Circuit Court for Prince George's County
Case No. CAL17-35481

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0036

September Term, 2020

TERENCE WILLIAMS

v.

DIMENSIONS HEALTH CORPORATION

Beachley,
Berger,
Zic,

JJ.

Opinion by Zic, J.

Filed: July 20, 2021

*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.

This medical malpractice action arises from Dr. Montague Blundon's negligence in treating appellant/cross-appellee Terence Williams's right leg, which was injured in a motor vehicle accident, while at appellee/cross-appellant Dimensions Health Corporation, Inc., d/b/a Prince George's Hospital Center ("Hospital"). Mr. Williams instituted this action in the Circuit Court for Prince George's County against Dr. Blundon, in addition to two other physicians who treated his accident injuries, for medical negligence and against the Hospital under an apparent agency theory.

After summary judgment was granted in favor of the two other physicians, the case proceeded to trial against Dr. Blundon and the Hospital. At the close of Mr. Williams's case, the Hospital moved for judgment based on insufficient evidence of apparent agency, and the court reserved ruling on the motion. The Hospital then renewed its motion at the conclusion of the evidence. At the same time, the Hospital, along with Dr. Blundon, moved for judgment, challenging the evidentiary support for certain economic damages. The court again reserved judgment and the case was submitted to the jury who found in favor of Mr. Williams. The Hospital and Dr. Blundon both moved for judgment notwithstanding the verdict. The Hospital's motion was based on apparent agency and economic damages while Dr. Blundon's motion raised only the latter issue. After a hearing, the court denied Dr. Blundon's motion but granted the Hospital's motion on the apparent agency issue, vacating the judgment against that defendant. Mr. Williams filed this appeal, and the Hospital noted a conditional cross-appeal.

QUESTIONS PRESENTED

Mr. Williams presents the following two questions for our review, which we have rephrased[1]:

> 1. Did the circuit court erroneously require that Mr. Williams show knowledge of the relationship between the Hospital and Dr. Blundon to establish apparent agency?
>
> 2. Did the circuit court erroneously conclude that there was insufficient evidence to support the jury's finding that Dr. Blundon was the apparent agent of the Hospital?

The Hospital raises a conditional cross-appeal based on the following question, which also has been reworded[2]:

> 1. Did the circuit court erroneously conclude that there was sufficient evidence to support the jury's economic damages award?

---

[1] Mr. Williams presented the questions as follows:

> I. Did the lower court err in imposing the requirement that the Plaintiff show knowledge of the Doctor's relationship with the Hospital to establish apparent agency?
>
> II. Did the lower court err in concluding there was not even slight evidence to support the jury's explicit finding that Dr. Blundon was the apparent agent of Dimensions Health Corporation, Inc.?

[2] The Hospital articulated the question presented on cross-appeal as:

> In medical-negligence actions, recoverable damages must be caused by the defendants' tortious conduct—not the plaintiff's preexisting conditions. Here, the plaintiff crashed his car, breaking both legs and one arm, and his surgeon negligently failed to save his permanently damaged right leg from amputation. Did the trial court err by upholding a $6 million damages award that compensates him for both the accident injuries and the amputated right leg?

For the reasons that follow, we answer the first two questions in the negative and affirm the circuit court's decision to grant the Hospital's Motion for Judgment Notwithstanding the Verdict. As such, we do not address the conditional cross-appeal concerning the economic damages award.

BACKGROUND

In the early morning hours of May 3, 2014, Mr. Williams crashed his car on the Capital Beltway. Witnesses to the accident reported that he was driving fast, lost control of his car, and hit the guardrail flipping several times. Mr. Williams, however, claimed that he was hit from behind by another vehicle. As a result of the accident, Mr. Williams sustained serious injuries to both his legs as well as his left arm.

