

Circuit Court for Prince George's County
Case No. CAL1713531

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3030

September Term, 2018

ADRIENNE MALLARD

v.

POTOMAC CONCRETE COMPANY, INC., et
al.

Fader, C.J.,
Shaw Geter,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: January 6, 2021

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

This case arises out of a trip and fall accident. Adrienne Mallard (“Mallard”) filed a Complaint in the Circuit Court for Prince George’s County against Potomac Concrete Company, Inc. (“Potomac Concrete”) and Creative Landscapes by Gregory, Inc. (“CLG”) alleging negligence. Potomac Concrete was dismissed from the action prior to trial. A three-day jury trial resulted in a verdict in favor of CLG. In this pro se appeal, Mallard presents 25 questions for this Court’s review. As most issues were not properly argued or preserved for our review, we have rephrased the only relevant questions as follows:

1. Did the circuit court err in granting Potomac Concrete’s Motion for Summary Judgment?
2. Did the circuit court err by failing to read the pattern jury instructions verbatim?
3. Did the circuit court err in precluding evidence regarding the riser heights?

For the reasons set forth below, we affirm the circuit court.

BACKGROUND & PROCEDURAL HISTORY

On June 6, 2014, Mallard was working at a model home (“the Property”) in Beltsville, Maryland. As she was leaving the Property, she fell on the exterior front steps. Mallard stated that she stepped down with her right foot onto the first step, then moved her left foot as if she was already on the walkway, not realizing there was a second step. Mallard alleged that the step did not conform with relevant codes and did not have a color contrast in violation of relevant codes.

Prior to trial, Potomac Concrete filed a Motion for Summary Judgment, arguing that they poured the concrete for the front stoop at the Property, but had no involvement

in the design or installation of the brick step and walkway. The Court granted Potomac Concrete's motion.

At trial, the Court heard arguments from CLG to preclude any evidence regarding the riser heights of the steps. The Court ruled that, based on testimony of liability expert Gregory Harrison, Ph.D., P.E., the riser height did not cause or contribute to Mallard's fall. After three days of trial, the jury returned a verdict in favor of CLG.

After trial, Mallard filed a Motion for Judgment Notwithstanding the Verdict and a Motion for a New Trial. Both motions were denied by the Court. This timely appeal follows.

DISCUSSION

I. POTOMAC CONCRETE'S MOTION FOR SUMMARY JUDGMENT

The only cause of action alleged against Potomac Concrete was negligence. The Court initially denied Potomac Concrete's motion for summary judgment. After further discovery and depositions, Potomac Concrete filed a Motion for Reconsideration of the summary judgment motion. Mallard appears to argue that the court erred in granting Potomac Concrete's motion because another judge previously denied the Motion for Summary Judgment.

When reviewing an order granting summary judgment, we must decide whether there were disputes of material fact before the circuit court. *Koste v. Town of Oxford*, 431 Md. 14, 24-25 (2013). If there is no genuine dispute of material fact, this Court determines "whether the Circuit Court correctly entered summary judgment as a matter of

law.” *Id.* at 25 (Internal quotations and citations omitted). We perform this review *de novo*. *Id.*

Maryland Rule 2-501(a) provides that “[a]ny party may file at any time a motion for summary judgment on all or part of an action.” The denial of a motion for summary judgment is an interlocutory order, thus “it is within the power of the trial court later to grant a renewal of a summary judgment motion.” *Azarian v. Witte*, 140 Md. App. 70, 85 (2001) (Internal quotations and citations omitted). Parties may resubmit a motion at a later point in the proceedings, particularly “where there has been some change of fact or law which substantially justifies the resubmission.” *Id.* (Internal quotations and citations omitted).

In this case, the Court initially denied Potomac Concrete’s Motion for Summary Judgment without argument. Potomac Concrete participated in further discovery and depositions, which elicited additional evidence in support of Potomac Concrete’s motion. Potomac Concrete cited the following in support of its Motion for Reconsideration: (1) CLG’s corporate designee stated it did not contend that Potomac Concrete did anything to cause or contribute to any of Mallard’s injuries; (2) Mallard’s only arguments were that the Defendants collectively failed to ensure the step tread riser heights met the code requirements for uniformity, violated the requirement to have a strong color contrast on all steps, and violated the code requirement for at least one handrail; (3) CLG’s Supervisor of Masonry and Hardscaping testified that CLG was responsible for installing the brick step that did not conform with riser heights and did not have a strong color

contrast; and (4) Potomac Concrete’s corporate designee testified that Potomac Concrete is not responsible for handrail installation.

On the first day of trial, the court heard arguments with respect to Potomac Concrete’s motion to reconsider the motion for summary judgment. During argument, Potomac Concrete explained that it contracted to pour all of the concrete work at the Property, including the walls, slab, and front stoop. Potomac Concrete argued that it was undisputed that it was not involved with any construction or installation of the brick walkway, brick step, or a handrail. Mallard opposed the motion for reconsideration, but specifically stated she “[did] not dispute anything that [Potomac Concrete] just said as far as the facts.”

To prevail on the theory of negligence, a plaintiff must prove the existence of a duty owed to the plaintiff, a breach of that duty, and an injury proximately caused by that breach. *See Pendleton v. State*, 398 Md. 447, 458 (2007). Mallard alleged that Potomac Concrete created the dangerous and defective condition of the stairway and owed a duty to repair the negligently constructed staircase. It was undisputed that Potomac Concrete did not construct the stairway in question, thus they did not create the defective and dangerous condition on which Mallard fell. It was also undisputed that Mallard’s injuries were not caused by the concrete stoop that was constructed by Potomac Concrete.

Potomac Concrete’s Motion for Reconsideration was entirely appropriate, given the additional information elicited during discovery. There was no genuine issue of

material fact before the court, thus the court did not err in granting Potomac Concrete's motion.

II. PATTERN JURY INSTRUCTION

Mallard contends that the circuit court erred by not “read[ing] the jury instruction[s].” Maryland Rule 8-504(a)(6) requires that a brief “shall ... include ... [a]rgument in support of the party's position on each issue.” Arguments that are “not presented with particularity will not be considered on appeal.” *Klauenberg v. State*, 355 Md. 528, 552 (1999). Though Mallard objected at trial, arguing that the pattern instructions were not read verbatim, Mallard fails to articulate on appeal which instruction was read improperly or provide argument in support of this contention. Thus, we will not consider it.

III. EVIDENCE REGARDING THE HEIGHT OF THE RISERS

Mallard argues that the court erred by precluding her from offering any evidence and testimony regarding the riser heights. On the first day of trial, the Court heard argument regarding CLG's Motion *in Limine* to preclude evidence and testimony with respect to the riser heights of the steps. Mallard's liability expert, Gregory Harrison, Ph.D., P.E., testified in his deposition that the riser height did not cause or contribute to Mallard's fall. The Court ruled that any evidence mentioning the riser height would be precluded as it was irrelevant to the cause of action.

We review the trial court's admissibility of relevant evidence under an abuse of discretion standard. *See Brooks v. State*, 439 Md. 698, 708 (2014). Maryland Rule 5-401

provides that relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” In this case, the circuit court heard testimony that the riser height did not cause or contribute to Mallard’s fall or injuries. Thus, any evidence regarding the riser height is not of consequence to the determination of the action. The circuit court did not abuse its discretion in precluding evidence and testimony regarding the riser heights as they had no bearing on the event.

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**