Circuit Court for Talbot County
Case No. C-20-CV-21-000024

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 140

September Term, 2024

ESTATE OF MELISSA I. TAYLOR, ET AL.

v.

RODNEY VAN RYCKEN SPRING

Wells, C.J.,
Berger,
Lazerow, Alan C.,
(Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: November 26, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Appellee, Rodney Van Rycken Spring, sued Appellant, the Estate of Melissa Taylor ("the Estate"), in the Circuit Court for Talbot County for damages resulting from a car crash between Spring and Taylor. For reasons discussed in detail below, the parties faced some obstacles during the discovery process leading to two motions to extend the court's scheduling order. The circuit court granted the first motion, but denied the second motion and a motion for reconsideration. The Estate provided late expert disclosures to Spring, including the proffered testimony of Sgt. Gore of the Maryland State Police. The court excluded the testimony of Sgt. Gore based on the late disclosure. At trial, after both sides rested, the court granted Spring's motion for judgment on the issue of his alleged contributory negligence. The jury returned a verdict in favor of Spring and awarded damages in the amount of $452,163.71. The Estate filed a motion for a new trial which the court denied.

The Estate noted this timely appeal, raising three issues that we have rephrased[1]:

[1] The Estate presented the following verbatim questions:

1. Did the trial court abuse its discretion in denying the Motions when Appellant demonstrated substantial compliance with the existing deadlines and established good cause for granting the extension?

2. Did the trial court abuse its discretion by excluding the testimony of Sergeant Gore of the Maryland State Police and the data from Appellee's event data record (EDR) showing Appellee was driving

I. Whether the court abused its discretion in denying the Estate's motion to amend the scheduling order;

II. Whether the court abused its discretion in excluding Sergeant Gore's testimony; and

III. Whether court erred in granting Spring's motion for judgment on the issue of contributory negligence, thereby removing it from the jury.

For the reasons that follow, we affirm on all three issues.

FACTUAL AND PROCEDURAL BACKGROUND

Spring sued the Estate for injuries resulting from a car crash between Spring and Taylor that occurred in 2018. Evidence at trial established that Taylor, while traveling westbound on Dover Road in Easton, Maryland, negligently made a left-hand turn across three lanes of traffic traveling eastbound on Route 50 and crashed into Spring's vehicle. Spring suffered permanent injuries to his foot and lost business profits due to his inability

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> aggressively/recklessly by accelerating at 99% of the vehicle's capability and traveling nearly double the posted speed limit at impact because Gore's report was received by Appellant and produced to Appellee after the discovery deadline established before the trial court's incorrect denial of the Motions?
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> 3. Did the trial court err when it granted Appellee's motion for judgment, removing the affirmative defense of contributory negligence from jury consideration, when the facts adduced at trial showed that Appellee was driving recklessly/aggressively at the moment of impact and that Appellee made the conscious decision to drive when he knew he was feeling lightheaded and dizzy just a short time before the subject vehicle collision?

to work for a period of time after the accident. The facts are recited here as relevant to this appeal.

I. Pre-trial

In his complaint, Spring not only alleged physical injury and mental anguish, but he claimed the accident caused him "and his company to incur loss of wages, lost dividends, lost corporate profits, lost earnings and lost business income." Paragraphs 18 and 19 of the complaint aver Spring's financial losses to his company, of which he is the owner, operator, and sole shareholder. In its answer, the Estate listed both assumption of the risk and contributory negligence as affirmative defenses.

In January 2022, the Estate served interrogatories and requests for production of documents on Spring. In March 2022, the court entered its initial scheduling order. The initial scheduling order designated June 2022 for the Estate's expert witness disclosures and October 21, 2022, for the close of all discovery.

Spring timely designated his proposed expert witnesses. June came and went, but the Estate had not designated its witnesses in accordance with the initial scheduling order. The Estate had, however, filed another notice of discovery in May 2022, noting subpoenas and notices of depositions *duces tecum* on four different medical centers.

On October 13, 2022, just eight days before the close of discovery, scheduled for October 21, the parties filed a Joint Motion to Modify Scheduling Order. In the motion, the parties cited Spring's counsel's unexpected surgery and medical leave as necessitating an extension of all deadlines. The court granted the Joint Motion to Modify, listing November

4, 2022, as the Estate's new expert witness designation deadline and January 19, 2023, as the new discovery deadline.

