Circuit Court for Baltimore City
Case No.: 24-C-19-002369

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 165

September Term, 2023

CHARLENE MCCORMICK

v.

HOUSING AUTHORITY OF BALTIMORE CITY

Wells, C.J.,
Reed,
Ripken,

JJ.

Opinion by Wells, C.J.

Filed: January 30, 2024

*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).

Charlene McCormick, representing herself, appeals the Circuit Court for Baltimore City's order granting a motion for judgment made by appellee, Housing Authority of Baltimore City ("HABC"). McCormick presents several issues for our review, which we consolidate and rephrase as follows:[1]

I. Did the court err in denying Ms. McCormick's motion for default judgment?

II. Did the court err in granting HABC's motion for judgment?

III. Did the court err in granting a motion for summary judgment?

IV. Did the court err in denying Ms. McCormick's motion *in limine* or make other procedural errors resulting in prejudice to Ms. McCormick?

For the reasons we shall discuss, we affirm the circuit court's judgment.

BACKGROUND

This is the second time this case, which has a complicated procedural history, has been before us.[2] The events relevant to this appeal are as follows. In 2019, McCormick filed a complaint alleging that she suffered various health issues from leasing a residence from HABC for over thirty years. Therein, she asserted several claims against HABC, including negligence, breach of contract, product liability, and fraudulent concealment.

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[1] It does not appear that McCormick has made attempts to comply with the relevant Maryland Rules governing appellate procedure, making it difficult to determine the exact nature of her contentions. However, as discussed *infra*, it appears that her brief focuses on four primary issues, which we address herein.

[2] Additional factual and procedural history is set forth in our unreported *per curiam* opinion addressing McCormick's first appeal, *McCormick v. Baltimore Department of Housing*, No. 1174, Sept. Term 2020 (filed October 4, 2021). We include only the facts necessary to the instant appeal herein.

HABC filed a motion to dismiss, which the circuit court granted, finding that McCormick was "on notice of her claims as early as 1985[,]" and accordingly, that her claims were barred by statute of limitations.

McCormick filed her first notice of appeal. On appeal, this Court vacated the order dismissing McCormick's claims, determining that she was not notified of issues relating to soil erosion in her residence until 2016. *McCormick v. Baltimore Department of Housing*, No. 1174, Sept. Term 2020 (filed October 4, 2021).[3] Accordingly, we remanded "with instructions to address any allegedly wrongful acts by HABC that accrued subsequent to April 16, 2016[,]" or three years prior to the filing of McCormick's complaint, pursuant to Md. Code Ann., Courts & Judicial Proceedings § 5-101.

On remand, McCormick filed a motion for summary judgment, and in the alternative, a motion for default judgment. In support of her request for default, she asserted that HABC failed to timely answer her complaint. HABC opposed the motion, maintaining that McCormick's claims had already been considered and denied by the court. In December of 2022, the court held a hearing where it considered several pending matters, including McCormick's motion. Docket entries from that hearing reflect, in relevant part, that: "[McCormick's] Motion for summary [] judgment is heard and denied."[4]

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[3] In September of 2022, the circuit court noted that use of the name "Baltimore Department of Housing" for appellee had been a misnomer in the record and that appellee's correct name is Housing Authority of Baltimore City. We refer to appellee accordingly in the instant appeal.

[4] The transcript from that hearing is not in the record before us.

On February 9, 2023, the parties appeared for trial. At the beginning of trial, McCormick asserted that her motion for default judgment was still pending. The court responded that there were no "pending motions in the file[,]" and that it believed McCormick's requests for "summary judgment and default judgment w[ere] taken care of[.]" HABC offered that although the court entitled the order as denying only summary judgment, that the order denied McCormick's requests for both summary judgment and default judgment.

