoting *Id*. at 248–49). "Unforeseen incapacity is one that a reasonable person would not have any reason to anticipate." *Id.*

In *Moore v. Presnell*, we found the defendant presented sufficient evidence of sudden incapacity to entitle the jury to find as a fact that the automobile collision was a result of a loss of consciousness. 38 Md. App. 243, 249 (1977). There, an eye witness testified that the defendant, immediately prior to the impact, appeared as if she "just passed out." *Id*. at 245. The defendant made no attempt to avoid the accident and there was no visible braking action, which indicated the defendant "did not react, when confronted with an imminent collision, as a conscious person would." *Id*. at 248. Moreover, medical testimony regarding the defendant's medical history of cardiovascular disease and

hypertension revealed that the defendant was "not an unlikely candidate for such lapses of consciousness." *Id.*

Halliburton presented sufficient evidence of sudden incapacity to justify the issue being submitted to the jury. Halliburton testified that he was stopped at the intersection of Annapolis Road and Martin Luther King, Jr. Boulevard and intended to proceed straight through the intersection when he suddenly lost consciousness. Like in *Moore*, the evidence established that Halliburton entered the intersection and drove straight at Johnson's vehicle, indicating that Halliburton "did not react, when confronted with an imminent collision, as a conscious person would." Also, medical records showed that Halliburton did indeed suffer a loss of consciousness. The photographs of Halliburton's vehicle and injuries to the top of his head were presented. The damage to the roof of Halliburton's vehicle was substantial and consistent with that which would be caused by the roof being struck by an airborne vehicle. Dr. Hinkes testified that he believed the injury to Halliburton's head was due to a vehicle striking the roof of Halliburton's vehicle, and that the injury probably caused Halliburton to lose consciousness. We hold the court did not err in submitting the issue of Halliburton's sudden incapacity to the jury.

II. Whether the court erred in admitting or excluding certain expert testimony.

1. *The court did not err in admitting Dr. Hinkes' testimony.*

Johnson contends the court erred in admitting Dr. Hinkes' testimony because he lacked an adequate factual basis for his opinions as to the causation of Halliburton's head

injury. On the other hand, Halliburton asserts Dr. Hinkes' testimony was supported by a sufficient factual basis, and was thus properly admitted.

Maryland Rule 5-702 provides:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

An expert witness "must base his or her opinion on the facts that the parties have adduced into the record." *Shives v. Furst*, 70 Md. App. 328, 341 (1987) (citations omitted). "A medical expert is not barred from expressing an opinion because he is not willing to state it with absolute certainty; it is not certainty but reasonable probability which is the test." *Andrews v. Andrews*, 242 Md. 143, 152 (1966). Testimony amounting to only speculation or conjecture, based on improper or insufficient data, or which lacks factual support in the admitted evidence, is inadmissible. *Terumo Medical Corp. v. Greenway*, 171 Md. App. 617, 624 (2006) (quoting Lynn McLain, *Maryland Evidence* (2d ed. 2001), § 702.2). "An adequate factual basis requires: (1) an adequate supply of data; and (2) a reliable methodology for analyzing the data." *Levitas v. Christian*, 454 Md. 233, 246 (2017). Ultimately, "whether a particular item of evidence should be admitted or excluded is committed to the considerable and sound discretion of the trial court and reviewed under an abuse of discretion standard." *Perry v. Asphalt & Concrete Services, Inc.*, 447 Md. 31, 48 (2016) (citing *Ruffing Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 619 (2011)).

Dr. Hinkes' opinion as to the causation of Halliburton's head injury was supported by an adequate factual basis and evidence in the record. In forming his opinion, Dr. Hinkes reviewed the discovery testimony and discovery responses, which arguably established that the roof of Halliburton's vehicle was struck by McManus's vehicle. Dr. Hinkes also reviewed Halliburton's medical records, which showed Halliburton was unconscious when medical first-responders arrived on the scene. These records established that Halliburton sustained a laceration to the top of his head, and that he was complaining of head pain. Dr. Hinkes also saw photographs of Halliburton's vehicle, which showed substantial damage to the roof consistent with that which would be caused by an airborne vehicle. As we see it, Dr. Hinkes' conclusion that Halliburton lost consciousness from being struck by McManus' vehicle was supported by a sufficient factual basis and evidence in the record.