Ten months after being served with interrogatories, Spring provided his answers. However, November passed with no expert designations from the Estate. The Estate deposed Spring in December 2022.

The Estate filed a Consent Motion to Extend Scheduling Order on March 15, 2023—almost two months after the amended discovery deadline of January 19, 2023. The motion explained that the parties had an agreement between themselves that they would attempt to settle the case before conducting the "invasive" discovery necessary to develop Spring's business loss claim; however, they were not able to reach a settlement. The motion lists Spring's December deposition as the source of the Estate's knowledge on his business loss claim. The circuit court denied the motion without hearing, stating:

> The Complaint, which was filed on April 20, 2021, alleges lost business opportunites. Interrogatories were served on the Plaintiff on January 21, 2021. The scheduling order was amended on October 25, 2022. Mr. Spring's depostion was taken on December 12, 2022. None of the infor[ma]tion alleged in the Motion should be so surprising that on the eve of the settlement conference, the parties wish to begin the process anew.

On the same day the court denied the motion, the court set the trial date for January 2024.

The Estate filed a Motion for Reconsideration and Request for Hearing the same month, further expanding upon the first amendment of the scheduling order; the parties' collaborative efforts to attempt settlement before conducting the invasive business loss discovery; and that neither party would have been prejudiced from a second amendment since trial was subsequently set for ten months in the future. Spring filed a brief response

to this Motion for Reconsideration simply stating that he did not oppose the Estate's request and deferred to the court. The court denied the Motion for Reconsideration without opinion. The Estate now appeals the denials of their Consent Motion to Extend and subsequent Motion for Reconsideration.

A few months later, in an effort to preserve the record for appeal, the Estate filed a notice to take depositions and made its expert designations. The court granted both of Spring's motions to strike these filings.

II. Trial

Trial occurred on January 23, 24, 26, and 29, 2024. At trial, Spring himself testified extensively about his lost business contracts and how his injury from the accident contributed to those losses. Spring also gave his account of the accident. He testified to driving over the speed limit at the time of the accident, but that he was fully conscious the entire time leading up to it

On day three of trial, without the jury present, the court heard testimony from Sgt. Gore to determine whether his testimony would require an expert qualification. Once Sgt. Gore testified to how he downloaded Spring's car's speed and acceleration data after the accident, the parties argued Spring's motion to exclude the testimony. The court inquired into whether Sgt. Gore was disclosed as a witness before the discovery deadline and when his report was ultimately produced:

> THE COURT: When was this, when was this originally supplied to the Plaintiff?
> [THE ESTATE]: September of 2023.
> THE COURT: Twenty-two?

> [THE ESTATE]: Twenty-three. It was right after we received it. We received it at the end of July. We produced it in September.
> THE COURT: But it was after the discovery deadline?
> . . .
> [THE ESTATE]: But, but the reality is, Your Honor, this information was given to the Plaintiff and again (inaudible), you can't go out and look for additional information. I got a PIA request and here it is and it is exactly on point with *Swan*.
> THE COURT: Well, a PIA request could have been done in 2021, when the suit was filed. Was Trooper Gore named as a witness in Answers to Interrogatories?
> [THE ESTATE]: He was. It says members of Easton and Maryland State Troopers, so…
> THE COURT: But that's not…
> . . .
> [SPRING]: Again, (inaudible) was not named as a witness. It was just a generic Easton Police officers, Maryland State Police officers. And again, all after the discovery deadline[.]

After this colloquy, the court sustained the objection to Sgt. Gore's testimony solely "on the basis that the information came in after the discovery deadline." The Estate now appeals this exclusion of Sgt. Gore.

The Estate then produced two fact witnesses, Shadonna Wilson and Keasia Stanley Ms. Wilson testified, in relevant part, to hearing a car's "loud revving of the engine," seeing a black SUV "flying" through the intersection, hearing the crash, and seeing the parties after the crash. Ms. Wilson also testified to hearing Spring tell the police after the crash that he "blacked out." Likewise, Ms. Stanley testified to hearing a truck revving its engine, hearing the impact of the crash, and going to the accident scene. When asked whether she heard Spring say anything after the crash, Ms. Stanley testified "I did hear he said that he had blacked out. I don't know if he blacked out after impact or before, but I did hear him say that he blacked out."

