Circuit Court for Montgomery County
Case No. 455979V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0091

September Term, 2024

STEVEN KRAWATSKY, ET AL

v.

RACHEL AVRUNIN, ET AL

Beachley,
Ripken,
Robinson, Dennis M., Jr.,
(Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: May 30, 2025

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

This case involves the claims of several parties arising out of allegations that three children—B.A., O.B., and S.B.[1]—were sexually abused by Steven Krawatsky ("Krawatsky"), a rabbi who was a counselor at a summer camp in 2015. Following the investigations into these statements, over the next few years, the allegations and the summer camp's response were explored in various publications which discussed the controversy but did not identify Krawatsky. At the end of 2017, Chaim Levin ("Levin") published a blog post regarding the allegations that identified Krawatsky. Shortly thereafter in early 2018, The Jewish Week, Inc. ("JWI") published three articles as part of an investigative series concerning Krawatsky, the camp, and the investigative response to the allegations. Two of those articles were authored by Hannah Dreyfus ("Dreyfus"). Members of the children's families—the Avrunin family, the Barad family, and the Becker family ("the families")—were quoted in the articles.

In October of 2018, Krawatsky filed suit in the Circuit Court for Montgomery County, asserting claims of defamation and related torts against JWI, Dreyfus, Levin, and the three families.[2] The families in turn filed claims against Krawatsky on behalf of their minor children related to the allegations of sexual abuse. JWI and Dreyfus were dismissed from the lawsuit in advance of trial based on a summary judgment ruling. The remaining

[1] To protect the privacy of the minor children, we identify them with the same initials used by the parties in their briefs.

[2] We note that Krawatsky was joined by his wife Shira Krawatsky as to some of his claims. However, because the appeal largely relates to issues concerning the claims solely against Krawatsky and not the Krawatskys' joint claims, we primarily refer to Steven Krawatsky alone.

claims proceeded to a jury trial, which resulted in a verdict in favor of O.B. and B.A. on their affirmative claims. The jury did not rule in favor of S.B. The circuit court then entered judgment as a matter of law dismissing the remaining claims. The instant appeal and cross-appeals ensued.

ISSUES PRESENTED FOR REVIEW

Krawatsky has presented six questions for our review, which we have consolidated into the following:[3]

> I. Whether the circuit court abused its discretion in its management of the trial, its evidentiary rulings, its instruction of the jury, its handling of punitive damages, or its handling of a claim of judicial bias.
>
> II. Whether the circuit court erred in determining that Krawatsky was a limited purpose public figure.

[3] Rephrased from:

1. Did the trial court err in determining that Rabbi Krawatsky is a "limited public figure" who must prove actual malice to sustain his defamation claims?
2. Did the trial court abuse its discretion by, *sua sponte*, ordering, on the first day of trial, that defendants' assault and battery counterclaims would be tried first and separately from plaintiffs' defamation claims?
3. Did the trial court abuse its discretion by excluding the testimony of a highly qualified expert psychiatrist on critical and relevant subjects when that testimony would have assisted the jury in understanding the evidence?
4. Did the trial court err in this civil case by instructing the jury using the pattern jury instruction for criminal attempted battery instead of the pattern civil assault jury instruction as the parties and court had earlier agreed?
5. Did the trial court err by allowing the jury to award punitive damages after the jury found that neither claimant had suffered actual injury and thus awarded each of them only nominal damages of $1?
6. When viewed in its entirety, does the record reflect judicial bias and prejudice sufficient for this Court to reverse and remand the case for a new trial before a judge other than the one who presided at trial?

In addition, the families and Levin ("cross-appellants") have each presented questions in their cross-appeals, which we have consolidated into the following single issue:[4]

> III. Whether the circuit court abused its discretion in denying the cross-appellants' summary judgment motions.

For the reasons to follow, we affirm the circuit court's rulings with respect to its management of the trial, its evidentiary rulings, its instruction of the jury, its handling of punitive damages, and its handling of a claim of judicial bias. We further hold that in light of our resolution of the first issues, the circuit court's limited purpose public figure analysis is moot. Finally, because the cross-appellants' cross-appeals are also moot, we decline to address them.

FACTUAL AND PROCEDURAL BACKGROUND

In the summer of 2015, three children from the three families—B.A., O.B., and S.B.—attended a four-week summer day camp in Frederick County, Maryland. The camp was run by members of the Orthodox Jewish community. Krawatsky, an Orthodox rabbi,

[4] Each of the cross-appellants presented their questions differently. The Avrunins presented questions in their brief as follows:

> I. Did the trial court err in denying the Avrunins' motion for summary judgment?
> II. Did the trial court err in denying the Avrunins' motion for reconsideration of the trial court's denial of their motion for summary judgment?

Levin presented the following question:

> Did the trial court err by denying Appellee Levin's pre-trial motion for summary judgment?

The Barads did not include a question presented; however, the context of the first two sections of their argument concerns the trial court's denial of their motion for summary judgment. The Beckers did not include a question presented.

worked at the camp in the role of head counselor in charge of boys who would be entering second grade to fifth grade. Krawatsky was a camp counselor to all three children at the camp. After B.A. returned home from the camp, he reported to his parents that Krawatsky had offered him and O.B. $100 to touch Krawatsky's penis. B.A. also reported that on three occasions, Krawatsky had been naked in front of him. The Avrunins then informed the camp's director of their son's disclosure. The camp director reported the allegations to child protective services. B.A. later disclosed, and testified at trial, that Krawatsky had committed a second-degree sexual offense on him.

The allegations were investigated by Child Protective Services ("CPS") and by the Frederick County Sheriff's Office. CPS conducted forensic interviews of B.A. and of O.B. CPS initially made a determination of "indicated" as to B.A. and a determination of "unsubstantiated" as to O.B.[5] Krawatsky filed an administrative appeal of the findings. In February of 2016, Krawatsky and CPS reached an agreement in which CPS reduced the finding as to B.A. to "unsubstantiated" from "indicated." Krawatsky agreed to withdraw the administrative appeal. The Frederick County Sheriff's Office made no arrests following its investigation; nor did the Frederick County State's Attorney pursue criminal charges.

[5] There are three findings a local department may make after investigating a report of child abuse. *McClanahan v. Wash. Cnty. Dep't of Soc. Serv.'s*, 445 Md. 691, 701 (2015). "'Indicated' means a finding that there is credible evidence, which has not been satisfactorily refuted, that abuse, neglect, or sexual abuse did occur." *Id.* (internal citation omitted). "'Ruled out' means a finding that abuse, neglect, or sexual abuse did not occur." *Id.* at 702. (internal citation omitted). "'Unsubstantiated' means a finding that there is an insufficient amount of evidence to support a finding of indicated or ruled out." *Id.* (internal citation omitted).

Following the disposition by CPS, in February of 2016, the camp issued a statement, asserting that an allegation of "improper conduct" by "a former [camp] employee" had been reported to and investigated by CPS. The camp stated that CPS had "determined that the allegations against the employee [were] unsubstantiated" and that the matter was now closed.[6]

In March of 2016, Frum Follies, a blog that publishes articles relating to sexual abuse in Jewish communities, posted an article stating that "unsubstantiated" did not mean "ruled out" and questioning other aspects of the camp's statement. Additionally in March of 2016, Jewish Community Watch, a victim advocacy organization that focuses on the Orthodox Jewish community, posted an article responding to the camp's statement and questioning the extent of the camp's efforts in informing parents and the community about the allegations. Jewish Community Watch also held a town-hall style meeting at an Orthodox synagogue in Baltimore County, drawing attention to issues of sexual abuse in the Jewish community. This event was covered by the Baltimore Jewish Times, which published an article in April of 2016 describing the meeting and discussing the camp's statement. In the summer of 2017, Dr. Shira Berkovits published an article concerning institutional abuse in the Jewish community. The article, which was published in a quarterly publication dedicated to Orthodox rabbinical thought, used an altered version of

[6] In February of 2016, CPS received similar allegations relating to Krawatsky concerning a third child, S.B. After conducting an investigation, CPS made a determination that the allegations were unsubstantiated as to S.B. In January of 2017, CPS received another report concerning S.B., and made a determination that abuse was indicated as to S.B. Krawatsky appealed the determination which resulted in an agreement with CPS to change the determination to unsubstantiated in exchange for a withdrawal of the appeal.

the families' stories as a case study. None of these articles or publications identified Krawatsky.

In November of 2017, Levin posted a blog entry stating that Krawatsky was "extremely dangerous" and had been alleged to have inflicted "severe harm on multiple children." Levin also reposted the blog post on his Facebook page. Krawatsky hired a public relations firm, which created internet content containing positive information concerning Krawatsky should internet searches occur regarding him. In January of 2018, JWI published three articles concerning the matter. The first article, titled "Did Baltimore's Orthodox Community Turn a Blind Eye to Child Sexual Abuse?" contained a lengthy discussion concerning the allegations, the investigations, and the Orthodox community's response. The second article, titled "'Kids Were Hurt. And Nothing Was Done.'", contained more details concerning the stories of the three children from the families' perspectives. The third article, an editorial titled "A Painful Lesson on Child Sexual Abuse," discussed abuse as a widespread concern in Jewish institutions.

Following the publication of the articles, in October of 2018, the Krawatskys filed suit against JWI, Dreyfus, the families, and Levin, alleging defamation and other related torts. The Avrunins and Beckers filed counter claims against Krawatsky, presenting multiple allegations which included battery as to B.A. and S.B. The Barads filed a separate

claim against Krawatsky, which was later consolidated with the other claims also including allegations of assault as to O.B.[7]

Prior to trial, several of the litigants moved for summary judgment. JWI and Dreyfus moved for summary judgment as to the Krawatskys' claims against them. Their arguments included contentions that at the time the January 2018 articles were published, Krawatsky was a limited purpose public figure, and that because actual malice could not be demonstrated, the defamation claims failed. Because the remainder of the claims were contingent on the existence of either defamation or actual malice, JWI and Dreyfus contended that any recovery against them was precluded. As to JWI and Dreyfus, the circuit court agreed that Krawatsky was a limited purpose public figure; because there was no actual malice on the part of JWI and Dreyfus, the court granted summary judgment.

The families and Levin likewise moved for summary judgment, arguing that Krawatsky was a limited purpose public figure as to them as well.[8] The circuit court denied these motions.

The case proceeded to a jury trial in February of 2024. The jury reached a verdict finding that Krawatsky had assaulted O.B. and battered B.A.; however, the jury concluded that Krawatsky had not battered S.B. The jury found Krawatsky liable as to O.B. and B.A.