Johnson contends Dr. Hinkes' testimony was inadmissible because he had neither examined nor had a conversation with Halliburton and Dr. Hinkes learned of the sudden incapacity theory—that McManus's vehicle struck the roof of Halliburton's vehicle—from counsel for Halliburton. This argument is meritless. Johnson cites no legal authority supporting these contentions. Dr. Hinkes was free to obtain details regarding the accident from any source he saw fit, including defense counsel. Also, regardless of whether Dr. Hinkes had the chance to examine or talk to Halliburton, his testimony was sufficiently supported by facts in the record. The source of data on which Dr. Hinkes based his testimony goes to weight of the evidence, rather than its admissibility. *See Braxton v. Faber*, 91 Md. App. 391, 396 (1992) ("[O]bjections attacking an expert's training,

expertise, or basis of knowledge go to the weight of the evidence and not its admissibility) (citations omitted). Thus, the court did not err in admitting Dr. Hinkes' testimony.

2. *The court did not err in striking Dr. Siekanowicz's testimony.*

Johnson claims the court erred in striking Dr. Siekanowicz's testimony relating to (1) Johnson's future need for steroid injections, (2) Johnson's veracity, (3) the medical condition of CPE, and the (4) permanency of Johnson's alleged injuries. However, Halliburton contends the court did not err in striking such testimony because it was "based on conjecture, guesswork, and speculation."

Johnson contends Dr. Siekanowicz's testimony regarding Johnson's future medical treatment of steroid injections and the price thereof should have been admitted because the testimony established that Johnson was "an appropriate candidate to be considered for epidurals," and that such a treatment was "the average typical treatment" for patients with Johnson's symptoms. However, Dr. Siekanowicz could not testify within a reasonable degree of medical certainty that Johnson should be prescribed such a treatment.[4] Instead,

[4] During Dr. Siekanowicz's *de bene esse* deposition, he testified regarding Johnson's future use of epidural injections as follows:

HALLIBURTON:	Are you saying that [Johnson] needs [the epidural injections], within a reasonable degree of medical certainty?
DR. SIEKANOWICZ:	Again –
	. . .
DR. SIEKANOWICZ:	That depends on the patient and the pain specialist, not me.
HALLIBURTON:	You're the expert.

Dr. Siekanowicz testified that Johnson may require epidural injections, but ultimately deferred to a pain management specialist's recommendation as to whether they were necessary.[5] Thus, Dr. Siekanowicz's opinion as to Johnson's need for epidural injections amounted to nothing more than speculation, and the court did not err in excluding the testimony. *Barnes v. Greater Baltimore Medical Center, Inc.*, 210 Md. App. 457, 481 (2013) ("The expert testimony must show causation to a 'reasonable degree of probability.'") (quoting *Jacobs v. Flynn*, 131 Md. App. 342, 355 (2000)).

Johnson contends the court erred in excluding her question—"Where, if at all, in any of the medical records, was it ever recorded that you or any doctor felt that Ms. Johnson was exaggerating her symptoms?"—because it was "a simple request that Dr. Siekanowicz,

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DR. SIEKANOWICZ: I'm not the pain specialist.
HALLIBURTON: Okay. So you have no opinion on that?
DR. SIEKANOWICZ: My opinion is she's worthy of evaluation for that—

[5] Dr. Siekanowicz's testified:

HALLIBURTON: Doctor, the – you would agree that nowhere in that report of September 30, 2014, do you indicate that [Johnson] was – should get epidural injections, three of them, at a cost of $9,000, correct?
DR. SIEKANOWICZ: Not –specifically at that time –
HALLIBURTON: Right.
DR. SIEKANOWICZ: —unless she went to a pain specialist and they recommended them.
HALLIBURTON: Right.
DR. SIEKANOWICZ: Obviously, I can't say to that at that point.
HALLIBURTON: You don't even know if the pain management specialist would recommend three epidurals when you created this September 30, 2014 report, correct?
DR. SIEKANOWICZ: Right.

a medical expert, interpret the medical records in this case and state whether there is any evidence within them indicating Ms. Johnson was exaggerating her symptoms." Under Maryland law, "a witness, expert or otherwise, may not give an opinion on whether he believes a witness is telling the truth. Testimony from a witness relating to the credibility of another witness is to be rejected as a matter of law." *Ware v. State*, 360 Md. 650, 678 (2000) (quoting *Bohnert v. State*, 312 Md. 266, 278 (1988)); *see also Bentley v. Carrol*, 355 Md. 312, 335(1999) (holding trial court should have excluded expert witness' testimony claiming the plaintiff exaggerated her complaints). Such expert opinion is inadmissible because it "encroache[s] on the jury's function to judge the credibility of the witnesses and weigh their testimony and on the jury's function to resolve contested facts." *Bohnert*, 312 Md. at 279.