On trial day four, after more witnesses testified for Spring, the court took up Spring's motion for judgment on the issue of contributory negligence., but the court paused the discussion until after the last two witnesses testified. First, Spring's witness, Mark Cuviello, testified to being Spring's personal trainer and that Spring had never had any issues with passing out or dizziness while they worked out together. The Estate then called Dylan Harris, who testified that he was working at a nearby Aldi store when the accident occurred, he heard "an engine rapidly accelerating," saw an SUV crossing the intersection faster than any vehicle he had seen going through the same intersection, and did not hear brakes.

The parties then argued Spring's motion for judgment on contributory negligence. The court inquired whether Spring's unconsciousness would be "a jury issue for causation," which Spring argued against based on the Estate's failure to present an accident reconstructionist or other expert witness as to causation. Spring also argued the evidence as to whether he was conscious before the accident was contradictory, and that evidence did not rise above mere speculation on the issue of causation. The Estate maintained the issue of Spring's contributory negligence should go to the jury based on "a combination of [Spring's] speed and inattentiveness."

The court, relying on *Myers v. Bright*, 327 Md. 395 (1992), granted Spring's motion for judgment on contributory negligence based on a lack of proximate cause evidence. The Estate now appeals that ruling.

STANDARD OF REVIEW

Discovery decisions are reviewed under an abuse of discretion standard. *Asmussen v. CSX Trans., Inc.*, 247 Md. App. 529, 551 (2020) ("[W]hether to modify a scheduling order and whether to strike a witness for a failure to comply with a scheduling order [ ] are committed to the circuit court's discretion."). To find a circuit court abused its discretion, "we must conclude that no reasonable person would take the view adopted by the circuit court, that the court acted without reference to any guiding principles, or that the court's ruling is violative of fact and logic." *Id.* at 552 (cleaned up) (internal citations omitted). Likewise, we will find an abuse of discretion "if we are unable to discern from the record that there was an analysis of the relevant facts and circumstances that resulted in the *exercise* of discretion." *Maddox v. Stone*, 174 Md. App. 489, 502 (2007). "If the judge has discretion, he must use it and the record must show that he used it." *Nelson v. State*, 315 Md. 62, 70 (1989). In other words, "the record must reflect that the judge . . . did not simply apply some predetermined position." *Maddox*, 174 Md. App. at 502; *see also Taliaferro v. State*, 295 Md. 376, 390 (1983) ("The exercise of discretion contemplates that the trial court will ordinarily analyze the facts and not act, particularly to exclude, simply on the basis of a violation disclosed by the file.").

In contrast, we review a circuit court's ruling on a legal question *de novo*, meaning "without deference" to the lower court's decision. *Rodriguez v. Cooper*, 458 Md. 425, 437 (2018). The decision to grant a motion for judgment is a legal one and therefore reviewed without deference. *Howell v. State*, 465 Md. 548, 561 (2019). Upon review, we ask whether

the non-moving party "presented evidence sufficient to generate a jury instruction" on the issue. *Id.* To survive a motion for judgment, the non-moving party must have presented evidence sufficient to make a "prima facie showing" of the issue. *Myers v. Bright*, 327 Md. 395, 399 (1992). The non-moving party "cannot sustain this burden by offering a mere scintilla of evidence, amounting to no more than surmise, possibility, or conjecture." *Id.* (internal citations omitted).

DISCUSSION

I. The Circuit Court Did Not Abuse Its Discretion in Denying the Estate's Motion to Amend the Scheduling Order.

A. Parties' Contentions

The Estate contends it made a good faith and earnest effort to adhere to the scheduling order despite extraordinary circumstances beyond its control. The Estate further asserts that its non-compliance was merely technical, not substantial, because its requested modification would not have affected the trial date set for ten months later, while a refusal to modify the scheduling order prejudiced both parties' abilities to prepare for trial. The Estate maintains that its request for modification and subsequent request for reconsideration were justified by the extraordinary circumstances and the parties' ongoing collaborative efforts towards settlement. Finally, the Estate argues the denial of its motions set off "a chain reaction of adverse rulings," making the sanction disproportionate to the circumstances and unreasonably prejudicial.