[7] The families additionally asserted claims against the camp and against David Finkelstein, the director of the camp. The circuit court granted summary judgment in favor of the camp and Finkelstein prior to trial.

[8] Mr. Becker moved for summary judgment on his own behalf on the basis that he had not communicated with third parties in relation to any of the statements alleged to be defamatory. The circuit court granted Mr. Becker's motion. Any discussion of the families as concerning the Krawatsky claims does not extend to Mr. Becker.

and awarded compensatory damages of $1 each. The jury awarded punitive damages to the two children in the amount of $8,000 each.

Following the jury's determination that the assault on O.B. and battery on B.A. had occurred, while the parties were presenting evidence concerning damages, the families and Levin filed new motions for judgment in their favor as to the Krawatskys' defamation claims. The court then entered judgment in favor of the families and Levin as to the Krawatskys' claims. The Krawatskys filed a timely notice of appeal to this Court. The families and Levin each filed timely notices of cross-appeal.

Further facts will be introduced as they become relevant to the analysis.

DISCUSSION

I. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN ITS MANAGEMENT OF THE TRIAL, ITS EVIDENTIARY RULINGS, OR ITS INSTRUCTION OF THE JURY; THE ARGUMENTS THAT THE CIRCUIT COURT ABUSED ITS DISCRETION IN ITS HANDLING OF PUNITIVE DAMAGES AND ITS HANDLING OF A CLAIM OF JUDICIAL BIAS ARE NOT PRESERVED.

Krawatsky asserts that the circuit court abused its discretion with respect to several aspects of the management of the trial. First, Krawatsky asserts that the court abused its discretion in ordering the families' counter claims to be tried before his defamation claims. Second, Krawatsky asserts that the court abused its discretion in excluding aspects of testimony from his expert. Third, he contends that the court abused its discretion in instructing the jury concerning civil assault. Fourth, Krawatsky claims the court abused its discretion in allowing the jury to award punitive damages premised on nominal damages. Fifth, Krawatsky claims the court was biased against Krawatsky. We address each contention in turn.

A. Presentation of Cases

i. Additional Facts

As recounted above, this matter involved multiple parties, claims, and counter claims on a variety of complex issues. The matter was scheduled for a six-week jury trial. At the pretrial conference which occurred the day before jury selection commenced, the court and the attorneys addressed the presentation of the cases so that the evidence would be heard in an organized, non-duplicative fashion. During that pretrial conference, Krawatsky's counsel acknowledged that "[o]ur claims depend on [the jury] not finding abuse," and similarly, that that the families' claims "depend on [the jury] not finding defamation. So [the jury] can't find [that the families] defamed [Krawatsky], but [Krawatsky] also abused the[] kids." The circuit court indicated that resolution of the assault claims first might also provide some resolution as to the defamation claims. Krawatsky's counsel contended that the defamation claims should be heard first because they had filed their defamation claims prior to the filing of the sexual abuse claims. The families contended that the claims were interrelated, and, as truth was a defense they were presenting in response to the defamation claims, presenting first the issue of whether sexual abuse occurred would aid in limiting the matters presented to the jury.

The court indicated that the issue related primarily to the order of presentation of evidence, and the court was unaware of any case law suggesting that "just because one party filed before the other one," they should present evidence first. No party provided case law on the subject, and the court stated that it would analyze the issue further and decide prior to opening statements.

The following morning, prior to the commencement of jury selection, the court made the following ruling concerning the order of presentation of evidence:

> Nobody really had any legal authority for me yesterday. So I spent some time last night . . . and took a look at this.
>
> * * *
>
> I looked, as I said, at some of the law on this issue about the order of proof and the trial court's discretion. The starting point is Maryland Rule 5-611, [s]ection A. It's entitled Control by [c]ourt and it provides as follows: "The [c]ourt shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence, so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." Notice . . . what's in that Rule and what's not in that Rule. One thing that's not in that Rule is, who filed first. That's not a factor that the [c]ourt uses in controlling the mode and order of witness presentation and other evidence presentation. Also, not in that Rule is the strategy of the litigants or the counsel. That's not a consideration for the [c]ourt. This is really for the [c]ourt to exercise some control over the mode and order of interrogating witnesses and those are the factors.

The court then cited several cases supporting the proposition that trial courts are vested with significant discretion in the order and presentation of evidence.[9] Based on the referenced legal authority, the court ruled that the trial would be conducted in phases, with the families' cases arising out of the alleged sexual abuse being tried first. The court indicated that if there was a finding of liability as to those claims, the case would then proceed to the damages phase and then to the Krawatskys' claims against the families and others as needed. The court ruled that if there was a finding of no liability, then the case

[9] The court cited *Ware v. State*, 360 Md. 650 (2000); *Bellamy v. State*, 119 Md. App. 296 (1998); and *McCray v. State*, 305 Md. 126 (1985).

would proceed to the defamation phase of the trial. Krawatsky's counsel objected to proceeding in that fashion, yet did not offer any legal authority to support his objection.

ii. Party Contentions

Krawatsky argues the court's decision concerning the order of the trial proceedings was an abuse of discretion. However, rather than viewing the decision as a presentation of evidence issue under Maryland Rule 5-611, Krawatsky asserts that the court ordered a "separate trial" of the families' claims and contends that such a decision may only occur within the confines of Maryland Rule 2-503. Because he asserts that he did not receive adequate notice or opportunity to prepare under that framework and he was tactically disadvantaged, Krawatsky argues that the circuit court abused its discretion.

The Avrunins respond that the circuit court did not order separate trials under Rule 2-503 because, based on the court's analysis, the court was not ordering separate trials; the court was deciding the order under which the evidence was to proceed pursuant to Rule 5-611. The Avrunins argue that the Krawatskys have presented the incorrect standard under which to analyze the court's decision. Regardless, they contend that the court acted within its discretion in determining the order of the presentation of evidence.

iii. Analysis

A trial court is required to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." Md. Rule 5-611(a).

The conduct of a trial rests largely in the "control and discretion of the presiding judge." *Kelly v. State*, 392 Md. 511, 543 (2006) (internal citation and quotation marks omitted). A court's exercise of discretion in this regard "will not be reversed absent abuse." *Applied Indus. Tech.'s v. Ludemann*, 148 Md. App. 272, 289 (2002). This includes the discretion to control presentation of witnesses and evidence in an orderly fashion. *See Ware v. State*, 360 Md. 650, 684 (2000).

> As a general proposition, trial judges have the widest discretion in the conduct of trials, and the exercise of that discretion should not be disturbed on appeal in the absence of clear abuse. Thus, a trial judge maintains considerable latitude in controlling the conduct of a trial subject only to an abuse of discretion standard.

Sumpter v. Sumpter, 436 Md. 74, 82–83 (2013) (quoting *City of Bowie v. MIE Prop.'s, Inc.*, 398 Md. 657, 684 (2007)). The abuse of discretion standard is a "high threshold." *Id.* at 85. An abuse of discretion may occur where "no reasonable person would take the view adopted by the [trial] court," where the court acts "without reference to any guiding rules or principles[,]" or where the decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what [the reviewing court] deems minimally acceptable." *Id.* (quoting *North v. North*, 102 Md. App. 1, 13–14 (1994)).

We perceive no abuse of discretion in the trial court's decision. "[T]rial judges have the widest discretion in the conduct of trials, and the exercise of that discretion should not be disturbed on appeal in the absence of clear abuse." *Sumpter*, 436 Md. at 82–83 (quoting *City of Bowie*, 398 Md. at 684). In this case, the circuit court contemplated the manner in which to conduct the scheduled six-week trial in a complex case that had been ongoing in excess of five years. The matter involved multiple parties, claims, and counter claims.

Further, as acknowledged by Krawatsky's counsel, the primary issue in both Krawatsky's and the families' cases—whether abuse occurred—overlapped. After determining that it had discretion to control the order and presentation of evidence, the court ordered that the trial proceed in the phases described above. Basing its decision on Maryland Rule 5-611 and applicable case law, the trial court determined that dividing the trial in this manner would be the most efficient way to proceed.

The court's decision to have the trial proceed in phases was a rational decision which referenced multiple guiding principles and contemplated the most effective way for the jury to be presented evidence. Such a determination cannot be said to be "beyond the fringe" of what is minimally acceptable. *Sumpter*, 436 Md. at 85 (quoting *North*, 102 Md. App. at 14).

We disagree with Krawatsky's assertion that the circuit court ordered "separate trials" under Maryland Rule 2-503. It is apparent from a review of the record that an order for separate trials is not what occurred. The court ordered that the issue of whether the abuse occurred was to be heard first, and the court further ordered the manner in which any of the remaining phases of the trial would be conducted. That is what was borne out at trial. Following the jury's determination of the first issue, the phases on liability and damages followed, consistent with the court's order. As is further clear from the court's decision on the record, should the jury have determined that sexual abuse did not occur, the remainder of the defamation case would have proceeded with a substantial portion of matter already decided—namely, that sexual abuse had not occurred, and therefore that the statements made by the families and Levin were false.

The court did not order separate trials under Maryland Rule 2-503, and we are satisfied that the court did not abuse its discretion in managing the presentation of evidence at trial.

B. Exclusion of Expert Testimony

i. Additional Facts

Prior to trial, the families filed a motion *in limine* to prohibit testimony that could be considered improper commentary on the children's credibility. The circuit court granted this motion on the record at a hearing in January of 2024, and later entered it in written form during trial. The court ordered that "testimony from any witness commenting or expressing opinions on the credibility of the minor children's allegations or whether abuse occurred is inadmissible and will not be received in evidence[.]" It further ordered that "if a proper foundation is laid, testimony from properly qualified expert witnesses about (1) child sexual abuse in general, and (2) the behavior that the behavioral sciences recognize as being a common reaction to a unique criminal act, without an opinion as to whether the three minor [p]laintiffs have been sexually abused, is admissible and will be received in evidence."

At trial, the Krawatskys presented Dr. Barbara Ziv as an expert witness in the field of forensic psychiatry. As permitted by the court's prior order, Dr. Ziv testified concerning her familiarity with the case. She also testified as to the general characteristics of pedophilic sex offenders, including the types of behavior they exhibit, the types of children they typically target, how "grooming behavior" manifests, and whether pedophilic sex offenders typically target multiple children at one time. Dr. Ziv additionally testified to the

characteristics generally seen in children who make allegations of sexual abuse. She explained the type of language commonly used by children who have been sexually abused. She also explained the concept of suggestibility and that children under third-grade age are more suggestible than older children. Dr. Ziv testified that evaluating children's behavior was not a reliable marker to evaluate whether abuse had occurred. She further testified as to what physical evidence could generally be expected in cases of sexual abuse, and in particular, anal rape.