Shortly after the crash, emergency medical personnel arrived at the scene. At that point, Mr. Williams was awake, though there was conflicting evidence regarding his level of consciousness while in route to the Hospital. For example, the paramedics' prehospital care report described Mr. Williams as "oriented" to person, place, and time and noted that he was aware of his surroundings and able to answer questions about his medical history. But the report also indicated that Mr. Williams was "confused" and "combative," asking the paramedics to straighten his injured leg and attempting to remove his cervical collar and oxygen mask. Mr. Williams testified during trial that he was "in and out of it" while in the ambulance. And, according to his deposition testimony that was read to the jury, he had no memory of any conversation with the emergency medical personnel and, more specifically, no recollection of any discussion concerning where he was being transported.

In accordance with Maryland state protocol, Mr. Williams was taken by ambulance to the Hospital's Trauma Center, which was located within the same building as the Hospital. The Hospital, as stipulated by the parties at trial, was designated as a Level II Trauma Center by the Maryland Institute for Emergency Medical Services Systems, which required the Hospital to have on-call an attending board-certified or board-eligible orthopedic surgeon. The parties further stipulated that Dr. Blundon was the on-call orthopedic surgeon for the Trauma Center on the day of Mr. Williams's accident. It is undisputed that, within that role, Dr. Blundon operated as an independent contractor for the Hospital. Additionally, he held hospital privileges and served as Chief of Orthopedic Surgery at the Hospital.

Mr. Williams arrived at the Hospital at approximately 1:33 a.m. His state of consciousness while at the Hospital was also described by contradictory medical and testimonial evidence. The Hospital's trauma assessment report described him as both "oriented" to person, place, and time and verbally "confused." Additionally, according to the general history and physical report, a physical examination of Mr. Williams revealed that he was "[a]lert and oriented." But that report also indicated that he was verbally "confused" and included the following note: "Patient repetitive and sentences not making sense. Patient keeps repeating, 'left turn to the bathroom!'" And a separate report by an orthopedic physician assistant noted that Mr. Williams was "disoriented and combative upon arrival" but stated elsewhere that he was "alert and oriented." Moreover, Mr. Williams was unable to sign the Hospital's universal medical consent form provided to him

at some unspecified time after his arrival because he was "intubated" and "lack[ed] decision-making capacity." This two-page form, which was signed by another individual on Mr. Williams's behalf, began with the following paragraph:

> **PHYSICIANS NOT AS EMPLOYEES**: I acknowledge that physicians furnishing services, including but not limited to attending physicians, radiologists, surgeons, emergency department physicians . . . **ARE NOT** employees or agents of the hospital. I understand that I will receive a separate bill from each of these private providers of service.

Regarding the testimonial evidence, Mr. Williams stated on direct examination that he was aware he was being treated at the Hospital, he "knew [the Hospital] was a trauma center," and he did not object to and was "okay with" receiving treatment there. Conversely, in his deposition testimony introduced during the trial, Mr. Williams explained that his only recollection while at the Hospital was "waking up, seeing people, and falling out." And he testified that he first realized what hospital he was at when he awoke from a coma more than a week after the accident.

At approximately 4:34 a.m. on the day of the accident, Mr. Williams was taken to an operating room. Following surgical procedures rendered by two other physicians, Dr. Blundon performed surgery to treat his orthopedic injuries. Ultimately, both of Mr. Williams's legs were amputated above the knee and his left arm was severely and permanently damaged.

On November 14, 2017, Mr. Williams filed this medical malpractice action against the Hospital, Dr. Blundon, and two other physicians who attended to his accident-related

injuries.[3] He claimed that Dr. Blundon was negligent in providing medical and surgical care and that compliance with the standard of care would have prevented the amputation of his right leg. More specifically, he argued that Dr. Blundon negligently performed a fasciotomy to address the development of compartment syndrome in his right leg.[4] Further, Mr. Williams contended that the Hospital was vicariously liable for Dr. Blundon's negligence under a theory of apparent agency.