Johnson next claims the court erred in striking Dr. Siekanowicz's testimony relating to CPE. We disagree. During the deposition, Dr. Siekanowicz stated that he did not treat CPE.[6] Dr. Siekanowicz, an orthopedic surgeon, further stated that the cardiogenic pulmonary edema was "not an orthopedic condition." There was nothing in the record that showed Dr. Siekanowicz had any expertise or special understanding of the condition.

[6] Dr. Siekanowicz was asked about CPE and testified:

JOHNSON: Are you familiar with cardiogenic pulmonary edema?
DR. SIEKANOWICZ: Yes.

. . .

JOHNSON: Is that a condition that you treat?
DR. SIEKANOWICZ: No.

Thus, his opinion that Johnson could receive adequate treatment from her doctor for CPE without having an orthopedic examination was, as we see it, speculation and the court did not abuse its discretion in excluding it.

Finally, Johnson avers that Dr. Siekanowicz's testimony regarding the permanency of Johnson's injuries was wrongfully stricken by the court because Dr. Siekanowicz testified that her injuries were "in part" caused by the action of McManus and Halliburton and that "if an injury is indivisible, any tortfeasor joined in the litigation whose conduct was a substantial factor in causing the plaintiff's injury would be legally responsible for the entirety of the plaintiff's damages." *Carter v. Wallace & Gale Asbestos Settlement Trust*, 439 Md. 333, 354 (2014). However, Johnson's reliance is misplaced. *Carter* asserts the proposition that multiple tortfeasors can be legally responsible for all damages stemming from an indivisible injury, which the tortfeasors, in fact, caused. Thus, the holding is inapplicable here where Johnson failed to show that Halliburton and McManus, in fact, caused each injury of which Johnson complained. Indeed, Dr. Siekanowicz initially testified Johnson had no history of any significant, intervening, or long-term injuries that could cause her ongoing symptoms. However, he later admitted that he had not seen Johnson's medical records prior to and after seeing her as a patient.[7] Dr. Siekanowicz also

[7] Dr. Siekanowicz testified:

HALLIBURTON: So you were unaware that on August 13, 2017, [Johnson's] primary care doctor was treating her for a backache?

DR. SIEKANOWICZ: No; I have no record of that.

did not have knowledge of Johnson's respective falls in May 2017 and July 2017, which occurred after the subject accident while Johnson was under his care.[8] Significantly, Dr.

HALLIBURTON: Would you have liked to have known that [Johnson] was going to her primary care doctor with complaints of back pain?

DR. SIEKANOWICZ: I mean, obviously, since that was an involved area, it would have helped.

HALLIBURTON: . . . Doctor, before you formulated your opinions in this case, you secured her medical records from her primary care doctor, right?

DR. SIEKANOWICZ: No. I don't have any medical – primary care physician records.

[8] With regard to Johnson's prior falls, Dr. Siekanowicz testified:

HALLIBURTON: And if you look at the second page [of the May 27, 2017 report from Johnson's chiropractor], Doctor, it says that she fell descending the stairs at the Metro and landed on her knees. Do you see that?

DR. SIEKANOWICZ: Yes.

HALLIBURTON: Why didn't you mention that she fell on her knees at the Metro station when you were preparing your recent report for litigation?

DR. SIEKANOWICZ: Because I have no record.

. . .

HALLIBURTON: Okay. And let me show you Exhibit 5. That's a July 22, 2017 report. That's less than two months from your exam, correct?

DR. SIEKANOWICZ: Okay.

HALLIBURTON: And [Johnson] on this occasion indicated to the acupuncturist, while on vacation in Florida, she fell. Do you see that, first page, second line?

DR. SIEKANOWICZ: Vacation, fell, thinks right knee gave out and a touch of vertigo.

. . .

Siekanowicz confirmed he was incapable of apportioning Johnson's injuries from those caused by the motor vehicle collision versus those that were not.[9] Thus, we cannot say the court abused its discretion in excluding Dr. Siekanowicz's opinion as to the nature, extent, and permanency of Johnson's injuries because, as we see it, he lacked an adequate supply of data and any opinion on the matter would have been mere speculation.