The court nonetheless offered to continue the trial. McCormick declined:

> THE COURT: I'm not here to hear the default judgment. If you want that to be heard, then I -- as, again, we can continue the case with the default judgment to be heard. But it was my understanding it was taken care of in that pleading number 52. But that's going to be your call. But it's my understanding that it was. But if you want a more concise and clear explanation of that, I know that he indicated on the motion that it was a motion for summary judgment. But me reading motion 52 and I believe there was a chambers hearing on that. It might have been via Zoom that all of those matters encompassing that motion was heard.
>
> MS. MCCORMICK: Okay. At the -- what is the -- the conference?
>
> THE COURT: Yes. We can call it -- your chambers for your motions.
>
> MS. MCCORMICK: Yes. The Judge at the conference said that there were outstanding -- on video, he said there was -- on the video -- we did it by video, and he said there were outstanding pending motions still alive. So that's why I did that. But we can go ahead on. I mean, I'm ready either way.
>
> ***
>
> THE COURT: Well, as I said, my determination is if you want that -- if you want more clarity on whether or not the default judgment was actually ruled on, then that would need to go back to the chambers judge. And I don't have a problem doing that but we won't be able to proceed today.
>
> MS. MCCORMICK: Okay. Well, let's (indiscernible - 9:29:16) proceed.

> THE COURT: So are you withdrawing -- I mean, are you -- I mean, I think it was heard in 52 but you either have to withdraw your request for a default judgment as it pertains to number 52 or you have -- or concede that the default judgment was actually answered in 52. You have to either make that decision or I can't go any further.
>
> MS. MCCORMICK: Okay. Well I'll go ahead with -- I'll -- what is it? I'll let the motion go.

The case proceeded to trial, where McCormick asserted that soil erosion on the property caused various issues within the residence, including rusty water, rust on her bathtub and water tank, water leaking from her walls and ceiling, issues with her washing machine, and mosquito and fly infestations. She alleged that she suffered from various illnesses as a result, including calcium deposits, muscle tightness, anxiety, popping in the left ear, abdominal tenderness, retinitis, back pain, constipation, tendonitis in the left ear, temporomandibular joint dysfunction, gastrointestinal illnesses, vaginal infections, stomach bloating, bad shoulder pain, and heart palpitations. She identified several exhibits, but only two – a letter about spraying for mosquitos, and a photo of a fly in a drink – were admitted into evidence.

At the close of McCormick's presentation of evidence, HABC made a motion for judgment, asserting that McCormick failed to "establish the essential elements of her claims." The court granted HABC's motion, concluding that McCormick was "missing major pieces of [her] case[] in order for it to go past a motion for judgment[.]" In relevant part, as to McCormick's breach of contract claim, the court stated, "I don't even have a lease. There's no []lease here to create a contractual obligation." As to McCormick's negligence claim, the court found that McCormick had failed to prove causation:

> I think the proximate cause issue is the biggest and I think you said it yourself. I think your words were very clear when you said, "I don't have anything on causation. I just -- because I don't have an expert", and I think you understand that you have to have an expert for causation. No one is saying in any way that you haven't incurred the medical issues that you say you've incurred. No one is saying that. But before even we get to causation, there's got to be a duty of care that was required and that there was a cause and I'm not really too sure, I can't even get -- I don't have evidence before me under the Maryland Rules that substantiate that the soil erosion caused these specific things to happen because I need testimony as regards to that and I need an expert. Then I need an expert to tell me that that lack -- that soil erosion, which is the problem that you indicate, is the cause of all of these things that have happened and what were those things that happened, these are the injuries that was caused by it, and these was -- this is the proximate cause. None of that is here before me and negligence in action, the elements are very, very clear. It doesn't mean you didn't have calcium deposits in 2016. It doesn't mean that you didn't have the issues of your back in 2017, the muscle tightness and the anxiety, the popping in the ear in August 10th of 2020, the abdominal tenderness in 2016, the abscess in 2016, the allergical -- allergic bentonites [sic] in 2016, the back pain in 2017, the constipation in 2017, the tendonitis in your left ear in 2021, the popping in your jaw in 2021, the gastral issues in 2016, and the bacteria from the showers that you allege and contend. The problem is is I -- they may -- I believe that that's every problem that you sought medical treatment for. I just don't have the causation.

McCormick timely noted this appeal. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

A motion for judgment is governed by Maryland Rule 2-519, which provides that:

> (a) Generally. A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence. The moving party shall state with particularity all reasons why the motion should be granted. No objection to the motion for judgment shall be necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of an opposing party's case.
>
> (b) Disposition. When a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed, as the trier of fact, to determine the facts and to render judgment

> against the plaintiff or may decline to render judgment until the close of all the evidence. When a motion for judgment is made under any other circumstances, the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made.