The following attempts to elicit further testimony specific to the parties in the case also occurred:

> [Krawatsky's counsel]: Now with respect to this particular case, . . . have you formulated an opinion as to whether there was any grooming at all?

The court sustained an objection to this question.

Krawatsky's counsel also sought to introduce evidence concerning whether the children in this case were "lying."

> [Krawatsky's counsel]: Let's talk about [suggestive interviews] for a second. So, does that mean the children are lying; or does that mean the children have been fed a false memory?
>
> [The families' counsel]: Objection.
>
> [The court]: Sustained.
>
> * * *
>
> [The court]: The jury will disregard that question.
>
> [Krawatsky's counsel]: Could you talk a little bit about, a little more about suggestibility then?

> [Dr. Ziv]: So, children are suggestible, meaning if authority figures tell them something, even if it goes against their own experience, they will doubt themselves and their own experience.

The families' counsel objected to this testimony and requested that it be stricken. The court sustained the objection and granted the motion to strike the testimony.

Krawatsky's counsel also sought to elicit testimony concerning the type of evaluation Dr. Ziv had conducted of Krawatsky. The following discussion ensued:

> [Krawatsky's counsel]: And could you tell the jury what type of evaluation you did of [Krawatsky] in that five hours?
>
> [The families' counsel]: Objection, Your Honor.
>
> [The court]: Please come to the bench. . . . Where are you going with this?
>
> [Krawatsky's counsel]: (Unintelligible) evaluation (unintelligible).
>
> [The court]: Yeah, but if that opinion is not going to be elicited, then what difference does it make what . . . evaluation she did or anything, what relevance does that have?
>
> [Krawatsky's counsel]: I think it's relevant to the (unintelligible), Your Honor.
>
> [The court]: Well, I understand that, but unless it has something to do with the general area of child sexual abuse, you can ask her about those kind of things, but not the results of any evaluations; and, frankly, whether she did evaluations or not in this case doesn't matter. What matters is the general area of child sexual abuse and whether the facts, what the common characteristics are as my order indicates. That's where we're headed with this.

The court then excused the jury. Without the jury in the courtroom, the court confirmed that the areas in which Dr. Ziv was permitted to testify concerned the subject matter discussed in the earlier order, and not as to whether the children had been sexually abused. The court explained that if Krawatsky's counsel intended to elicit evidence that Dr. Ziv

had evaluated Krawatsky and determined that he did not fit a certain profile, that testimony would not be permitted; any inferences whether Krawatsky fit a profile was solely proper for the jury to decide as the finders of fact.

ii. Party Contentions

Krawatsky primarily challenges the court's exclusion of three aspects of Dr. Ziv's testimony, regarding: (1) the type of evaluation she conducted of Krawatsky; (2) whether she had formulated an opinion about the existence of grooming in this case; and (3) whether the children were lying.[10] Krawatsky argues that Dr. Ziv's testimony "regarding the

[10] Krawatsky also challenges the court's exclusion of Dr. Ziv's testimony on whether anal rape is a common form of child sexual abuse among pedophiles. We discern no abuse of discretion in the trial court's decision, as it appears the subject testimony was excluded for reasons other than those raised above. The following facts relate to this analysis:

> [Krawatsky's counsel]: Okay. Let's talk a little bit about physical evidence. How do you evaluate physical evidence in a sexual assault investigation?
>
> [Dr. Ziv]: Well, most times with children there is no physical evidence. The exception is when there is anal rape. Anal rape is, even among pedophiles, is actually relatively rare.

Rather than discussing evaluation of physical evidence in a sexual assault investigation, Dr. Ziv then discussed why this form of sexual abuse was rare among pedophiles. The families' counsel noted an objection, which the court sustained, stating the following:

> [The court]: . . . I'm going to strike and ask the jury to disregard that portion [of the testimony] that talks about how common or uncommon anal rape is. That wasn't the question that was asked.

Krawatsky's counsel did not attempt to elicit this testimony again in a form that would be responsive to the question asked.

Unlike the other portions of Dr. Ziv's excluded testimony, which, as will be discussed *infra*, were excluded due to infringing upon the jury's domain of witness credibility, the

behaviors of child abusers and victims"—and her application of those generalizations to the specific parties in this case—was outside the knowledge and experience of jurors. He contends that Dr. Ziv's testimony is similar to that of experts in cases where testimony related to an ultimate issue was determined to be admissible. Krawatsky argues that this evidence would have been helpful to the jurors and that its exclusion was "prejudicial." We understand Krawatsky's argument to be that the court abused its discretion by excluding the evidence related to this part of Dr. Ziv's potential testimony.

The Avrunins respond that the trial court did not abuse its discretion in limiting aspects of Dr. Ziv's testimony. They argue that Dr. Ziv was permitted to testify generally concerning behavioral patterns of abusers and victims, thus fulfilling her educational role. They contend that the court properly excluded Dr. Ziv's testimony concerning credibility, and that, additionally, there was no substantial prejudice resulting from its exclusion.

iii. Analysis

"We review a circuit court's decision to admit expert testimony for an abuse of discretion." *Ingersoll v. State*, 262 Md. App. 60, 76 (2024) (quoting *Abruquah v. State*, 483 Md. 637, 652 (2023)). Because trial courts are afforded substantial deference in this area, it is "rare" that a trial court's "exercise of discretion to admit or deny expert testimony will be overturned." *Id.* (quoting *State v. Matthews*, 479 Md. 278, 306 (2022)). An appellate court will not reverse such a decision unless the trial court's decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that

court struck Dr. Ziv's testimony here because it was not responsive to the question asked. We discern no abuse of discretion in this regard.

court deems minimally acceptable." *Id.* (quoting *Matthews*, 479 Md. at 305) (further citation and quotation marks omitted).

"[A] witness, expert or otherwise, may not give an opinion on whether [the witness] believes [another] 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." *Robinson v. State*, 151 Md. App. 384, 394 (2003) (quoting *Bohnert v. State*, 312 Md. 266, 278 (1988)). "[T]he credibility of a witness and the weight to be accorded the witness' testimony are *solely within the province of the jury*." *Fallin v. State*, 460 Md. 130, 154 (2018) (emphasis added) (quoting *Bohnert*, 312 Md. at 277).

The extent of permissible expert testimony in child sexual abuse cases has been explored at length in Maryland. *See Fallin*, 460 Md. at 135–38 (collecting cases). In *Bohnert*—a case with no eyewitnesses or physical evidence—the Supreme Court of Maryland held that it was an abuse of discretion to allow an expert to testify that in her opinion, abuse had occurred. 312 Md. at 270, 276–78. The Court held that this was because the expert's opinion that the child had been abused was "tantamount to a declaration by [the social worker] that the child was telling the truth[.]" *Id.* at 278.

The Court expounded upon that holding in *Hutton v. State*, which discussed the testimony of two expert witnesses concerning general behaviors of child sexual abuse victims. 339 Md. 480, 485–90 (1995). Each expert also provided testimony concerning the specific child witness in the case; each expert testified that the expert had assessed the child's credibility concerning the allegations based on specific behavior outlined as hallmarks of abuse victims. *Id.* at 487–90. The Court held that the testimony attributing the

characteristics of abuse to the specific victim in the case constituted indirect commentary on the witness's truthfulness and was therefore impermissible. *Id.* at 504–05.

This Court also addressed aspects of expert testimony that do not infringe on credibility determinations in *Yount v. State*, 99 Md. App. 207, *cert. denied* 335 Md. 82 (1994). This Court held that "the arcane context" of child sexual abuse "would be of appreciable help" to the jury. *Id.* at 212. In that case, the expert witness provided general testimony concerning phenomena frequently seen in child sexual abuse cases—particularly regarding the commonality of child victims recanting initial abuse accusations. *Id.* at 210–11. The expert did not testify as to whether sexual abuse had occurred in that particular case. *Id.* at 214. This Court held that, beyond providing insight into the context of the behavior of abuse victims, the testimony "did nothing to indicate that the victim's version of events rather than the [defendant's] version of events should be believed." *Id.* at 219. This Court concluded that the testimony was permissible and that the circuit court did not abuse its discretion in allowing the testimony. *Id.*

The Supreme Court of Maryland revisited these holdings in *Fallin*, where the Court stated the following:

> [A] fundamental principle underlying trial by jury is that the credibility of a witness and the weight to be accorded the witness' testimony are solely within the province of the jury. Accordingly, a trial court may not ordinarily permit questioning that calls for one witness to assess the credibility of testimony or statements made by another witness concerning the facts of the case. This is not to say that a witness may not offer the jury general information that may be useful to the jury in making the credibility determinations, such as character evidence or tools related to the assessment of credibility.

460 Md. at 154 (footnotes and internal citations omitted). In *Fallin*, an expert witness offered testimony concerning whether she observed signs of coaching or fabrication in an alleged child victim's statement to her. *Id.* at 157. The Court held that the testimony was impermissible, concluding that the expert's testimony—which consisted of her own conclusions rather than general guideposts the jury could use to apply its own analysis—was indistinguishable from vouching for a witness's credibility. *Id.* at 157–58.

In the present case, the circuit court declined to allow Dr. Ziv to testify concerning whether abuse had occurred. We observe no abuse of discretion. The Supreme Court held that testimony offering an opinion that a child was sexually abused was "tantamount to a declaration by [the social worker] that the child was telling the truth[.]" *Fallin*, 460 Md. at 136–37 (2018) (quoting *Bohnert*, 312 Md. at 278). The inverse would also be true here—were Dr. Ziv's opinion that the children were *not* sexually abused to have been permitted, it would be tantamount to a declaration that the children were lying. *See id.*

Here, Dr. Ziv offered general testimony contextualizing sexual abuse, which, consistent with *Yount*, was permissible and likely of assistance to the jury. *See Yount*, 99 Md. App. at 211–12. Krawatsky offered general testimony that the existence of grooming behavior is often indicative of whether pedophilic sexual abuse occurred. Krawatsky then attempted to elicit whether Dr. Ziv believed grooming had occurred in this case. Dr. Ziv testified that grooming behavior is indicative of whether sexual abuse had occurred, and she testified regarding how the jurors could recognize such behavior. To go further and offer an opinion that a determining characteristic of abuse had or had not occurred would have invaded the province of the jury to decide whether abuse had occurred, and therefore,

the credibility of the witnesses. *See Hutton*, 339 Md. at 504–05; *Yount*, 99 Md. App. at 219; *Fallin*, 460 Md. at 154. The court thus appropriately disallowed this testimony.