This matter proceeded to trial on October 7, 2019. At the close of Mr. Williams's case and at the conclusion of the evidence, the Hospital moved for judgment, arguing that Mr. Williams did not establish the necessary elements of apparent agency—that the Hospital created the appearance of an agency relationship and that Mr. Williams actually believed Dr. Blundon was the Hospital's agent and relied on that belief in seeking medical care. Additionally, both defendants moved for judgment at the close of evidence based on insufficient evidence of economic damages for certain future medical services and devices. The Hospital's primary contention was that Mr. Williams failed to show that future care damages, such as attendant care expenses and prosthetic leg costs, were the result of Dr. Blundon's negligence in treating his right leg rather than based on his preexisting injuries

[3] The two other physicians, Dr. Mohammad Ali Khan and Dr. Arthur N. S. Mcunu, Jr., were dismissed from the case on a summary judgment motion prior to trial.

[4] Fasciotomy is a surgical procedure in which the fascia, sheets of connective tissue surrounding muscle compartments, is cut to relieve swelling and restore blood flow. *Stedman's Medical Dictionary* 647, 653 (27th ed. 2000). This procedure is used to treat compartment syndrome—"a condition in which increased pressure in a confined anatomical space adversely affects the circulation and threatens the function and viability of tissues therein." *Id.* at 1751.

caused by the accident. The court reserved ruling on the motions, and the case was submitted to the jury.

On October 17, 2019, the jury returned a verdict against Dr. Blundon, finding that he committed medical malpractice and that his negligence was a cause of Mr. Williams's damages, and against the Hospital, finding that Dr. Blundon was its apparent agent. Mr. Williams was awarded economic and noneconomic damages totaling $6,285,549. The economic damages award included the following: $210,857 for durable medical equipment, $5,059,692 for attendant care, $165,000 for case management, and $550,000 for prosthetic leg costs. Judgment on the verdict was entered on October 22, 2019.

The Hospital timely filed a Motion for Judgment Notwithstanding the Verdict on the issues of apparent agency and economic damages, raising the same general arguments in support of its Motion for Judgment. Dr. Blundon also moved for judgment notwithstanding the verdict on the damages issue. A motion hearing was held on January 29, 2020. After hearing the parties' arguments, the court ruled from the bench and denied Dr. Blundon's motion with the exception that the case management award be reduced to $16,500 as the parties conceded that the original amount of $165,000 was a clerical error. The court reserved ruling on the Hospital's motion so that it could review the apparent agency cases referenced by counsel.

Subsequently, the court issued an order memorializing its oral ruling as to Dr. Blundon's motion and granting the Hospital's motion on the basis of apparent agency. It then ordered judgment in favor of the Hospital. Thereafter, Mr. Williams filed this appeal

and the Hospital noted a conditional cross-appeal.[5] Additional facts are provided as necessary in the relevant sections below.

DISCUSSION

Mr. Williams challenges the circuit court's decision granting the Hospital's Motion for Judgment Notwithstanding the Verdict on two grounds—the ruling was erroneously based on Mr. Williams's failure to show that he knew of Dr. Blundon's relationship with the Hospital, which is not an element of apparent agency, and there was legally sufficient evidence establishing that Dr. Blundon was the apparent agent of the Hospital. The Hospital asserts that the court did not impose this knowledge requirement upon Mr. Williams and that it correctly concluded that the evidence adduced at trial failed to satisfy the elements of apparent agency liability. And, as a conditional cross-appeal, the Hospital argues that certain economic damages lacked adequate evidentiary support, focusing primarily on the damages for attendant care, which it contends compensated Mr. Williams for his preexisting accident injuries in addition to his amputated right leg.

As explained further below, we affirm the grant of judgment notwithstanding the verdict, concluding that the court's ruling was not based on Mr. Williams's failure to establish his knowledge of the relationship between the Hospital and Dr. Blundon and that there was insufficient evidence from which a reasonable jury could make the requisite finding that Mr. Williams subjectively believed that Dr. Blundon or, more generally, the

[5] Dr. Blundon did not appeal the circuit court's denial of his Motion for Judgment Notwithstanding the Verdict.

physicians attending to him were the Hospital's agents. In light of our disposition of those issues, we do not to consider the conditional cross-appeal.