Spring contends the Estate's non-compliance was substantial, not technical. Spring argues that the Estate should have conducted discovery—beyond taking Spring's

deposition—before the discovery deadline since it could have discovered Sgt. Gore's and other experts' identities without needing to amend the scheduling order for a second time. Spring maintains that since the Estate knew liability would be at issue, its late expert disclosures were inexcusable. Spring contends the trial court's multiple rulings demonstrate its consideration of the facts and application of the relevant standards, thereby precluding an abuse of discretion finding.

B. Analysis

We conclude the circuit court properly exercised its discretion in denying the Estate's motion to amend the scheduling order because the court could have reasonably found that the Estate had not substantially complied with the scheduling order. "[T]here is inherent power for the courts to 'enforce their scheduling orders through the threat and imposition of sanctions.'" *Maddox*, 174 Md. App. at 507 (citing *Manzano v. S. Maryland Hosp., Inc.*, 347 Md. 17, 29 (1997)). "Though such orders are generally not unyieldingly rigid as *extraordinary circumstances which warrant modification do occur*, they serve to light the way down the corridors which pending cases will proceed." *Naughton*, 114 Md. App. at 653 (emphasis supplied).

Our abuse of discretion inquiry is two-fold. *Colter v. State*, 297 Md. 423, 426 (1983). To start, we determine whether the court exercised any discretion in the first place, rather than "appl[ied] some predetermined position." *Maddox*, 174 Md. App. at 502. Then, we determine whether the discretion exercised was reasonable. *See id.* ("If the judge has

discretion, he must use it and the record must show that he used it. He must use it, however, soundly or it is abused.") (quoting and citing *Nelson v. State*, 315 Md. 62, 70 (1989)).

First, we conclude the court did exercise its discretion in denying the Estate's motion to amend. "It is well settled that a trial judge who encounters a matter that falls within the realm of judicial discretion *must* exercise his or her discretion in ruling on the matter. . . . Hence, a court errs when it attempts to resolve discretionary matters by the application of a uniform rule, without regard to the particulars of the individual case." *Gunning v. State*, 347 Md. 332, 351–52 (1997) (internal citations omitted).[2] A clear example of a trial judge's failure to exercise discretion is *Colter v. State*, 297 Md. 423 (1983). There, the defense had improperly disclosed its alibi witness only a day before trial, in violation of the relevant discovery rule.[3] *Id.* at 425. The judge allowed the prosecution to try to speak with the witness (who refused to talk), and the judge heard arguments from both parties on the prosecution's objection to the witness testifying. *Id.* In deciding to exclude the witness from testifying, the court stated:

> Quite frankly, I know some judges will [grant a continuance], but that is not my way of handling it. If the State violates the discovery rule and the defense asks that I suppress the product, I will suppress it. It's always been the way I handled it. I think the rules are supposed to be the same for everybody.

[2] The touchstone case on discretionary discovery sanctions, *Taliaferro v. State*, established this proposition in Maryland by outlining several factors the trial judge should consider in exercising their discretion. 295 Md. at 390–91. A more detailed discussion on the *Taliaferro* factors and appellate review is below.

[3] Maryland Rule 741(d)(3) governs disclosure of alibi witnesses by the defense to the State.

Id. at 427. Upon review, the Supreme Court of Maryland found that based on the record, "the trial judge applied a hard and fast rule, of not granting a continuance, whether it was the State or the defendant which was in violation." *Id.* at 428. Thus, since "the trial judge did not exercise the discretion granted him under the rule," the Supreme Court reversed and remanded the case for a new trial. *Id.* at 431. Notably, the sticking point in *Colter* was not whether the trial judge entertained arguments on the motion—which he did—but whether the judge indicated in his ruling that he was not considering the case's particular circumstances.