After Dr. Ziv testified about coercive interviews and suggestibility, Krawatsky's counsel also inquired of Dr. Ziv the following: "[s]o, does that mean the children are lying; or does that mean the children have been fed a false memory?" These inquiries are not permitted under Maryland law, as "the credibility of a witness and the weight to be accorded the witness' testimony are solely within the province of the jury." *Fallin*, 460 Md. at 154 (quoting *Bohnert*, 312 Md. at 277).

Immediately following that exchange, Krawatsky's counsel asked Dr. Ziv to expound further on suggestibility. Dr. Ziv stated that "children are suggestible, meaning if authority figures tell them something, even if it goes against their own experience, they will doubt themselves and their own experience." This comment indirectly informed the jury that the children were not credible and that their testimony should be afforded less weight. *See Fallin*, 460 Md. at 154, 157–58. The court did not abuse its discretion in striking this testimony that improperly invaded the jury's role in evaluating witness credibility.

Krawatsky then attempted to elicit testimony from Dr. Ziv regarding her evaluation of Krawatsky himself. The court declined to allow it because the testimony Krawatsky intended to elicit—i.e., whether Krawatsky fit the profile of a pedophile, and therefore whether he had abused the children—went to the ultimate issue in the case of whether the abuse had occurred, and therefore to credibility. The court did not abuse its discretion in

disallowing testimony that would have improperly invaded the jury's role in evaluating witness credibility. *See id.*

Krawatsky's argument—that Dr. Ziv's testimony regarding behaviors of child abusers and victims was improperly excluded—misapprehends the court's ruling and what occurred at trial. As described above, Dr. Ziv was permitted to testify generally concerning these patterns and behaviors. The areas in which Dr. Ziv was not permitted to testify concerned the issue of whether the abuse had actually occurred, specific to the present case. As explained *supra*, this was because the issue of whether the abuse had occurred went directly to witness credibility.

Krawatsky relies on two cases to support his argument that Dr. Ziv's testimony permissibly related to an ultimate issue rather than to credibility. In the first case, the expert witness was a social worker who had treated the child victim and had diagnosed him with psychological disorders. *Hall v. State*, 107 Md. App. 684, 688 (1996). She testified that the disorders were associated with being a victim of child sexual abuse. *Id.* at 689. This Court held that the testimony did not constitute a comment on witness credibility because "the expert did no more than opine that there was a strong cause-effect relationship between child abuse and the disorders from which the victim was suffering."[11] *Id.* at 695. Krawatsky also relies on *Shpak v. Schertle*, a case involving an adult plaintiff who alleged that the

[11] The decision in *Hall* was issued before the *Daubert-Rochkind* standard was adopted. *See generally Rochkind v. Stevenson*, 471 Md. 1 (2020). If an expert provided opinion testimony concerning causation at a trial today, it would be subject to analysis concerning whether sufficient facts supported the reliability of that conclusion and whether each causal link was supported. *See Oglesby v. Balt. School Assoc.'s*, 484 Md. 296, 333–43 (2023).

defendant had sexually abused her as a child. 97 Md. App. 207, *cert. denied* 333 Md. 201 (1993). The testimony at issue in *Shpak* was that of an expert witness who testified that the adult plaintiff's "current emotional state [was] a result of early childhood abuse." *Id.* at 219. Similar to *Hall*, this causation testimony went to the relationship between childhood abuse and the plaintiff's present-day emotional state—not whether the defendant in that case had abused the plaintiff. *Id.* at 219–20.

The testimony in both *Hall* and *Shpack* served to contextualize the emotional state of the victim as common characteristics of childhood sexual abuse, without commenting on whether the particular defendant had perpetrated that abuse. *Hall*, 107 Md. App. at 695; *Shpak*, 97 Md. App. at 219–20. In this case, Dr. Ziv's general testimony on the common behaviors of child abusers and victims, similar to the contextualizing testimony provided by the witnesses in *Hall* and *Shpak*, was permitted; in contrast, Dr. Ziv's specific testimony on her evaluation of Krawatsky and whether he fit the profile of a pedophile was not contextualizing and would have been dissimilar to the testimony in *Hall* and *Shpak*. For these reasons Krawatsky's reliance on *Hall* and *Shpak* is misplaced.

The court did not abuse its discretion in excluding these aspects of Dr. Ziv's testimony.

C. Jury Instruction on Civil Assault

i. Additional Facts

Prior to closing arguments, the parties and the court addressed the jury instructions that would be appropriate to submit to the jury. Initially, the parties agreed to using the civil pattern jury instructions for assault and for battery. Subsequently, Krawatsky's

counsel made a motion for judgment as to O.B.'s claim for civil assault based on the intent-to-frighten form of assault found in the pattern jury instructions. Krawatsky argued that there was no evidence to suggest that O.B. had been in fear; he further argued that there was insufficient evidence to suggest that Krawatsky had the "ability" to carry out the threat. Most of the argument centered around the issue of fear. The court indicated that the evidence and the testimony could be remembered in "different ways"; however, the court took the matter under advisement.

The following day, the court ruled. The court examined that which could constitute a civil assault. Citing *Watson v. Peoples Security Life Insurance Company*, 322 Md. 467 (1991), the trial court recognized that civil assault encompasses both intent-to-frighten assault and attempted battery. The court quoted the Supreme Court to support the definition of assault as "any unlawful attempt to cause a harmful or offensive contact with the person of another or to cause an apprehension of such a contact." *Id.* at 481. The court also found instructive the language of the Supreme Court stating "[w]e have also said that assault has substantially (if not exactly) the same meaning in our law of torts as in our criminal law[.]" *Id.* at 482.

The trial court provided further clarification in explaining apprehension of a harmful or offensive contact, stating that "it is not necessary that the victim be actually frightened or placed in fear of an imminent battery at the hands of one with the apparent present ability to commit such a battery." *Lamb v. State*, 93 Md. App. 422, 437 (1992) (referencing W. Prosser and P. Keeton, *The Law of Torts* § 10 (5th ed. 1984)). The court explained that "[t]he critical state of mind on the part of the victim is to be placed in reasonable

apprehension of an impending battery" but that fear itself was not required. *Id.* at 437–38. The court also cited *Head v. Rakowski*, 695 F. Supp. 3d 663 (D. Md. 2023), *Nelson v. Carroll*, 355 Md. 593 (1999), and *Continental Casualty Company v. Mirabile*, 52 Md. App. 387 (1982) to support the proposition that in Maryland, an assault can be either an unlawful attempt to cause a harmful or offensive contact, or to cause an apprehension of such a contact. The court continued by citing *Head* for the proposition that "[f]or the 'apprehension' element to be satisfied," actual fear is not required—merely the apprehension of an impending battery is required. 695 F. Supp. 3d at 685.

Based on the court's analysis, the court concluded that there was sufficient evidence to generate a jury instruction on the attempted battery form of civil assault. Following the denial of the motion for judgment, the court indicated that it would give jury instructions based on the attempted battery form of assault rather than the intent-to-frighten form of assault. The court indicated that it had drawn from the criminal pattern jury instructions to generate the following:

> The Barads allege that [Krawatsky] committed [an] assault on [O.B.] Assault is an attempt to cause offensive physical con[tact]. In order to prove that [Krawatsky] committed an assault on [O.B.], the Barads must prove that, one, [Krawatsky] actually tried to cause immediate offensive physical contact with [O.B.], . . . two, [Krawatsky] intended to bring about offensive physical contact. . . . [and three], [Krawatsky's] actions were not [legally] justified[.]

Krawatsky's counsel objected on multiple grounds. He first argued that the criminal pattern jury instruction ought not be used because the present case was civil. He also argued that the instruction was not accurate because it did not include a statement concerning the ability to carry out the threat or the fear of imminent harm. Krawatsky's counsel argued

that the cases cited by the court were written before the crime of assault had been codified in the statute. He additionally argued that civil assault was distinguished from criminal assault in that the attempted battery form of civil assault did not require the victim to be aware of the impending battery. He stated that the civil pattern jury instruction was "the correct and the only . . . instruction of the law" in the context of civil assault.

The court, contrary to Krawatsky's argument, gave the instructions as described.[12]

ii. Party Contentions

Krawatsky contends that the circuit court abused its discretion in propounding the assault instruction, asserting that it was "an incorrect statement of the law." Krawatsky claims that the civil pattern jury instructions contain the correct elements of civil assault. He argues that the instruction given by the court was the criminal attempted battery instruction and that it should not have been given because this matter was civil, not criminal. He contends that two of the elements present in the civil pattern instructions were not covered by the instructions given by the court; therefore, he asserts the court abused its discretion.

The Barads' brief largely does not respond to this argument, other than to identify evidence from which the jury could have concluded that O.B. was placed in apprehension of an impending battery.

[12] After the court gave the jury instructions, counsel approached the bench. The transcript does not reflect the contents of what was said, but it appears Krawatsky's counsel objected to the instructions given based on the earlier discussion.

iii. Analysis

Appellate courts review "a trial court's decision to give a particular jury instruction under an abuse of discretion standard." *Armacost v. Davis*, 462 Md. 504, 523 (2019). "A trial court abuses its discretion if it commits an error of law in giving a particular jury instruction." *Id.* In conducting this review, we first determine whether the trial court's instruction was erroneous; and second, if the instruction was erroneous, whether the error prejudiced the appellant. *Barksdale v. Wilkowsky*, 419 Md. 649, 657 (2011). "To overturn a jury verdict, a jury instruction must not only be incorrect legally, but also prejudicial." *Armacost*, 462 Md. at 524. Therefore, we will first determine whether the trial court's instruction on civil assault was erroneous; if the instruction was erroneous, we will then examine whether the error prejudiced Krawatsky.

Whether the Jury Instruction was Erroneous

We first address Krawatsky's contention that the court was required to give the pattern jury instruction. While the use of pattern jury instructions has been encouraged on occasion by the Supreme Court of Maryland, their use is not required. *Street v. Upper Chesapeake Med. Ctr., Inc.*, 260 Md. App. 636, 697 n.33 (2024) (citing *Armacost*, 462 Md. at 516 n.5). What is required is that the jury instruction fairly covers a correct exposition of applicable law in light of the evidence before the jury. *See Malik v. Tommy's Auto Serv., Inc.*, 199 Md. App. 610, 616 (2011).