I. STANDARD OF REVIEW

An appellate court reviews the grant of a motion for judgment notwithstanding the verdict for legal correctness. *Retina Grp. of Wash., P.C. v. Crosetto*, 237 Md. App. 150, 174 (2018). In doing so, the court inquires "whether on the evidence presented a reasonable fact-finder could find the elements of the cause of action by a preponderance of the evidence." *JAI Med. Sys. Managed Care Org., Inc. v. Bradford*, 209 Md. App. 68, 76 (2012) (quoting *Univ. of Md. Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012)). "If the record discloses any legally relevant and competent evidence, however slight, from which the jury could rationally find as it did," judgment notwithstanding the verdict was improper. *Jacobs v. Flynn*, 131 Md. App. 342, 353 (2000). But "if the evidence . . . does not rise above speculation, hypothesis, and conjecture, and does not lead to the jury's conclusion with reasonable certainty," the court should affirm the grant of the motion. *Id.* at 353. Importantly, the court must assume the truth of the nonmoving party's evidence, including all fairly deducible inferences therefrom, and resolve all conflicts in the evidence in that party's favor. *Barnes v. Greater Balt. Med. Ctr., Inc.*, 210 Md. App. 457, 480 (2013).

II. GOVERNING LEGAL PRINCIPLES

The doctrine of apparent agency is an exception to the general principle that one who engages an independent contractor is not vicariously liable for the contractor's

negligence. *See Hunt v. Mercy Med. Ctr.,* 121 Md. App. 516, 545, 547 (1998). In *Bradford v. Jai Medical Systems Managed Care Organization, Inc.*, 439 Md. 2 (2014), the Court of Appeals expressed the apparent agency doctrine as consisting of three elements. *See id.* at 18. Specifically, after reviewing Maryland cases applying this theory in the medical context, the Court explained that a plaintiff must show that: (1) "the apparent principal create[d], or acquiesce[d] in, the appearance that an agency relationship existed"; (2) the plaintiff subjectively believed that an agency relationship existed between the apparent principal and apparent agent and relied on that belief in seeking the services of the apparent agent; and (3) the plaintiff's personal belief and reliance are reasonable. *Id*. The first and third elements are objective while the second is a subjective element. *Id.* at 18-19. For purposes of this appeal, we tailor our discussion to the first two elements.

The first prong of apparent agency focuses on the apparent principal's conduct, either affirmative acts or failure to take corrective steps, that created an appearance of an agency relationship. *See id.* at 18-19; *Progressive Cas. Ins. Co. v. Ehrhardt*, 69 Md. App. 431, 441 (1986). In *Mehlman v. Powell,* 281 Md. 269 (1977), the seminal case applying this theory in the hospital setting, the Court provided insight on how a hospital creates such an appearance with respect to independent-contractor physicians. There, the decedent, who was suffering from shortness of breath and other discomfort, went to the emergency room located in the defendant-hospital where an attending physician made a faulty diagnosis. *Id.* at 271. He was eventually sent home and died two days later. *Id.* The decedent's widow

and children filed suit against the hospital and the physician for medical malpractice and obtained a judgment against them. *Id.* at 271-72.

In affirming the denial of the hospital's motion for directed verdict, the Court concluded that there was sufficient evidence establishing the hospital's liability for the physician's negligence under an apparent agency theory. *Id*. at 272-75. As to the first element, it held that the hospital represented that it employed the emergency room staff, reasoning that "all appearances suggest and all ordinary expectations would be that the Hospital emergency room, physically a part of the Hospital, was in fact an integral part of the institution" and that "[i]t is not to be expected, and nothing put [the decedent] . . . on notice, that the various . . . departments of a complex, modern hospital . . . are in fact franchised out to various independent contractors." *Id.* Later, in *Bradford*, the Court clarified this specific holding of *Mehlman*, explaining that "[t]he physical proximity of the emergency room to the hospital and the absence of any signs indicating that the emergency room was not part of the hospital" constituted a representation by the hospital that it employed the negligent physician. 439 Md. at 17. Of the few reported decisions in Maryland involving medical-related apparent agency claims, none have yet to opine on what "signs," such as a medical consent form informing incoming patients that physicians are independent contractors, provide adequate notice, thereby preventing a plaintiff from establishing apparent agency. *But see Debbas v. Nelson*, 389 Md. 364, 384-86 (2005) (dispute of material fact existed concerning hospital's apparent agency liability based on,

among other factors, its medical consent form that patient signed, which stated that doctors are hospital staff).