This case is plainly distinguishable from those such as *Colter*. Here, in its order denying the Estate's motion, the court listed the dates of the complaint (including that the complaint alleged lost business opportunities); the Estate's service of interrogatories on Spring; the scheduling order's original amendment; and Spring's deposition. The court then concluded, "None of the infor[ma]tion alleged in the Motion should be so surprising that on the eve of the settlement conference, the parties wish to begin the process anew." Though perhaps stated more briefly than the parties themselves would have done it, the court's references to the Estate's "surprise" claim in its motion to amend and the complaint's allegation of lost business opportunities—along with the key dates mentioned—suffice to show the court's consideration of the particular facts of the case in making its decision. While the court did not hear arguments on the motion, there is nothing in the record to indicate the court applied a hard and fast rule without considering his options, such as stating "that is not my way of handling it," or "I think the rules are

supposed to be the same for everybody." *Colter*, 297 Md. at 427. Here, the court exercised its discretion where required.

Second, the circuit court's exercise of discretion was reasonable based on the record before us. We assess discretionary sanctions for failure to comply with scheduling orders under what have become known as "the *Taliaferro* factors,"[4] which can be summed up by "two broader inquiries": (1) whether the non-complying party "substantially complied with the scheduling order," and (2) whether the non-complying party provided "good cause to excuse the failure to comply with the order." *Asmussen*, 247 Md. App. at 550 (emphasis omitted). In our recent case of *Asmussen v. CSX Transportation*, rather than asking whether the trial court engaged in a lengthy discussion about substantial compliance and good cause in making its ruling below, this Court evaluated simply whether "the circuit court [could have] reasonably concluded" from the record that the movant had neither substantially complied nor justified his non-compliance with good cause. *See id*. at 552–56. We engage in the same evaluation here, noting that both substantial compliance *and* good cause must have been present to disturb the circuit court's decision not to amend the scheduling order.

Whether the Estate substantially complied with the scheduling order turns on whether its violation was technical or gross, and the timing of its ultimate disclosure. *Id.* at

[4] "[W]hether the disclosure violation was technical or substantial, the timing of the ultimate disclosure, the reason, if any, for the violation, the degree of prejudice to the parties respectively offering and opposing the evidence, whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance." *Taliaferro*, 295 Md. at 390–91.

552. "[A]t the barest minimum," there must be "a good faith and earnest effort toward compliance." *Naughton*, 114 Md. App. at 653. However, there need not be a showing of willful, contemptuous, or contumacious behavior to justify a circuit court's sanction for non-compliance with the scheduling order, especially when the sanction is not a case-ending one. *See Scully v. Tauber*, 138 Md. App. 423, 432 (2001) (explaining that even case-ending sanctions, *e.g.*, dismissal or entry of default judgment, for failure to comply with a discovery order may be justified if the sanctioned party had no valid excuse for its failure to comply, even if the sanctioned party did not do so contumaciously).

Here, the Estate provides no explanation as to why it did not attempt to identify experts or develop its contributory negligence defense until settlement negotiations fell through. Additionally, the "sanction"—denial of the Estate's motion to amend—was not a case-ending one such as dismissal. While we by no means believe the Estate engaged in willful or contemptuous non-compliance, we also cannot say there was a good faith effort at compliance. Therefore, denial of the motion was a sound exercise of the court's discretion.

We agree with Spring that these circumstances are distinguishable from those in *Maddox*. In *Maddox v. Stone*, this Court found the appellants had substantially complied with the scheduling order even though they provided their expert's opinion 34 days after the deadline. 174 Md. App. at 508. The violation was deemed technical because the appellants had timely disclosed their experts' names previously; the expert opinions were sent to opposing counsel within 24 hours after the appellants received them; and the

appellants collaborated with opposing counsel to schedule their expert's deposition before the close of discovery. *Id.*

Here, in contrast, there was no attempt to designate experts pursuant to the (already extended) scheduling order deadline. While the Estate blames its non-compliance on Spring's delayed responses to interrogatories coming after the Estate's expert designation deadline, the burden, ultimately, falls on the Estate to prepare its defense. It was unreasonable for the Estate to wait for Spring's answers to seek out experts in a case where lost profits were alleged in the complaint and contributory negligence was noted in the Estate's answer. Further, the Estate's ultimate expert disclosures came five months after the close of discovery and the Estate did not provide Sgt. Gore's report to Spring until weeks after receiving it. These circumstances are clearly distinguishable from those in *Maddox* in which the appellant had disclosed the experts' names prior to the deadline, disclosed the report only 34 days after the deadline, and provided the report within 24 hours after receiving it.