There are two types of common law assault recognized in Maryland tort law. *See Cont'l Cas. Co. v. Mirabile*, 52 Md. App. 387, 398, *cert. denied* 294 Md. 652 (1982) ("An assault is any unlawful attempt to cause a harmful or offensive contact with the person of

another or to cause an apprehension of such a contact."). The first is the intent-to-frighten form of assault, which is the type described in the Maryland civil pattern jury instructions. *Id.*; *see also* MPJI-Cv 15:1 Assault -- Liability. The second is the attempted battery form of assault, which is not described in the civil pattern jury instructions. *See Mirabile*, 52 Md. App. at 398.

In propounding its instructions, the circuit court explained that it was giving instruction on the attempted battery form of assault rather than the intent-to-frighten form of assault; however, because the law as to the attempted battery type of assault was not encompassed within the pattern jury instructions, the court looked to other authorities. We perceive no error with the court's analysis and explanation of the reason for deviation from the pattern jury instructions; however, whether there was an error with respect to that instruction warrants further analysis. This is because the criminal pattern jury instruction propounded by the court does not require the victim to be aware of or in apprehension of the impending attempted battery.[13] *See* MPJI-Cr 4:01(B).

[13] Krawatsky's position is that there are two elements which were absent from the court's instruction; both "reasonable fear of imminent harm" and the victim's belief that the perpetrator had the "present ability" to carry out the imminent harm. We disagree because both of these elements concern only the intent-to-frighten variety of civil assault. Under this standard, "reasonable fear of imminent harm" is used to evaluate whether the plaintiff, subjectively, was in fact frightened; whether the defendant had the "present ability" to carry out the assault measures if the plaintiff's fear was objectively reasonable. *See Lee v. Pfeifer*, 916 F. Supp. 501, 505–06 (D. Md. 1996). Neither element is relevant in evaluating the attempted battery variety of civil assault because in the attempted battery variety of assault, the defendant must have already attempted the battery, not merely threatened it. Therefore, whether the plaintiff feared that the defendant would act on the threat is of no import, because by attempting the battery, the defendant did act on the threat; the present ability to carry out the threat is likewise subsumed by the defendant's attempt to carry out the battery.

When this Court defined the tort of assault in *Mirabile*, we explained that an assault could be either an "unlawful attempt to cause a harmful or offensive contact" to another person (i.e., attempted battery); or an unlawful attempt "to cause apprehension" of a harmful or offensive contact (i.e., intent-to-frighten). 52 Md. App. at 398. With respect to the attempted battery form of assault, we did not state that the victim was required to have apprehension of the impending battery. *See id.* Nor has the Supreme Court indicated that a victim's apprehension of an impending battery was required. *See Watson v. Peoples Sec. Life Ins. Co.*, 322 Md. 467, 481 (1991) (citing *Mirabile* in defining assault as "any unlawful attempt to cause a harmful or offensive contact with the person of another or to cause an apprehension of such contact"). In *Watson*, the Supreme Court also stated that "assault has substantially (if not exactly) the same meaning in our law of torts as in our criminal law." *Id.* at 482 (internal citations and quotation marks omitted). In criminal law, the attempted battery variety of assault does not require the victim's apprehension or even awareness. *Barrios v. State*, 118 Md. App. 384, 402 (1997) ("[A]n assault of the attempted battery[ ]type does not require that the victim be aware of the attack.").

The absence of a requirement of a victim's apprehension of an impending battery for the attempted battery variety of assault is likewise reflected in *Nelson*, 355 Md. at 605–06 (defining civil assault in a case involving a completed battery for purposes of a transferred intent analysis); *Head*, 695 F. Supp. 3d at 684–85 (defining civil assault in a case involving the intent-to-frighten variety coupled with a completed battery); and *Carter v. Maryland*, Civil No. JKB-12-1789, 2012 WL 6021370, at *11 (D. Md. Dec. 3, 2012) (defining the forms of assault in civil case with a completed battery, and explaining that

for the attempted battery form of civil assault, a victim's awareness of the impending battery is not required). We are not aware of Maryland cases that involved only the attempted battery form of civil assault without a completed battery. Nonetheless, based upon the above cases, the basis for the trial court's decision to propound the pattern jury instructions for assault that reflected the criminal definition of assault—which lacked information regarding whether the victim apprehended the impending battery—is apparent. *See* MPJI-Cr 4:01(B).

While Maryland tort law has left open the question of whether a victim's apprehension of an impending attempted battery is required, modern tort law in other jurisdictions would suggest that such apprehension is required in the civil setting.[14] *See*

[14] *See, e.g., McEntee v. Beth Isr. Lahey Health, Inc.*, 685 F. Supp. 3d 43, 48 n.3 (D. Mass. 2023) (noting that "[t]he distinction between civil and criminal assault is that criminal assault does not require proof of the victim's actual fear or apprehension of harm[,]" whereas civil assault does require apprehension); *Plotnik v. Meihaus*, 146 Cal. Rptr. 3d 585, 598 (Cal. Ct. App. 2012) (noting that apprehension of an impending battery is the basis of civil assault); *Doe v. Brown Univ.*, 304 F. Supp. 3d 252, 264 (D. R.I. 2018) (noting that "[i]t is a plaintiff's apprehension of injury . . . which renders a defendant's act compensable") (quoting *Hennessey v. Pyne*, 694 A.2d 691, 696 (R.I. 1997)); *Williams v. City of Grand Rapids*, 672 F. Supp. 3d 395, 417 (W.D. Mich. 2023) (stating that "[u]nder Michigan law an assault is an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery") (internal citations and quotation marks omitted); *Whitlow v. Bruno's, Inc.*, 567 So.2d 1235, 1239 (Ala. 1990) ("[T]he question [of] whether there is an assault depends more upon the apprehension[] created in the mind of the person claiming to have been assaulted than upon the intentions of the alleged tort-feasor."); *Meyer v. Briggs*, 119 N.W.2d 354, 355 (Wis. 1963) (noting that a required element of the attempted battery form of assault is the victim's fear of such contact); *Balas v. Huntington Ingalls Indus., Inc.*, 711 F.3d 401, 412 (4th Cir. 2013) (noting that under Virginia law, regardless of whether the assault comprises the intent-to-frighten or attempted battery variety, "[t]he conduct must also cause an objectively reasonable apprehension of an imminent battery"); *Bowie v. Murphy*, 624 S.E.2d 74, 80 (Va. 2006) (noting that for either form of civil assault, the victim must have "a reasonable apprehension of an imminent battery") (internal citations and quotation marks omitted);

also 1 Dan B. Dobbs, Paul T. Hayden and Ellen M. Bublick, *The Law of Torts* § 38 (2d ed. 2011) ("[I]f the plaintiff never apprehended that a battery was forthcoming, the defendant may be liable for a battery but not an assault."); 4 Barry A. Lindahl, *Modern Tort Law: Liability and Litigation* § 41:6 (2d ed. 2024) ("Liability for an assault requires that the plaintiff is put in apprehension of a harmful or offensive contact by some act of the defendant. . . . A person unaware of an attempt to do violence to his or her person cannot recover for an assault.").

A further distinction can be made between assault in criminal law—where a primary concern is criminal liability and the defendant's "blameworthiness"—and assault in tort law, which is primarily concerned with civil recovery and victim's harm. *See Lamb*, 93 Md. App. at 443. This distinction is further magnified in light of the description in *Lamb* of the type of injury assault comprises:

> The interest in freedom from apprehension of a harmful or offensive contact with the person, as distinguished from the contact itself, is protected by an action for the tort known as assault. No actual contact is necessary to it, and the plaintiff is protected against *a purely mental disturbance* of this distinctive kind. This action, which developed very early as a form of trespass, is the first recognition of a mental, as distinct from a physical, injury. There is *a touching of the mind, if not of the body*.

Id. at 437 (emphasis added) (quoting *The Law of Torts* § 10, *supra*) (quotation marks omitted); *see also Thing v. La Chusa*, 771 P.2d 814, 816 (Cal. 1989) ("A civil action for

Skille v. Martinez, 406 P.3d 126, 130 (Or. Ct. App. 2017) (same); *Baska v. Scherzer*, 156 P.3d 617, 622–23 (Kan. 2007) (same); *Brower v. Ackerley*, 943 P.2d 1141, 1144–45 (Wash. Ct. App. 1997) (same); *Leang v. Jersey City Bd. of Educ.*, 969 A.2d 1097, 1117 (N.J. 2009) (same); *Bohrer v. DeHart*, 943 P.2d 1220, 1224 (Colo. App. 1996) (same); *Simms v. Chaisson*, 890 A.2d 548, 555–56 (Conn. 2006) (same).

assault is based upon an invasion of the right of a person to live without being put in fear of personal harm.") (internal citation and quotation marks omitted); *Doe v. Brown Univ.*, 304 F. Supp. 3d 252, 264 (D. R.I. 2018) (noting that for civil assault, "[i]t is a plaintiff's apprehension of injury . . . which renders a defendant's act compensable") (quoting *Hennessey v. Pyne*, 694 A.2d 691, 696 (R.I. 1997)). Hence, in a civil case seeking recovery based on the attempted battery variety of assault, there must be a showing of apprehension of the impending battery by the victim. Without this showing, a tort plaintiff is unable to demonstrate that a "mental disturbance" or a "touching of the mind" was suffered based on the civil defendant's act. *See Lamb*, 93 Md. App. at 443. Therefore, we hold that apprehension of an impending harmful or offensive contact is required for the attempted battery form of civil assault.

We note that in making the showing of the victim's mental state, actual fear is not a necessary element; the requirement is limited to apprehension. *See Lamb*, 93 Md. App. at 437 ("For [the attempted battery] variety of assault, it is not necessary that the victim be actually frightened or placed in fear of an imminent battery at the hands of one with the present ability to commit such a battery. The critical state of mind on the part of the victim is to be placed 'in reasonable apprehension' of an impending battery."); *see id.* at 437–41 (collecting cases); *see also Head*, 695 F. Supp. 3d at 685 ("For the 'apprehension' element to be satisfied, the plaintiff need not be in fear; the plaintiff need only have a 'reasonable apprehension of an impending battery.'") (internal citation omitted).

Assuming that the trial court's jury instruction was erroneous—because it did not include an instruction that O.B. was required to have apprehension of the attempted battery—we next examine whether the instruction was prejudicial.