Under the second element, a plaintiff must show that he or she "subjectively believed that an employment or agency relationship existed between the apparent principal and the apparent agent" and "relied on that belief in seeking medical care from the apparent agent." *Bradford*, 439 Md. at 18-19. To understand how this subjective element is satisfied, we turn to *Bradford*, which appears to be the only reported Maryland decision providing any meaningful analysis of this subjective prong in the medical malpractice context. In that case, the plaintiff sued a managed care organization, asserting that a podiatrist in the defendant's network who provided the negligent medical care was its apparent agent. *Id.* at 4-5. On appeal, the defendant argued that the evidence was insufficient to support the jury verdict in the plaintiff's favor, and the Court agreed. *Id.* at 5. The Court based its ruling on the third element of apparent agency—that it was not reasonable for the plaintiff to believe that the podiatrist worked for the defendant. *Id.* Regarding the second element, however, the Court concluded that the plaintiff's testimony stating that she believed the physician was the defendant's employee and the reasons for this belief satisfied the subjective element even though the defendant's evidence suggested that one of those reasons was invalid. *Id.* at 20.

Like *Bradford*, plaintiffs in other medical negligence cases in Maryland have introduced similar proof, testifying to their perception that the treating physician or the hospital staff generally was the hospital's agent or employee and their reliance on that

belief. *See Jacobs*, 131 Md. App. at 385 n.13; *Hetrick v. Weimer*, 67 Md. App. 522, 533 (1986), *rev'd on unrelated grounds*, 309 Md. 536 (1987); *see also Faya v. Almaraz*, 329 Md. 435, 460 (1993) (apparent agency claim against hospital was improperly dismissed when plaintiffs "alleged that Hopkins represented that Dr. Almaraz was its agent; that they believed that he was its agent; and that they relied on this representation and Hopkins' excellent medical reputation in selecting Almaraz as their surgeon"). These cases suggest that plaintiffs need not establish their belief as to the particular negligent physician and instead may show that they held a general belief that the physicians or staff at the hospital were agents. *See Hunt,* 121 Md. App. at 547-48 (summary judgment improper when factual issues existed concerning the hospital's vicarious liability for misdiagnosis of patient who never met the negligent physician and was presumed to be unaware of the physician's involvement in his medical care).

While direct testimony is sufficient to satisfy this second prong, the Court in *Mehlman* seems to suggest that the subjective belief and reliance of a patient who died sometime after the negligent treatment, and thus is unable to provide testimony, may be established by inference from other evidence supporting the apparent agency claim. In addition to the holding discussed above, the Court concluded that the record supported the finding that the decedent justifiably relied on the belief that the emergency room staff were hospital employees. *See Mehlman,* 281 Md. at 273-75. When explaining its reasoning and the relevant facts, there was no mention of testimony by the decedent, presumably because no such testimony existed as he died two days after the negligent treatment. *See id.* at 271,

273-75. And while the Court did not identify the specific evidence on which it based this particular holding, it did state that "[w]hen [the decedent] made the decision to go to Holy Cross Hospital, he . . . obviously was relying on Holy Cross Hospital to provide [medical services]." *Id.* at 274. One plausible reading of *Mehlman* is that the Court viewed the decedent's decision to seek treatment from the hospital as adequate proof establishing his subjective belief and reliance.