Rather, the Estate's violation was a gross one, more akin to *Asmussen*. There, this Court affirmed the lower court's denial of the appellant's motion to modify the scheduling order, first holding "the circuit court could [have] reasonably conclude[d] that Asmussen had not substantially complied with the scheduling order." 247 Md. App. at 554. In sum, we found a lack of substantial compliance because Asmussen did not properly comply with the expert designation requirements until six months after the expert designation deadline; the expert's opinion was only provided in a report included in Asmussen's brief opposing

summary judgment; and allowing the late disclosure or extending the scheduling order would have severely prejudiced opposing counsel. *Id.* at 553–55. At the bare minimum, Asmussen had timely disclosed the names of experts he intended to call. *Id.* at 552. However, this Court explained that "Asmussen did nothing more with his expert-witness designation than inform [opposing counsel] that he might use experts to establish essential elements of his claim and that any testimony ultimately used would have some proper basis." *Id.* at 553.

Though the level of prejudice had the court granted the Estate's motion to amend certainly would not have risen to the level the court faced in *Asmussen*,[5] the Estate's non-compliance was still substantial. As mentioned above, the Estate failed to engage in trial preparation outside of deposing Spring. Further, the Estate waited until months past the discovery deadline to request the second extension. Settlement discussions do not override counsel's duty to prepare for trial in the event settlement cannot be reached. Essentially, with regard to the scheduling order, "[t]here was no attempt at compliance." *Taliaferro*, 295 Md. at 391.

To be clear, we empathize with the Estate's frustrations. We strongly encourage litigants to engage in the types of collaborative efforts the Estate describes in its brief; however, the parties are litigants in an adversarial system. While scheduling orders "are

[5] In *Asmussen*, granting an extension of the scheduling order "would have threatened a delay of the trial date." 247 Md. App. at 555. Here, as the Estate correctly points out, the trial date would have been unaffected by a second extension of the scheduling order.

generally not unyieldingly rigid" and "compliance with scheduling orders is not always feasible from a practical standpoint," modification of scheduling orders—particularly for a second time—is generally reserved for "extraordinary circumstances." *Naughton*, 114 Md. App. at 653. Spring's late interrogatory answers, additional particulars revealed in his deposition, and engaging in settlement discussions are not extraordinary circumstances warranting a second modification.

Because we conclude the Estate did not substantially comply with the scheduling order, we need not reach the question of whether the Estate provided good cause for its non-compliance. As there was no substantial compliance, the circuit court did not abuse its discretion in denying the Estate's motion to amend the scheduling order.

II. The Circuit Court Did Not Abuse Its Discretion in Excluding Sergeant Gore's Testimony.

A. Parties' Contentions

The Estate contends it provided Spring with Sgt. Gore's report as soon as it became available to the Estate via public request. The Estate further asserts that the court's exclusion of Sgt. Gore's testimony at trial was "based on a misapplication of the broader purpose of the discovery rules and a misunderstanding of when the info was received and disclosed." Accordingly, the Estate claims that Spring had been aware of Sgt. Gore as a potential witness since the Estate provided its answers to interrogatories. Altogether, the Estate maintains that the exclusion of Sgt. Gore was part of the chain reaction set off by the court's previous "improper pre-trial rulings" causing severe prejudice to the Estate's defense.

Spring argues, again, that the Estate should have engaged in discovery well before the scheduling order's deadline to discover Sgt. Gore's report. Spring asserts that admitting Sgt. Gore's testimony "would have been grossly prejudicial to [Spring], who respected the scheduling order, identified expert witnesses within the discovery deadline, and *timely* requested amendment of the scheduling order[.]" Finally, Spring argues that the trial court exercised proper discretion by hearing arguments on the motion to exclude Sgt. Gore and conducting in camera review of Sgt. Gore's testimony before making his ruling.