Whether the Error was Prejudicial

We next address whether Krawatsky has established that the error was prejudicial. Determining whether an error was prejudicial or harmless requires a case-specific analysis involving a balancing of the probability of prejudice with the circumstances of a given case. *Barksdale*, 419 Md. at 662. "When prejudice is not readily apparent, a reviewing court must focus on the context and magnitude of the error." *Id.* at 665. The Supreme Court of Maryland has suggested the following non-mandatory, non-exclusive factors for reviewing courts to consider in evaluating whether an erroneous jury instruction is prejudicial:

> (1) the degree of conflict in the evidence on critical issues; (2) whether [the] respondent's argument to the jury may have contributed to the instruction's misleading effect; (3) whether the jury requested a rereading of the erroneous instruction or of related evidence; . . . and (4) the effect of other instructions in remedying the error.

Id. at 669 (quoting *Nat'l Med. Transp. Network v. Deloitte & Touche*, 72 Cal. Rptr. 2d 720, 731 (Cal. Ct. App. 1998)).

The party that seeks to overturn the jury verdict in a civil case due to an erroneous jury instruction "has the burden of demonstrating that prejudice was not just possible, but probable, in the context of the particular case." *Armacost*, 462 Md. at 524 (citing *Barksdale*, 419 Md. at 658–70).

In our review of the context and the magnitude of the error, we begin by examining the *Barksdale* factors. 419 Md. at 669. The first of those involves the degree of conflict in the evidence on critical issues. *Id.* In this case, although there was not a jury instruction regarding O.B.'s apprehension of an impending battery, the families' counsel presented evidence regarding O.B.'s apprehension. First, O.B. testified that when he was in the locker room in a bathroom stall, Krawatsky walked in and offered O.B. $100 to touch Krawatsky's penis. O.B. further testified that Krawatsky pulled his own shorts down when O.B. came in, exposing his penis. In addition, B.A.—who stated in 2015 and again at trial that he was present in the locker room at the time of the interaction between Krawatsky and O.B.—testified that during the subject interaction, O.B. "looked whimpery" and "seemed really sad and afraid." From this evidence, the jury could reasonably conclude that O.B. apprehended an imminent offensive contact with Krawatsky.[15] Krawatsky has not identified any contradicting evidence that demonstrated O.B. was not in apprehension of an offensive contact.[16] Thus, although Krawatsky contends the evidence concerning O.B.'s apprehension should not have been believed, it was uncontested.

[15] Indeed, from the evidence before them, the jury was faced with two outcomes: to believe the testimony of O.B. and B.A. that O.B. perceived Krawatsky expose himself and attempted to induce O.B. to touch Krawatsky's penis; or to believe the testimony of Krawatsky, that the incident did not occur. Based on the jury's determination, it is evident that they believed O.B.'s and B.A.'s version of events, and therefore that O.B. perceived the imminent offensive contact.

[16] Krawatsky's brief focuses on the absence of evidence of O.B.'s fear; however, as explained above, fear is not a required element assault; all that needs to be shown is apprehension on the part of the tort plaintiff. *See Lamb*, 93 Md. App. at 437–38; *see also Head*, 695 F. Supp. 3d at 685.

The second *Barksdale* factor involves review of whether the respondent's argument to the jury may have contributed to the instruction's misleading effect. 419 Md. at 669. During the closing arguments here, O.B.'s counsel did not suggest that O.B. was not required to have apprehension of the impending battery. Rather, he argued to the jury that O.B. was "scared." To the extent counsel's argument had an effect with respect to the erroneous instruction, we perceive that effect as ameliorating rather than contributing.

The third *Barksdale* factor involves review of whether the jury requested a rereading of the erroneous instruction or of related evidence. 419 Md. at 669. Here, the jury did not do so. Finally, the fourth *Barksdale* factor involves review of the effect of other instructions in remedying the error. *Id.* Here, there were not overlapping instructions involving a victim's apprehension of an impending battery.

Based on our review of the context of the case and the magnitude of the trial court's error—and particularly in light of the absence of contested evidence in relation to O.B.'s apprehension of an impending battery—we do not view the erroneous jury instruction as prejudicial. Because Krawatsky has not met his burden of "demonstrating that prejudice was not just possible, but probable," *Armacost*, 462 Md. at 524, we decline to disturb the jury's verdict in this regard.

D. Punitive Damages

i. Additional Facts

Following the jury's determination that Krawatsky had assaulted O.B. and battered B.A., the jury heard evidence and then instructions regarding damages. During the damages phase of the trial, the jury was charged with determining whether, and if appropriate, in

what sum, to award compensatory damages to O.B. and B.A., and whether to award punitive damages. The actual award of punitive damages was saved for the third phase of the trial.

In his opening statement to the jury in the compensatory damages phase of the trial, Krawatsky's counsel stated the following:

> There's nothing [O.B. and B.A.] allege, nothing they can ask for that's specific. **The only damages . . . we believe will be nominal damages, which you can award a dollar -- a $1 nominal, and then you could award punitive damages.**

(emphasis added). After evidence was presented, the court instructed the jury. During its instructions, the court stated the following:

> And it [is] now your duty to consider the question of damages. It will be your duty to determine what, if any, award will fairly compensate [O.B.] and [B.A.]

The court further explained the burden of proof and what the jury could consider as part of a damages award. After explaining what the jury should consider as noneconomic damages, the court stated: "[a] person who has been assaulted but who has not suffered any injury may recover nominal damages of $1." The court instructed the jury: "[i]f you award damages to compensate [O.B.] and/or [B.A.] for their injuries, you may go on to consider whether to make an award for punitive damages." Krawatsky's counsel did not object to this instruction.

The jury reached a verdict. The jury found Krawatsky liable and awarded "compensatory damages" to O.B. and to B.A. in the amount of $1 to each child. Further,

following the presentation of evidence at the punitive damages phase of the trial, the jury also awarded punitive damages in the amount of $8,000 each to O.B. and to B.A.

ii. Party Contentions

Krawatsky contends that the jury was improperly instructed with respect to punitive damages. He asserts that the jury's award of $1 in damages was not an award of compensatory damages, and only constituted an award of nominal damages. He contends that this means there was no actual loss, and therefore punitive damages could not be supported. He contends that the issue of punitive damages therefore should not have been submitted to the jury.

None of the Appellees responded to this argument.

iii. Analysis

The Maryland Rules provide that "[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." Md. Rule 2-520(e). As to issues submitted to the jury, the Maryland Rules state that "[n]o party may assign as error the submission of issues to the jury . . . unless the party objects on the record before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection." Md. Rule 2-522(b)(5). Further, under Maryland Rule 8-131(a), this Court will not ordinarily decide a non-jurisdictional issue "unless it plainly appears by the record to have been raised in or decided by the trial court." *Quinones v. State*, 215 Md. App. 1, 16 (2013) (quoting *Wilkerson v. State*, 420 Md. 573, 597 (2011)).

Krawatsky did not object to the trial court's instruction of the jury concerning punitive damages; nor did he object to the submission of the issue to the jury. Based on his argument to the jury, Krawatsky agreed with the trial court that an award of nominal compensatory damages could support an award of punitive damages. Accordingly, the issue is not preserved for our review.[17]

E. Allegations of Judicial Bias

i. Additional Facts

During the second phase of the trial—after the jury had returned a verdict as to liability—Krawatsky's counsel asserted that the trial court was showing bias against Krawatsky's attorneys and his position in front of the jury. Krawatsky's attorneys asserted that the trial court had been rolling his eyes, pointing, making faces, and *sua sponte* correcting Krawatsky's counsel "every time we do something." They contended that the trial court had shown "clear animus" towards Krawatsky's position from the beginning of

[17] Even if we were to consider this issue, Krawatsky would not prevail. In *Shell Oil Company v. Parker*, the Supreme Court of Maryland held that "to support an award of punitive damages in Maryland there must first be an award of *at least nominal compensatory damages*." 265 Md. 631, 644 (1972) (emphasis added). This Court later expounded on this principle, clarifying that there are two types of nominal damages; nominal compensatory damages, which exist when "a compensable injury has been proven but it is impossible to calculate the actual loss"; and nominal "technical invasion" damages, which exist when no compensable injury was proven. *Shabazz v. Bob Evans Farms, Inc.*, 163 Md. App. 602, 639–40 (2005). This Court held that "[i]n a proper case, a nominal damages award will support a punitive damages award." *Id.* at 639. In this case, based on counsel's arguments, the court's instructions, and the verdict sheet—all of which indicated that the jury was contemplating whether to make an award to compensate O.B. and B.A.—it is clear that the award was for nominal compensatory damages. Therefore, the underlying damages award was sufficient to support the punitive damages award. *See Shabazz*, 163 Md. App. at 639–40.

the trial, as exemplified by the court's previous ruling in deciding the order of the trial. Krawatsky's counsel also argued that the court's alleged bias was demonstrated by "scold[ing]" Krawatsky's expert in front of the jury.[18] As another example of the court's alleged bias, Krawatsky's counsel contended that the trial court had "excoriate[d]" him for playing an audio recording during his opening statement while saying nothing in reference to opposing counsel's rebuttal closing argument.[19]

Counsel for the families responded that they did not observe any eye-rolling or favoritism on the part of the court. The judge indicated that he did not think "any of those things happened" and further indicated that the corrective instruction to Krawatsky's expert occurred outside the jury's presence. However, the court asked whether, due to Krawatsky's allegations, counsel was requesting the court to provide an instruction or take any other actions. Following a brief recess, Krawatsky's counsel moved for a mistrial, which the trial court denied.

[18] Notably, the court's instruction to Krawatsky's expert occurred outside the presence of the jury. During the time that issue was addressed, Krawatsky's expert had been testifying in a narrative fashion where, in addition to answering the question asked, the expert then pivoted to testifying in a different tangential area that was not responsive to the question asked. After sustaining several objections related to this pattern of answering, the court excused the jury and explained the issue to the expert. From our reading of the record, there was no "scolding" of Krawatsky's expert in the presence of the jury.

