

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2036

September Term, 2014

BALTIMORE COUNTY, MARYLAND

v.

MAYOR & CITY COUNCIL OF
BALTIMORE , *et al.*

Woodward,
Friedman,
Wilner, Alan M.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: April 13, 2016

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

We are asked to determine whether the circuit court erred when it: (1) granted a motion to limit the issues and (2) denied appellant Baltimore County's ("County") motion for judgment. We conclude that the circuit court correctly granted the motion to limit the issues and that the County's motion for judgment is not preserved for our review. Therefore, we affirm.

BACKGROUND

Appellee James Stanley is a former Baltimore City firefighter (he retired in May 2009) who volunteered as a County firefighter after his retirement. In November 2009, he suffered a stroke while volunteering for the County. Stanley filed an occupational disease claim with the Workers' Compensation Commission ("Commission") in 2010, seeking worker's compensation benefits from the County. The County contested Stanley's claim and impleaded the Mayor & City Council of Baltimore ("City") as a possible employer and insurer. The Commission issued an order ("First Order") finding that: (1) Stanley had sustained an occupational disease (hypertension) arising out of and in the course of his employment; (2) Stanley's disability resulted from the occupational disease; (3) the date of Stanley's disablement was the date of his stroke; (4) Stanley was co-employed by the City and the County on the date of disablement; and (5) the City was 95% liable and the County was 5% liable.

The City petitioned for judicial review of the First Order in the Circuit Court for Baltimore County. The County did not seek judicial review of the Commission's decision, nor did it file a cross-petition. The circuit court stayed the City's petition and remanded the

case to the Commission for a determination of the date of last injurious exposure. On remand, the Commission issued an order (the “Second Order”) finding that Stanley’s last injurious exposure occurred while he was employed by the City.

The City petitioned for judicial review of the Commission’s Second Order, requesting a jury trial. The County again did nothing. The circuit court lifted the stay on the City’s first petition and consolidated its two petitions. Prior to trial, the parties disagreed about the effect of the County’s failure to file a cross-petition for review of the First Order. The City filed a motion *in limine* asking the circuit court to limit the issues at trial to those for which the City had petitioned for judicial review: (1) the date of last injurious exposure; and (2) apportionment of liability. The City argued that, by petitioning, it had decided which issues to put before the jury. As a corollary to that, the City argued that, by failing to cross-petition, the County forfeited the chance to contest other issues. The circuit court granted the City’s motion limiting the issues and the matter proceeded to trial.

At the conclusion of the City’s case, the County made a motion for judgment, arguing that because the City did not present expert testimony regarding the date of Stanley’s last injurious exposure and the apportionment of liability between the City and the County, the City had failed to establish a *prima facie* case. The circuit court denied the County’s motion for judgment. The County then presented its case, but, at the end of all evidence, did not renew its motion for judgment. The County did not object to the trial court’s instructions or to the verdict sheet.

The jury reversed the Commission's Orders, finding that the last injurious exposure occurred while Stanley was employed by the County, and therefore the County was solely liable. The County filed this appeal and the City cross-appealed.

DISCUSSION

The County challenges the circuit court's grant of the motion to limit the issues and the denial of the County's motion for judgment. The City argues that the circuit court was correct in both decisions. In its cross-appeal, the City challenges the circuit court's decision that precluded it from presenting expert testimony. We conclude, first, that the circuit court correctly granted the City's motion to limit the issues and, second, that the County's motion for judgment is not preserved for our review. Additionally, because we affirm in the City's favor, we decline to address the City's argument about the presentation of expert testimony.

I. Motion to Limit the Issues

The County's first argument is that the circuit court erred in granting the City's motion to limit the issues presented to the jury to: (1) whether the last injurious exposure took place while Stanley was working for the County, the City, or for both; and, if both, (2) the percentage of liability for each. The County contends that *de novo* review was required of all of the Commission's findings and therefore that it should have been able to challenge the Commission's findings on the issues of causation, statute of limitations, and co-employment. The County further argues that its failure to file a cross-petition for judicial review is not dispositive because it was the prevailing party before the Commission and, therefore, was not required to file a cross-petition. The City responds that because the

County did not petition for judicial review of the Commission’s Orders it forfeited its ability to determine which, if any, issues would be reviewed. We conclude that, contrary to its argument, the County did not prevail entirely in front of the Commission, and therefore to the extent that it didn’t, it was required to file a cross-petition for judicial review, which it failed to do. Accordingly, we determine that the circuit court’s decision to limit the issues to those raised by the City’s petition was not in error. We explain.