B. Analysis

"If the circuit court did not err in denying the motion to modify the scheduling order, then it also did not err in striking the witnesses whose designations or depositions did not comply with the scheduling order's deadlines." *Asmussen*, 247 Md. App. at 546. Because we concluded the circuit court did not abuse its discretion in denying the Estate's motion to amend the scheduling order, we conclude, for the same reasons, the court did not abuse its discretion in excluding the late-disclosed testimony of Sgt. Gore.

III. The Court Did Not Err in Granting Spring's Motion for Judgment on Contributory Negligence.

A. Parties' Contentions

The Estate argues there was more than sufficient evidence to submit the issue of contributory negligence to the jury. By removing the issue from the jury, the Estate asserts the trial judge "usurped the jury's role as the ultimate factfinder." The Estate first posits that the court's exclusion of Sgt. Gore's testimony unfairly prejudiced its ability to support its defense of contributory negligence. Regardless, the Estate asserts there was sufficient

evidence, including testimony by Spring and other witnesses, which created a factual dispute as to Spring's speed and inattentiveness and their impact on the collision. Finally, the Estate contends the trial court's reliance on *Myers v. Bright*, 327 Md. 395 (1992), is misguided because compared to *Myers*, the present case "included layers of independent negligence" sufficient to submit contributory negligence to the jury.

Spring contends that the Estate failed to present evidence on how Spring's alleged negligence was a proximate cause of the accident. Spring argues the trial court correctly relied on *Myers v. Bright* for the proposition that evidence of Spring exceeding the speed limit or being inattentive does not show that his speed or inattentiveness were a proximate cause of the crash. Since the Estate presented no evidence on proximate cause, Spring maintains the court was correct to remove contributory negligence from the jury.

B. Analysis

We agree with Spring that the Estate did not satisfy its evidentiary burden to submit contributory negligence to the jury. "With respect to the legal phenomenon of 'contributory negligence,' the limiting adjective 'contributory' is just as significant and just as necessary an element as is the noun 'negligence.'" *Rosenthal v. Mueller*, 124 Md. App. 170, 171 (1998). "The law holds a driver responsible for an accident only when he or she can be blamed for contributing to the event. Negligence that does nothing to cause a mishap cannot create accountability." *Myers*, 327 Md. at 407. It has been long established in Maryland that to assert a defense of contributory negligence, the burden is on the defendant to make a *prima facie* showing of two elements: (1) that the plaintiff was negligent, and (2) that the

plaintiff's negligence was a proximate cause of the accident. *See, e.g.*, *Friedman v. Hendler Creamery Co.*, 158 Md. 131, 148 (1930); *Rosenthal*, 124 Md. App. at 175; *Schwarz v. Hathaway*, 82 Md. App. 87, 90 (1990). To be absolutely clear, "proximate causation is an additional and independent element that must be proved" to submit contributory negligence to the jury. *Rosenthal*, 124 Md. App. at 177.

The parties agree the Estate presented evidence on the first element of contributory negligence—Spring's negligent acts—but dispute whether the Estate presented evidence showing Spring's alleged negligence was a proximate cause of the accident. Thus, just as in *Myers*, "[o]ur focus is simply on causation[.]" 327 Md. at 408. In fact, our analysis here is quite similar to that in *Myers*. There, the plaintiff was driving southbound in the right hand lane when her car was struck by a driver coming northbound who made a lefthand turn across traffic. *Id.* at 397. The Supreme Court of Maryland affirmed the trial court's grant of judgment on contributory negligence, finding there was no evidence presented on the plaintiff's alleged speed being a proximate cause of the accident. *Id.* at 396. In so holding, the Court explained that "speed in excess of the posted speed limit is not the proximate cause of an accident when the vehicle is where it is entitled to be and the driver would not have been able to avoid an accident even had he been driving at the lawful speed." *Id.* at 406 (quoting Keith C. Miller, *Automobile Accident Law and Practice*, § 19.10 (1991)). Applied to the facts of *Myers*, the Court held the plaintiff "was where she was entitled to be: going the correct direction in a through lane when suddenly [the

defendant] emerged from in front of the [traffic]. She would not have been able to avoid the accident even had she been driving within the posted limit." *Id.*