III. ANALYSIS

The circuit court did not err in granting the Hospital's Motion for Judgment Notwithstanding the Verdict. In coming to this conclusion, we first turn to Mr. Williams's argument that, in granting the motion, the court erroneously applied the apparent agency doctrine by requiring proof that Mr. Williams knew of the relationship between Dr. Blundon and the Hospital. In other words, Mr. Williams alleges that the court's decision was based on his failure to prove that he knew Dr. Blundon was an independent contractor. He cites the following statements made by the court during the motion hearing as the reasoning for its subsequent order:

> [T]here is no evidence the Plaintiff[] ever perceived the hospital held out or represented that Dr. Blundon was an agent. There is no evidence that Mr. Williams knew of any relationship between Dr. Blundon and the hospital. There is no evidence that Mr. Williams knew of the existence of Dr. Blundon.

According to Mr. Williams, the court, by requiring such a showing, improperly imposed upon him a "duty or obligation to inquire of the relationship between Dr. Blundon and the Hospital." The Hospital counters that the court did not require such a showing, noting that

Mr. Williams could not recover if he knew that Dr. Blundon was an independent contractor, and that the above comment formed no part of the court's eventual holding.

We are unable to determine with precision whether the court's decision was based on the reasons mentioned in its statement during the motion hearing. The court did not render its ruling on the Hospital's motion during the hearing and instead issued a written order a few weeks later. In the order, the court offered a brief explanation of its rationale, stating that "the facts of this case are not 'sufficiently analogous' to any of the cited Maryland cases to support this verdict" and that it "declines to extend the concept of apparent agency as set forth in the proffered out of state cases," where plaintiffs' unconsciousness when arriving at the hospital did not preclude recovery under this theory. It did not specify in what way this case differed from the Maryland cases cited by the parties. At the end of the order, the court announced its decision, granting judgment notwithstanding the verdict "[f]or the reasons set forth in Defendant Dimension[']s Motion . . . and for the reasons set forth on the record at the hearing." It is possible that the court, in either of the previously quoted statements from the order, was referencing its comment from the motion hearing, though we cannot be sure. But assuming that it was, we disagree with Mr. Williams's reading of the court's comment—that, as evidenced by that statement, the court erroneously required Mr. Williams to show that he knew that Dr. Blundon was an independent contractor. Instead, the court appears to be emphasizing the absence of evidence that he personally believed Dr. Blundon was the Hospital's agent or employee.

Notably, a few sentences after making this observation, the court correctly reiterated the three elements of apparent agency.

Mr. Williams is correct in asserting that Maryland courts do not require a plaintiff to show knowledge of the independent contractor relationship. *See Bradford*, 439 Md. at 18. Such a showing would defeat an apparent agency claim—the plaintiff would have no basis for believing that an agency relationship existed. *See id.* at 18 ("Apparent authority results from certain acts or manifestations by the alleged principal to a third party leading the third party to believe that an agent had authority to act." (quoting *Klein v. Weiss*, 284 Md. 36, 61 (1978))). We also agree that the apparent agency doctrine as applied in Maryland does not impose upon the patient a duty to inquire into the treating physician's relationship with the hospital. *See Mehlman*, 281 Md. at 275 ("[I]t cannot seriously be contended that respondent, when he was being carried from room to room . . . should have inquired whether the individual doctors who examined him were employees . . . or were independent contractors." (quoting *Stanhope v. L.A. Coll. of Chiropractic*, 128 P.2d 705, 708 (Cal. Ct. App. 1942))). We do not, however, view the court's statement during the hearing as endorsing a concept completely at odds with the apparent agency doctrine, which it correctly summarized a few moments later. *See Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) ("It is a well-established principle that '"[t]rial judges are presumed to know the law and to apply it properly."'" (alteration in original) (quoting *State v. Chaney*, 375 Md. 168, 179 (2003))). As such, we conclude that the court did not

improperly impose this knowledge requirement in granting judgment notwithstanding the verdict.