[19] During the opening statement in the liability phase of the trial, Krawatsky's counsel played a long portion of a recording of a conversation between O.B. and his mother. After counsel concluded his opening statement, the court brought counsel to the bench. The court informed counsel that it was inappropriate to present anticipated evidence to the jury during an opening statement, and that had there been an objection, the court would have sustained such an objection.

ii. Party Contentions

Krawatsky contends that the trial judge was biased against him, and therefore, that a new trial is warranted. He claims that the trial court was "openly hostile" to Krawatsky's case, as demonstrated by the allegations concerning eye-rolling, pointing, and making faces, in addition to the rulings he perceives as unfavorable. He claims that the jury was influenced by the court's alleged bias as exemplified by the verdict in favor of O.B. and B.A. He contends that because of the existence of the alleged bias, he did not receive a fair trial, and he should receive a new one.

The Avrunins assert that Krawatsky has not met the requirements to obtain appellate review concerning his allegations of bias. They also contend that there was no prejudicial conduct on the part of the trial judge.

iii. Analysis

In Maryland a "strong presumption" exists that "judges are impartial participants in the legal process. *Harford Mem. Hosp., Inc. v. Jones*, 264 Md. App. 520, 541 (2025) (quoting *Balt. Cotton Duck, LLC v. Ins. Comm'r of the State of Md.*, 259 Md. App. 376, 402 (2023)). "Bald allegations and adverse rulings are not sufficient to overcome this presumption of impartiality." *Id.* at 541–42. To preserve a claim of judicial bias for appellate review, a litigant must raise the issue promptly during trial, and four requirements must be met:

> (1) facts are set forth in reasonable detail sufficient to show the purported bias of the trial judge; (2) the facts in support of the claim must be made in the presence of opposing counsel and the judge who is the subject of the charges; (3) counsel must not be ambivalent in setting forth his or her

> position regarding the charges; and (4) the relief sought must be stated with particularity and clarity.

Id. at 543 (quoting *Balt. Cotton Duck, LLC*, 259 Md. App. at 401 (in turn quoting *Braxton v. Faber*, 91 Md. App. 391, 408–09 (1992))). The requirement that litigants move for relief as soon as the basis for relief becomes known ensures that "allegations of judicial bias and partiality are not weaponized to avoid unfavorable rulings or otherwise disrupt trial." *Jones*, 264 Md. App. at 543.

If a claim of bias is preserved, the question on appellate review is "whether a reasonable member of the public knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned." *Id.* at 547 (quoting *Reed v. Balt. Life Ins. Co.*, 127 Md. App. 536, 554 (1999)). In answering that question, "assuming the sufficiency of the record, [an appellate court's] inquiry is limited to what impact, if any, the trial judge's alleged conduct had on the appellant's ability to obtain a fair trial." *Balt. Cotton Duck, LLC*, 259 Md. App. at 401 (quoting *Reed*, 127 Md. App. at 550).

Here, Krawatsky has asserted that the trial court was biased against him in several areas, including: (1) the trial judge ruling against him at various points during the trial; (2) the trial judge ordering the trial to proceed in phases with the families' assault claims proceeding first, which Krawatsky contends he was not prepared to do; (3) the trial judge excluding Krawatsky's expert testimony; (4) the trial judge's alleged "hostil[ity]" to Krawatsky's expert witness; and (5) the trial judge's alleged facial expressions.

The first four of these assertions are not preserved because Krawatsky did not promptly address the alleged biased conduct as soon as the basis for relief became known. *See Jones*, 264 Md. App. at 542–43 (holding that allegations of judicial bias must be made promptly so as to avoid weaponized attempts to avoid unfavorable rulings). As to the first four issues, Krawatsky did not attempt to set forth any details regarding purported bias until long after the rulings on these issues had been put forth. Further, as presented on appeal, Krawatsky provides no information as to specific evidentiary rulings that demonstrated a bias against him. In addition, and as explained in sections I.A.–I.D., *supra*, the court did not abuse its discretion in making the previous rulings. "Bald allegations and adverse rulings are not sufficient" to overcome the strong presumption of judicial impartiality, and Krawatsky has not overcome that presumption here. *Jones*, 264 Md. App. at 542.

As to the fifth issue—the alleged eye-rolling and facial expressions on the part of the trial judge—Krawatsky made a prompt allegation of that behavior. However, we are not persuaded that the first *Braxton* requirement is met. To preserve a claim of judicial bias, a litigant must set forth in the record facts with reasonable detail sufficient to show the purported bias of the trial judge. *Braxton*, 91 Md. App. at 408. In this case, the only facts presented by Krawatsky in the record to demonstrate that the trial judge engaged in eye-rolling and improper facial expressions were the assertions of Krawatsky's counsel.[20]

[20] These claims were also coupled with allegations by Krawatsky's counsel that the court had "scolded [their] expert" in the presence of the jury, which was inaccurate. *See* note 18 *supra*.

These assertions were contradicted by counsel for the families, who stated that they had not observed any such expressions from the trial judge. The trial judge further stated that he did not think "any of those things happened[.]"

We are left then with a record in which there is not sufficient detail to show any of the purported bias of the trial judge. This is not to say that allegations by counsel on the record cannot suffice in meeting the first *Braxton* factor. *Braxton* itself suggests that such allegations can, in fact, suffice, as in that case, the charges stated on the record by counsel competent to testify would have been the "functional equivalent" of an affidavit or testimony. 91 Md. App. at 406. However, this Court suggested that a distinction can be made in cases where counsel proffered in an uncontested fashion that allegations of body language-type bias existed as compared to a case where the court (or opposing counsel) disagreed that such events had occurred. *See id.* at 406–08.

In *Braxton*, an allegation was made of improper judicial facial expressions, eye-rolling, and body language; in that case, the court denied that those events occurred and suggested that counsel provide proof of such events, if they existed. *Id.* at 407. This Court then contrasted the *Braxton* trial judge's and counsel's behavior with that which occurred in *Surrat v. Prince George's County, Maryland*. *Id.* This Court explained that in *Surrat*, there was an account of improper judicial conduct, which, although partially uncorroborated, was not disputed by opposing counsel or the trial judge. 320 Md. 439, 463 (1990); *see also Braxton*, 91 Md. App. at 407. The *Braxton* court observed that in *Surrat*, the trial judge's only comment in response to the allegations of improper judicial conduct was that he did not have any recollection of the events described by counsel. *Braxton*, 91

Md. App. at 407 (citing *Surrat*, 320 Md. at 463). Of note, the Supreme Court in *Surrat* indicated that there was "nothing inherently incredible about the history set forth by counsel." 320 Md. at 463.

In this case, the trial court denied that the events described by Krawatsky's counsel occurred, as did counsel for the families. Further, the history set forth by Krawatsky's counsel in describing the events was not inherently credible, as demonstrated by the inaccurate description of the court's instruction of Krawatsky's expert. *See supra* note 18. For these reasons, we find the facts in this case are more similar to those in *Braxton* than to *Surrat* and we conclude that the record does not contain sufficient detail to show the purported bias of the trial judge.

Because Krawatsky failed to meet the first required *Braxton* factor, his claim of judicial bias is not preserved.[21]

II. THE ISSUE OF WHETHER THE CIRCUIT COURT ERRED IN ITS LIMITED PUBLIC FIGURE ANALYSIS IS MOOT.

A. Additional Facts

As described above, JWI and Dreyfus moved for summary judgment before trial as to all claims. Among the grounds relied upon, JWI and Dreyfus asserted that Krawatsky

[21] Even were the claim of alleged bias preserved, the actions of which Krawatsky complains do not reveal bias or prejudice. The extensive trial record in this case demonstrates rulings in favor of and against both sides; the court and counsel for the families and Levin noted this on the record as well. The legal rulings about which Krawatsky complains are not demonstrative of bias but are demonstrative of the trial court's attempts to manage the trial in an organized fashion. "There is a strong presumption in Maryland, and elsewhere, that judges are impartial participants in the legal process." *Balt. Cotton Duck, LLC*, 259 Md. App. at 402 (internal citation omitted). After careful review of the record, that strong presumption was not rebutted.

was a limited purpose public figure, and that because actual malice could not be demonstrated, the defamation claims failed.[22] JWI and Dreyfus argued that Krawatsky met the definition of a limited purpose public figure because a public controversy involving the sexual abuse allegations had been ongoing for several years, and because by hiring a public relations firm, Krawatsky had sufficiently participated in the controversy to justify limited purpose public figure status.[23] Because the remainder of the claims were contingent on the existence of defamation or actual malice, JWI and Dreyfus argued that any recovery against them was precluded. Krawatsky opposed the motion, arguing that there was not a public controversy; Krawatsky argued that even assuming there was a controversy, he had not participated in such controversy.

The circuit court agreed with JWI and Dreyfus, holding that the publication of the articles between 2016 and the end of 2017 was sufficient to constitute a public controversy. The court also accepted JWI's and Dreyfus' argument that Krawatsky's hiring of a public relations firm was sufficient to constitute voluntary participation in the public controversy.

[22] In defamation cases, an ordinary plaintiff must establish four elements: "(1) that the defendant made a defamatory statement to a third person, (2) that the statement was false, (3) that the defendant was legally at fault in making the statement, and (4) that the plaintiff suffered harm." *Hosmane v. Seley-Radtke*, 227 Md. App. 11, 20–21, (2016). However, if the plaintiff is determined to be a public figure or a limited purpose public figure, the plaintiff must demonstrate these elements "by clear and convincing evidence" and must also prove that the defendant made the defamatory statements with "actual malice." *Waicker v. Scranton Times Ltd. P'ship*, 113 Md. App. 621, 637 (1997).

[23] To decide if a person is a limited purpose public figure, courts examine (1) whether there was a particular public controversy that gave rise to the alleged defamation; and, if so, (2) whether the nature and extent of the plaintiff's participation in that particular controversy was sufficient to justify public figure status. *Waicker*, 113 Md. App. at 630.

The court then determined that Krawatsky was a limited purpose public figure. After reaching this determination, the court examined whether the alleged defamatory statements were made with actual malice, and concluded that there was no genuine dispute that the statements were not made with actual malice. The court therefore granted summary judgment in favor of JWI and Dreyfus.

Following the court's entry of summary judgment as to JWI and Dreyfus, the jury trial was held. The jury found that, concerning the families' claims of sexual abuse, Krawatsky had assaulted O.B. and battered B.A.

B. Party Contentions

Krawatsky claims that the circuit court was incorrect in determining that he was a limited purpose public figure because there was no public controversy. Even if there were a public controversy, Krawatsky contends he does not qualify as a limited purpose public figure because he did not thrust himself into the forefront of the controversy.