Throughout the opinion, Court focused on the fact that the proponent of contributory negligence must present actual evidence as to proximate cause. *See id.* ("There [was] **no evidence** that Myers' speed deprived her of an opportunity to take some action to avoid the collision.") (emphasis supplied). In fact, the Court addressed the reason for not relying on speculation or conjecture in deciding whether to send the issue to the jury:

> It could be argued that had [the plaintiff] been going slower, she would not have been at that location at the precise moment when [the defendant] was trying to dash into the Burger King. In other words, **speeding put her in the wrong place at the wrong time**. It could be similarly argued that had she been going much faster she also would have avoided the accident. Seventy years ago, the Illinois Supreme Court stated:
>
> "If the illegal act is a mere condition which made it possible for the accident to occur, but is in itself no part of the accident, it will not bar recovery. It is, of course, an essential condition of most accidents that the injured party be where he was at the time he was in order for the injury to occur, and the fact that he would not have been there if he had not been violating the law is not, in itself, a defense."

Id. at 408 (quoting *Lerette v. Dir. Gen. of R.Rs.*, 306 Ill. 348, 353 (1922)) (emphasis supplied) (additional citation omitted).

Here, as in *Myers*, Spring was where he was entitled to be: driving the correct direction in a through lane. The Estate enumerates thirteen pieces of evidence it presented at trial, which it claims establish Spring's contributory negligence:

> (1) Spring testified at trial that he was driving about 37-mph or 12-mph over the speed limit just moments prior to the accident;
> (2) he testified that the force of his GMC truck striking Appellant's sedan pushed her sedan about 80 feet past the entrance to the store;

(3) Shadonna Wilson, an eyewitness to Spring's speed, testified that she heard him "revving" his engine loudly as he crossed through the intersection of Dover Road and Route 50 and that he was "flying";
(4) Wilson heard the loud acceleration until the point of impact;
(5) Keasia Stanley, also an eyewitness, testified that she heard the loud revving and saw Spring coming through the intersection at great speed;
(6) Stanley reported that Spring's large SUV sounded like a "race car" coming through the intersection;
(7) Stanley also heard the loud acceleration until the point of impact;
(8) Dylan Harris, also an eyewitness, testified that he worked at a nearby store and had seen countless vehicles cross through that intersection– he testified that Spring traversed the intersection faster than any vehicle he had ever seen pass through the intersection;
(9) Spring testified that he was in the right-hand lane of two lanes that were straight through the intersection. He testified that there were cars to his left as he crossed the intersection. Even though there were cars to his left, closer to where Taylor allegedly attempted to cross, none of those cars collided with Taylor's vehicle;
(10) the lane in which Spring was traveling ended shortly past the entrance for the retail store and the jury could easily infer that Spring was driving so erratically in a congested area so that he could beat all of the traffic to his left and merge into the single lane of traffic in the lead;
(11) Spring told one of the investigating officers that he passed out before the collision and came to after the collision;
(12) Spring told the hospital triage nurse that he felt dizzy earlier in the day and blacked out before the accident; and
[(13)] both Wilson and Stanley heard Spring say at the scene that he blacked out prior to the collision.

While there was certainly a factual dispute as to Spring's negligence, the Estate's own list of evidence fails to reveal evidence specifically showing how Spring's actions contributed to the accident.

Without evidence of how Spring's negligence was a proximate cause of the accident, this case presents a "wrong place at the wrong time" situation akin to *Myers*. *See also Sun Cab Co. v. Faulkner*, 163 Md. 477, 479 (1932) ("The contribution of the Sun cab

to the accident appears to have been only that of being there at the moment, a circumstance which might have arisen with or without negligence in approaching the place."); *Rosenthal*, 124 Md. App. at 181 ("Even assuming, arguendo, that the appellant's vehicle at the moment of collision was negligently 'off the roadway' in a place where it should not have been, the only connection that fact would have had with the accident is that it placed the appellant in harm's way—at the wrong place at the wrong time."). Without evidence presented specifically for the purpose of proving the second element of contributotry negligence, the trial court properly granted judgment on that issue.

THE JUDGMENT OF THE CIRCUIT COURT FOR TALBOT COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.