Turning to his second challenge, Mr. Williams contends that he presented sufficient evidence to support his claim of apparent agency. Citing *Mehlman*, he argues that a hospital represents that a physician is its agent by holding itself out as providing a given service without informing the patient of the treating physician's contractor status. The Hospital, Mr. Williams argues, made such a representation based on its official designation as a trauma center treating orthopedic injuries and its failure to notify him that Dr. Blundon, or any other physician in the Trauma Center, was an independent contractor. According to his trial testimony, Mr. Williams did not see any signs at the Hospital or personally sign any documents stating that physicians are not Hospital employees, and no one informed him of this fact. Additionally, Mr. Williams claims that, under *Mehlman*, evidence of the Hospital's representation also established his subjective reliance. Conversely, the Hospital attests that in order to prove reliance, a plaintiff must actively choose to go to the hospital for medical care, which Mr. Williams did not do in light of his incapacitated state after the accident and state protocol requiring the paramedics to transport him to the Hospital. It further alleges that Mr. Williams's testimony regarding his awareness while at the Hospital and lack of objection to medical care did not demonstrate his reliance. And, as for the first element, the Hospital argues that its medical consent form notified him of Dr. Blundon's independent contractor status. We need not determine whether the representation element

or the reliance component of the second prong were satisfied because we rest our decision to affirm on the lack of evidence of Mr. Williams's subjective belief.[6]

Mr. Williams alleges that the evidence presented supports a finding that he personally believed the physicians and staff attending to him, including Dr. Blundon, were agents or employees of the Hospital. Specifically, he references his testimony that he was aware he was at the Hospital and that he did not object to and was relying on the Hospital for care. He also argues that medical evidence, such as the trauma assessment report describing him as "oriented" to person, place, and time, allowed the jury to conclude that he was able to and did in fact form a belief that those attending to him were agents of the Hospital. We disagree and hold that the evidence was insufficient for a reasonable jury to find that Mr. Williams actually entertained a belief that an agency or employee relationship existed. There was no direct testimony from Mr. Williams that he believed that Dr. Blundon or, more generally, the physicians or staff at the Hospital were its agents or employees. He did, however, testify that he did not know and was never introduced to Dr. Blundon prior to the operation:

> [COUNSEL FOR MR. WILLIAMS]: And did you know an individual by the name of Dr. Montague Blundon?
>
> [MR. WILLIAMS]: No.

[6] Although the Hospital's consent form plays no part in this decision, we note that, assuming a consent form or similar document with an independent contractor disclaimer could provide adequate notice and thus defeat an apparent agency claim, it would be incongruous to bar recovery under this theory for a patient who personally signed such a form but not for a patient who was unconscious or otherwise incapable of signing when brought to the hospital.

> [COUNSEL FOR MR. WILLIAMS]: Okay. Had you seen him before?
>
> [MR. WILLIAMS]: No.
>
> [COUNSEL FOR MR. WILLIAMS]: Do you know how Dr. Blundon became your doctor?
>
> [MR. WILLIAMS]: No.
>
> [COUNSEL FOR MR. WILLIAMS]: Did you choose Dr. Blundon?
>
> [MR. WILLIAMS]: No.
>
> [COUNSEL FOR MR. WILLIAMS]: Who did you choose to treat you?
>
> [MR. WILLIAMS]: I didn't have a choice. All I relied on was the hospital to treat me.
>
> [COUNSEL FOR MR. WILLIAMS]: All right. And had you ever spoken to Dr. Blundon?
>
> [MR. WILLIAMS]: No.

This contrasts with the circumstances of *Bradford* where the Court held that this element was sufficiently proven based on the plaintiff's testimony in which she stated her belief that the negligent physician was an employee and provided two reasons for this understanding. 439 Md. at 20.

Moreover, Mr. Williams's testimony of his awareness at the Hospital does not provide a reasonable basis for concluding that he held the requisite subjective belief.[7] In

---

[7] The Hospital argues that Mr. Williams's contradictory trial testimony is entitled to no weight, citing the following language in *Kucharczyk v. State*, 235 Md. 334 (1964), as support: "When a witness says in one breath that a thing is so, and in the next breath that

our view, his awareness of where he was being treated says nothing about his perception about who—an employee or independent contractor—was providing that treatment. And we do not believe that a reasonable jury could infer from testimony regarding his lack of objection and reliance on the Hospital for care that these actions were premised on a belief that the treating physicians and staff were agents or employees of the Hospital. Lastly, we note that, despite the conflicting medical reports and other evidence regarding Mr. Williams's level of consciousness at the Hospital, we are required to view this evidence in