Accordingly, although the court is required to consider all evidence and inferences in light of the non-moving party in a matter proceeding before a jury, in a non-jury trial, the court "is not compelled to make any evidentiary inferences in favor of the party against whom the motion for judgment is made." *Saxon Mortg. Servs., Inc. v. Harrison*, 186 Md. App. 228, 262 (2009) (quoting *Bricker v. Warch*, 152 Md. App. 119, 135-36 (2003)). Instead, the court may "evaluate the evidence, as though he were the jury, and [] draw his own conclusions as to the evidence presented, the inferences arising therefrom, and the credibility of the witnesses testifying." *Pahanish v. Western Trails, Inc.*, 69 Md. App. 342, 353 (1986).

On appeal, we "review a trial court's decision to grant or deny a motion for judgment applying the de novo standard of review." *Wallace & Gale Asbestos Settlement Tr. v. Busch*, 238 Md. App. 695, 705 (2018), *aff'd*, 464 Md. 474 (2019). In accordance therewith, our task is to determine "whether on the evidence presented a reasonable fact-finder could find the elements of the cause of action by a preponderance of the evidence." *Univ. of Maryland Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012). We review the lower court's legal conclusions to determine whether they are "legally correct[.]" *Walter v. Gunter*, 367 Md. 386, 392 (2002). However, we "set aside a trial court's factual determinations only when they are clearly erroneous[.]" *Krause Marine Towing Corp. v. Ass'n of Maryland Pilots*, 205 Md. App. 194, 206 (2012). *See also* Md. Rule 8-131(c).

DISCUSSION

As an initial matter, we note that McCormick filed an informal brief that does not appear to comply with several of the relevant Maryland Rules of appellate procedure.[5] For instance, her brief does not include separately numbered questions indicating the legal propositions involved and the questions of fact at issue as required by Md. Rule 8-504(a)(3). Instead, it provides a lengthy recitation of facts and identifies, under four separate headings, several "[i]ssues that [she] would like [us] to review[,]" although none of which present discernible questions:

> Issue #1: 2/9/2023- Main Issue
>
> Issue #2: 2/9/2023 Defense Motion for Summary Judgment is here by heard and GRANTED.
>
> Issue #3 – 2/9/2023 Plaintiff's Motion in Limine to exclude Defendant's list of wellness (witnesses) was heard and DENIED.
>
> In Conclusion A, B, C, D, & E "Strange" Trial Transactions

McCormick's brief also lacks a table of contents, a concise statement of the facts material to the determination of the questions presented, references to a record extract or appendix, the applicable standard of review for each (or any) issue, or an appendix of pertinent rulings from the lower court, as required by Md. Rules 8-504(a)(1), (a)(4)-(5), (b)(1). Although these deficiencies make McCormick's assertions difficult to comprehend,

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[5] Nor was informal briefing authorized in this appeal. *See* Md. Rule 8-502(a)(9) (providing that informal briefing may be authorized by administrative order of this Court); *see also* Appellate Court of Maryland Administrative Order, (effective December 19, 2022) (permitting informal briefing where no appellant is represented by counsel in "cases filed by incarcerated individuals; foreclosure cases; and family law cases[,]" none of which apply to the facts before us).

it appears that her contentions can be categorized into four main issues, which we address in turn.

I. McCormick Waived Her Motion for Default.

McCormick asserts that HABC failed to timely answer her complaint following remand, and thus the court erred in declining to enter a default judgment in her favor. HABC responds that the court already considered and denied McCormick's request for default following an earlier-filed motion, and further, that she waived her motion for default by "clearly agree[ing] to proceed with trial[.]" McCormick does not dispute that she waived her motion at trial, but asserts that she "had to waive" her motion because she was "under pressure" to do so.

We agree that McCormick's request for default has not been preserved for our review. The record indicates that at trial, the court offered McCormick several opportunities to continue the case so she could re-visit her motion for default. Although the court made clear that it had no "problem doing [so,]" McCormick declined to continue the matter at least three different times. She provides no explanation or support for her assertion that she "had to" waive her motion, nor is this Court aware of any. Accordingly, this issue is not properly before us on appeal. *In re Nicole B.*, 410 Md. 33, 64 (2009) ("It is well-settled that a party in the trial court is not entitled to appeal from a judgment or order if that party consented to or acquiesced in that judgment or order."); *Simms v. State*, 240 Md. App. 606, 617 (2019) ("[W]here a party acquiesces in a court's ruling, there is no basis for appeal from that ruling.").