III. Whether the court erred by allowing the jury to hear certain questioning of Johnson by defense counsel.

Johnson asserts the court erred in allowing Halliburton's counsel to engage "in several instances of reading directly from [] Johnson's deposition transcript and editorializing thereon under the guise of 'refreshing her recollection.'" Halliburton contends his questioning of Johnson was proper because he used Johnson's prior inconsistent statements to impeach her testimony. We agree with Halliburton.

HALLIBURTON: So why didn't you mention that she fell—[Johnson] fell in Florida when you were preparing your report?

DR. SIEKANOWICZ: Again, I don't—I don't have this record.

HALLIBURTON: You would have liked to have known about that, correct?

DR: SIEKANOWICZ: It would have definitely helped, yes.

[9] Dr. Siekanowicz testified as follows:

HALLIBURTON: Doctor, one question: You cannot put a percentage as to a breakdown from all these myriad of potential causes; isn't that correct? That's what you state on the second page of your report?

DR. SIEKANOWICZ: That's correct. There's no realistic way that anybody could. I've been doing this for over 20 years. There's no exact method of an apportionment, especially in something this complex. That's why the best I can say is, "in part."

Under Maryland Rule 5-616(a), "[t]he credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at: (1) proving under Rule 5-613 that the witness has made statements that are inconsistent with the witness's present testimony; [and] (2) proving that the facts are not as testified to by the witness[.]" Maryland Rule 5-613(a) provides,

> A party examining a witness about a prior written or oral statement made by the witness need not show it to the witness or disclose its contents at that time, provided that before the end of examination (1) the statement, if written, is disclosed to the witness and the parties, or if the statement is oral, the contents of the statement and the circumstances under which it was made, including the person to whom it was made, are disclosed to the witness and (2) the witness is given the opportunity to explain it.

Halliburton was not using Johnson's deposition and discovery responses to attempt to refresh Johnson's recollection, but rather to impeach her by informing the jury of Johnson's prior inconsistent statement, as permitted by Maryland Rules 5-616 and 5-613. On direct-examination, Johnson testified that she did not know how much time passed from when she observed McManus' vehicle become airborne to when Halliburton's vehicle struck her vehicle. However, in her deposition, Johnson stated that the period in question was approximately five minutes. Thus, the questioning of Johnson was proper.

Johnson also contends the court erred in allowing Halliburton to "read directly from medical records written by an unidentified employee of Women[']s Health[.]"[10] The report

[10] The challenged questioning and testimony follows:

HALLIBURTON: . . . You are still under the care of Womens Health (sic), correct?

JOHNSON: Yes, they are my primary physician.

to which Johnson is referring was admitted at trial as Exhibit 8 before Halliburton's counsel cross-examined her and read portions of it aloud. Because Johnson does not attack the admissibility of the report, the only question before us is whether it was err to allow Halliburton's counsel to read the exhibit aloud. Johnson provides no legal authority nor are we aware of any rule that precludes an attorney from reading from a piece of evidence while cross-examining a witness. As such, we conclude the court did not err in allowing Halliburton's counsel to read aloud the Women's Health report during his cross-examination of Johnson.

IV. Whether McManus' appeal is properly before this Court.

McManus argues Johnson does not have the right or standing to proceed in this appeal because the parties entered into a consent agreement, and thus Johnson relinquished her right to appeal. She also claims the court erred in submitting the question as to her liability to the jury. McManus contends that granting permission to another to operate her

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HALLIBURTON:	And on September 17, 2017, just a couple of months before you went to Dr. Siekanowicz for that litigation visit, you were seen by Womens Health, correct?
JOHNSON:	I don't know.
HALLIBURTON:	This is Exhibit 8 counsel. Let me show you Exhibit 8, it is a 7/17/2017 report and I think that is you, Karen H. Johnson?
JOHNSON:	Yes.
HALLIBURTON:	Okay and you were there for fatigue, correct?
JOHNSON:	I don't remember.
HALLIBURTON:	Okay let me take a look at this, it says here "complaint of fatigue"—

vehicle was insufficient to make her liable for the actions that caused Johnson's injuries, and that, even if it were, she sufficiently rebutted the presumption of agency.

However, the parties entered into a consent judgment agreement in which McManus was obligated to pay to Johnson $30,000, regardless of whether the jury found her liable. McManus now seeks to attack that judgment on appeal, arguing the evidence was insufficient to support such a finding. However, even if we were to agree the evidence was insufficient, McManus consented to the $30,000 judgment against her. She cannot now appeal that judgment to which she consented. *Suter v. Stuckey*, 402 Md. 211, 222 (2007) ("It is a well-settled principle of common law that no appeal lies from a consent decree.").

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.