JWI and Dreyfus respond that a public controversy had been ongoing for at least two years at the time the articles were published, and thus the first part of the limited purpose public figure test was met. They contend that Krawatsky's participation in the controversy—which they acknowledge primarily consisted of hiring a public relations firm to enhance his online profile, should internet users search for him—was sufficient to qualify as voluntary participation in the controversy. In the alternative, they contend that in light of the jury verdict, the articles JWI and Dreyfus published are substantially true,

and the judgment in their favor should therefore be affirmed because Krawatsky is unable to meet the elements of defamation.[24]

C. Analysis

This court ordinarily does not "render judgment on moot questions." *In re M.C.*, 245 Md. App. 215, 224 (2020). "A case is considered moot when 'past facts and occurrences have produced a situation in which, without any future action, any judgment or decree the court might enter would be without effect.'" *La Valle v. La Valle*, 432 Md. 343, 351 (2013) (quoting *Hayman v. St. Martin's Evangelical Lutheran Church*, 227 Md. 338, 343 (1962)). "The test for mootness is 'whether, when it is before the court, a case presents a controversy between the parties for which, by way of resolution, the court can fashion an effective remedy.'" *Sanchez v. Potomac Abatement, Inc.*, 198 Md. App. 436, 443 (2011) (quoting *Adkins v. State*, 342 Md. 641, 646 (1991)). Unless an exception to the mootness doctrine is met, appellate courts generally decline to address moot issues. *See In re O.P.*, 470 Md. 225, 249 (2020).

In this case, the court entered summary judgment in favor of JWI and Dreyfus as to all claims based on its limited purpose public figure analysis. In the court's analysis concerning JWI and Dreyfus, Krawatsky was a limited purpose public figure, and therefore

[24] JWI and Dreyfus also argue that we could affirm the grant of summary judgment on an alternative ground that they raised below—namely, that the articles are not capable of defamatory meaning because, in JWI's and Dreyfus' view, the articles pose a question concerning a larger issue of institutional response to abuse, rather than accusing Krawatsky of sexual abuse. We do not address this argument, as appellate courts ordinarily may affirm a trial court's grant of summary judgment "only on the grounds upon which the trial court relied in granting summary judgment." *Rovin v. State*, 488 Md. 144, 173 (2024) (quoting *Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 297 (2022)).

defamation could not be proven as a matter of law because there was no actual malice with respect to the publications.[25] Because the remaining claims depended on the existence of the tort of defamation or of actual malice, the court entered judgment as to the remainder of the claims.

Subsequently, the facts and circumstances of the case changed, as exemplified by the jury's factual determination that the abuse alleged by O.B. and B.A. had occurred. This determination established that another necessary element to defamation—i.e., that the statement published was false—could not be met.[26] Because we have affirmed the circuit court's management of the trial, and therefore the jury's verdicts, any decision with respect to the summary judgment order would be without effect. *See La Valle*, 432 Md. at 351. This is because even were we to conclude that the court erred in its limited purpose public figure analysis, Krawatsky would be unable to meet the elements of defamation or any of the contingent claims because, in light of the jury verdict, Krawatsky would be unable to demonstrate that the challenged statements were false. Further, Krawatsky has not challenged the court's actual malice determination, and so the claims that were contingent

[25] *See supra*, note 22.

[26] *See Hosmane*, 227 Md. App. at 20–21 (identifying the elements of defamation). "[A] statement is not considered false unless it would have a different effect on the mind of the reader from that which the pleaded truth would have produced." *Batson v. Shiflett*, 325 Md. 684, 726 (1992) (internal citation and quotation marks omitted). "[M]inor inaccuracies do not amount to falsity so long as 'the substance, the gist, the sting, of the libelous charge be justified.'" *Id.* (quoting *Masson v. New Yorker Mag., Inc.*, 501 U.S. 496, 517 (1991)). The jury found that Krawatsky had sexually abused two out of the three boys; we perceive no substantial difference in the jury's conclusion regarding the facts as compared to that which was published by JWI and Dreyfus. *See Batson*, 325 Md. at 726.

on actual malice likewise cannot be demonstrated. Were we to disturb the court's summary judgment order, this Court would be unable to fashion an effective remedy, as Krawatsky would be unable to establish defamation and the contingent claims as to JWI and Dreyfus. *See Sanchez*, 198 Md. App. at 443.

Hence, the issue with respect to the court's limited purpose public figure analysis is moot.[27]

[27] Even if the limited purpose public figure determination was not moot, we note that the court's analysis was legally correct. To decide if a person is a limited purpose public figure, courts examine (1) whether there was a particular public controversy that gave rise to the alleged defamation; and, if so, (2) whether the nature and extent of the plaintiff's participation in that particular controversy was sufficient to justify public figure status. *Waicker*, 113 Md. App. at 630. Courts use the following factors to analyze the sufficiency of a defamation plaintiff's participation in a controversy:

> (1) whether the individual had access to channels of effective communication; (2) whether the individual voluntarily assumed a role of special prominence in public controversy; (3) whether the individual sought to influence resolution or outcome of controversy; (4) whether controversy existed prior to publication of defamatory statements; and (5) whether the individual retained public figure status at the time of alleged defamation.

Id. at 631. The second and third factors "are often considered together" as they "reflect a 'consideration that public figures are less deserving of protection than private persons[.]'" *Id.* at 634 (quoting *Reuber v. Food Chem. News, Inc.*, 925 F.2d 703, 709 (4th Cir. 1991)). Here, it was undisputed that there was a controversy prior to publication of the JWI and Dreyfus articles—there was regular public discussion of the controversy starting with the first article in March of 2016 and continuing to include Levin's blog post in November of 2017. As the circuit court noted, the allegations were a matter of public concern to at least some segment of the public, as the allegations related to the safety of children and Jewish institutional response. The trial court also considered Krawatsky's participation in the controversy. It was undisputed that the public relations firm posted articles favorable to Krawatsky, demonstrating that Krawatsky had access to channels of effective communication. Krawatsky voluntarily assumed a role in the controversy by hiring the public relations firm for the purpose of posting articles intended to influence the outcome of the controversy—by causing news articles with a positive image of Krawatsky to silence or minimize the posts concerning abuse. The controversy existed prior to the publication

III. THE CROSS-APPEALS ARE MOOT.

A. Additional Facts

In March of 2021, the families and Levin moved for summary judgment as to Krawatsky's claims against them. The Avrunins contended that several of the statements alleged to be defamatory fell outside the statute of limitations; for the remaining statements, they contended that Krawatsky was a limited purpose public figure, and because there was no evidence of actual malice, he could not establish defamation as to them.[28] For the remaining claims, they argued that because there was no actual malice or no underlying tort, recovery was precluded. With the exception of the statute of limitations argument, similar arguments were made by Ms. Becker, the Barads, and Levin.

In January of 2024, the circuit court denied these motions. The Avrunins requested that the circuit court reconsider its denial of their motion for summary judgment. That request was also denied.

After the jury's determination at trial that the assault on O.B. and battery on B.A. had occurred, while the parties were presenting evidence concerning damages, the families and Levin filed new motions for judgment in their favor as to the Krawatskys' defamation

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of the JWI and Dreyfus articles, as demonstrated by the lengthy history of publications regarding the camp, and by Levin's blog post from November of 2017. Krawatsky retained public figure status at the time the JWI and Dreyfus articles were published, as the public relations firm was hired and commenced activity in November of 2017, and the JWI and Dreyfus articles were published in January of 2018; further, Krawatsky's public relations firm continued posting articles beyond that time. Under the factors set forth in *Waicker*, we agree that Krawatsky qualified as a limited purpose public figure.

[28] *See supra*, note 22.

claims. The Krawatskys noted a general objection on the record to the motions for judgment, but did not file written responses. The court then entered judgment in favor of the families and Levin as to the Krawatskys' claims.

B. Party Contentions

The Avrunins acknowledge that a ruling by this Court upholding the jury verdicts would render review of the cross appeal unnecessary. They conditionally argue, however, that the circuit court should have granted summary judgment in their favor based on a determination that Krawatsky was a limited purpose public figure. The Avrunins also assert that the trial court should have granted their motion for reconsideration based on the same reasoning. Levin asserts that he should have been granted summary judgment on the same grounds as JWI and Dreyfus.[29]

Krawatsky contends that this Court should not consider the cross-appeals because, he asserts, the arguments improperly adopt the papers filed in the circuit court. In the event this Court considers the cross-appeals, Krawatsky contends that the trial court did not err in denying the summary judgment motions because the families and Levin did not demonstrate that the facts were undisputed. Krawatsky asserts that because the court was correct in denying the Avrunin's summary judgment motion, it did not abuse its discretion in subsequently denying the motion for reconsideration.

[29] The Beckers and the Barads incorporated the briefs of the other appellees and cross-appellants and do not restate an argument as to this issue.

C. Analysis

As explained *supra*, this Court ordinarily does not "render judgment on moot questions." *In re M.C.*, 245 Md. App. at 224. "A case is considered moot when 'past facts and occurrences have produced a situation in which, without any future action, any judgment or decree the court might enter would be without effect.'" *La Valle*, 432 Md. at 351. "The test for mootness is 'whether, when it is before the court, a case presents a controversy between the parties for which, by way of resolution, the court can fashion an effective remedy.'" *Sanchez*, 198 Md. App. at 443 (quoting *Adkins*, 324 Md. at 646). Appellate courts generally decline to address moot issues. *See In re O.P.*, 470 Md. at 249.

In this case, the issue of whether the court erred in denying summary judgment to the families and Levin is moot because the trial court subsequently entered judgment in favor of the families and Levin as related to the Krawatskys' claims. Even if we were to conclude that the trial court erred in denying the pre-trial motions for summary judgment, such an order would have no effect in light of the trial court's later ruling.[30] Because the cross-appeals are moot, we decline to address them.

[30] We note that "denial . . . of a summary judgment motion, as well as foregoing the ruling on such a motion either temporarily until later in the proceedings or for resolution by trial of the general issue, involves not only pure legal questions *but also an exercise of discretion* as to whether the decision should be postponed until it can be supported by a complete factual record[.]" *Dashiell v. Meeks*, 396 Md. 149, 164 (2006) (emphasis added) (internal citations and quotation marks omitted). This Court reviews the denial of a summary judgment motion for an abuse of discretion. *Id.* at 165. This is distinguished from a trial court's grant of a motion for summary judgment, which is reviewed *de novo*. *Id.* at 163. In this case—which involved multiple parties and significant disputes of fact that resulted in a trial of several weeks—were a reviewing court to evaluate the merits of the issue, it would be a high burden to demonstrate that the trial court abused its discretion in denying the summary judgment motions.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.