Prior to trial, the City filed a motion *in limine* to limit the issues presented to the jury at trial. The City argued that, because the County did not seek judicial review of the Commission’s Orders, evidence should be limited to the issues for which the City was seeking judicial review, namely the date of last injurious exposure and apportionment of liability. The County conceded that it had not petitioned for review of either of the Commission’s Orders, but argued that all of the issues decided by the Commission were intertwined and that the *de novo* nature of the judicial review opened all issues for consideration. The circuit court granted the City’s motion and limited the issues.

“[A] cross-[petition] is required for the circuit court to revisit an issue decided by the Commission against the non-[petitioning] party that, if decided in that party’s favor, would require that the circuit court *reverse or vacate* at least a portion of the Commission’s decision.” *Uninsured Employers’ Fund v. White*, 219 Md. App. 410, 422-23 (2014) (emphasis in original). Conversely, “a cross-[petition] is *not* required for the circuit court to revisit an issue decided by the Commission against the non-[petitioning] party that, if decided in that party’s favor, would support *affirmance* of the Commission’s decision.” *Id.*

at 422 (emphasis in original). “[O]ne who seeks to attack, modify, reverse, or amend a judgment (as opposed to seeking to affirm it on a ground different from that relied on by the trial court) is required to appeal or cross appeal from that judgment.” *Paolino v. McCormick & Co.*, 314 Md. 575, 579 (1989).

To have the circuit court revisit the issues of causation, statute of limitations, and co-employment, and not just simply affirm the Commission’s decision, the County was required to cross-petition. The Commission decided all of these issues against the County in its First Order. The First Order found that Stanley’s disability was the result of an occupational disease, that Stanley was employed by *both* the County and the City, and that *both* the County and the City were liable. To revisit those findings and to “attack, modify, reverse, or amend” the Commission’s judgment, the County was required to file a petition or cross-petition for judicial review. Because the County failed to file the required petition or cross-petition for judicial review, we conclude that the circuit court did not err in limiting the issues to those about which the City had petitioned.

II. Motion for Judgment

The County’s second argument is that because the City did not present expert testimony on last injurious exposure, it failed to establish a *prima facie* case and, therefore, the circuit court should have granted the County’s motion for judgment. The City argues that because the County failed to renew its motion for judgment, this argument is waived. We agree with the City and conclude that the County’s argument is not preserved for our review.

At the end of the City's case, the County moved for judgment pursuant to Maryland Rule 2-519. The County argued that the City had failed to establish a *prima facie* case because it had not presented expert testimony regarding when Stanley's last injurious exposure occurred. The circuit court denied the County's motion. The County then presented evidence, but did not, at the end of all evidence, renew its motion for judgment.

“In Maryland, a motion for judgment, made at the close of an opponent's case and thereafter denied, is withdrawn when the party making the motion offers evidence in its own case-in-chief.” *General Motors Corp. v. Seay*, 388 Md. 341, 351 (2005). Maryland Rule 2-519(c) states:

A party who moves for judgment at the close of the evidence offered by an opposing party may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. In so doing, the party withdraws the motion.

Md. Rule 2-519(c). Therefore, by offering evidence after making a motion for judgment, a party withdraws its motion.

The County did not preserve its argument for appeal because it withdrew its motion for judgment by offering evidence, and failed to renew the motion. Pursuant to Rule 2-519(c), the County was permitted to offer evidence after the circuit court denied its motion at the end of the City's case. By offering evidence, however, the County withdrew its motion for judgment. *Seay*, 388 Md. at 351. At the close of all evidence, the County did not renew its motion for judgment. Therefore, the County did not preserve its argument that the City failed to present a *prima facie* case. Accordingly, we determine that the issue

is not preserved for our review, and decline to address the circuit court's denial of the County's motion for judgment.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY BALTIMORE
COUNTY.**