---

it is not so, his testimony is too inconclusive, contradictory, and uncertain, to be the basis of a legal conclusion." *Id.* at 338 (quoting *Slacum v. Jolley*, 153 Md. 343, 351 (1927)). The Hospital does not identify the specific statements that are allegedly inconsistent. From what we can gather, it seems to take issue with Mr. Williams's statement on direct examination about his awareness that he was being treated at the Hospital and his assertion on re-cross-examination the he did not recall any conversation with emergency medical personnel. Notably, Mr. Williams also testified that he recalled the paramedics telling him he was going to the Hospital, but this was struck as hearsay.

We recognize that this Court and the Court of Appeals have made clear that "[t]he doctrine set forth in *Kucharczyk* is extremely limited in scope." *Smith v. State*, 302 Md. 175, 182 (1985). More recently, this Court explained "the massive disconnect between the case of *Kucharczyk v. State*, with its microscopically narrow holding that has never been repeated, and the so-called *Kucharczyk* Doctrine, a bloated attack on the legal sufficiency of evidence" that "assumes that damaged credibility is inherent incredibility and proceeds automatically to the exclusionary sanction." *Rothe v. State*, 242 Md. App. 272, 276, 284 (2019). Judge Moylan further stated that "the so-called *Kucharcyzk* Doctrine, if it ever lived, is dead. . . . Damaged credibility is not necessarily inherent incredibility." *Id.* at 285; *see also Owens-Illinois, Inc. v. Hunter*, 162 Md. App. 385, 394 (2005) ("[T]he Court of Appeals has suggested that, whatever continuing vitality the *Kucharczyk* doctrine may have in criminal cases, it seems to be far less applicable in civil cases because the lower standards of proof could tolerate less consistent testimony."). With that said, we decline to extend *Kucharczyk* to the facts of this case and thus reject the Hospital's assertion that Mr. Williams's trial testimony is entitled to no weight. And to the extent that the Hospital argues that Mr. Williams's pretrial deposition testimony conflicts with his statements during trial, we note that *Kucharczyk* is inapplicable. *See Brooks v. Daley*, 242 Md. 185, 192 (1966).

his favor. But assuming that he was able to form a subjective belief does not reasonably support the conclusion that he did in fact hold such a belief. *See B. P. Oil Corp. v. Mabe*, 279 Md. 632, 644-45 (1977) (emphasizing that apparent agency, as well as agency by estoppel, requires "actual reliance upon the part of the person injured" and noting that "[i]t is not enough that he [or she] might have been . . . so misled" (quoting 1 Floyd R. Mechem, *A Treatise on the Law of Agency* § 245, at 177-78 (2d ed. 1914))).

Although *Bradford* seemingly set a low evidentiary bar for establishing subjective belief and reliance, this in no way diminishes the importance of this element—the general rationale behind this theory of liability is to remedy the harm caused by a plaintiff's misapprehension that an agency relationship exists. *See Hetrick*, 67 Md. App. at 532 ("One party may be held liable, as a principal, for acts of another party when the purported principal has, by words or deeds, induced a third party to believe that the purported agent is acting on behalf of the purported principal."). We decline to lower that bar by inferring Mr. Williams's subjective belief from his testimonial and medical evidence, especially when, unlike the deceased patient in *Mehlman*, he had the opportunity to testify to his personal belief. And we are aware of no controlling caselaw mandating such an outcome under these facts. Thus, because Mr. Williams did not adduce adequate evidence from which a rational jury could find that he subjectively believed that an agency relationship existed, the jury verdict against the Hospital cannot stand.

For the foregoing reasons, we affirm the circuit court's judgment concluding that the record is devoid of sufficient evidence to support the jury verdict against the Hospital

under a theory of apparent agency. Consequently, we need not address the Hospital's conditional cross-appeal.

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