II. THE COURT PROPERLY GRANTED HABC'S MOTION FOR JUDGMENT.

McCormick asserts that the court erred in dismissing her claims, relying primarily on her claims of negligence and breach of contract.[6] In support, she asserts that soil erosion is "obviously harmful" and the "probable cause of [her] long term pain and suffering [and] multiple illnesses[.]" She adds that she should "not have to prove proximate cause" because her allegations constitute *res ipsa loquitur* negligence: that the facts so obviously indicated HABC's negligence that she did "not need to explain[.]" Finally, she does not dispute that she failed to identify a lease in support of her breach of contract claim, but asserts that a copy of the lease was not necessary because a letter from HABC, attached to her complaint, "acknowledged that it had a lease agreement with Ms. McCormick[.]"[7]

HABC responds that the court properly granted its motion for judgment because McCormick failed to "show the source of any duty[,]" failed to "establish [] causation[,]" and failed to "produce a lease[.]" Further, HABC asserts that Ms. McCormick did not dispute HABC's assertion at trial that *res ipsa loquitur* did not apply, and thus that she failed to preserve that claim for our review. We agree.

A. McCormick failed to present evidence of negligence by a preponderance of the evidence.

[6] Ms. McCormick asserts that the court dismissed her claims by granting a motion for summary judgment, not a motion for judgment. We disagree and address Ms. McCormick's characterization of the dispositive motion in part III, *infra*.

[7] Further, Ms. McCormick makes no argument in support of her product liability claims and makes only passing remarks to her fraud claims. Accordingly, we decline to consider either of those issues on appeal. *See* Md. Rule 8-504(a)(6); *Klauenberg v. State*, 355 Md. 528, 552 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.")

A plaintiff must establish four elements to state a claim of negligence: "(1) that the defendant had a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the defendant's breach of duty proximately caused the loss or injury." *Pendleton v. State*, 398 Md. 447, 460 (2007). Indeed, "[n]egligence is not actionable unless it is a proximate cause of the harm alleged." *Stone v. Chicago Title Ins. Co. of Maryland*, 330 Md. 329, 337 (1993). "To be a proximate cause for an injury, 'the negligence must be 1) a cause in fact, and 2) a legally cognizable cause.'" *Pittway Corp. v. Collins*, 409 Md. 218, 243 (2009) (quoting *Hartford Ins. Co. v. Manor Inn*, 335 Md. 135, 156–57 (1994)). Causation in fact occurs when "it is more likely than not that the defendant's conduct was a substantial factor in producing the plaintiff's injuries." *Pittway Corp.*, 409 Md. at 244 (internal quotation marks omitted). We have made clear that "[p]roof of causation cannot be based on mere speculation." *Davis v. Regency Lane, LLC*, 249 Md. App. 187, 216 (2021). Instead, "there must be proof that, but for the wrongful conduct, the injury would not have occurred." *Coit v. Nappi*, 248 Md. App. 44, 62 (2020).

To prove proximate cause, "[i]t is not always necessary that the existence of physical injury and the source of its cause be proved by expert medical testimony." *Vroom v. Arundel Gas Co.*, 262 Md. 657, 664 (1971). This is true in cases "where the causal connection is clearly apparent from the illness itself and the circumstances surrounding it, or where the cause of the injury relates to matters of common experience, knowledge, or observation of laymen." *Wilhelm v. State Traffic Safety Comm'n*, 230 Md. 91, 99 (1962).

Examples of such circumstances include "where a dentist extracts the wrong tooth, a doctor amputates the wrong arm or leaves a sponge in a patient's body, or an attorney fails to inform his client that he has terminated his representation of the client." *Schultz v. Bank of America, N.A.*, 413 Md. 15, 29 (2010). This is because "[i]n those cases, the alleged negligence is so obvious that the trier of fact could easily recognize that such actions would violate the applicable standard of care." *Id.* However, if "an injury claimed to have resulted from a negligent act is a complicated medical question involving fact finding which properly falls within the province of medical experts[,]" it has been stated that, "proof of the cause must be made by such witnesses." *Wilhelm*, 230 Md. at 100.

Here, McCormick noted specifically in relation to causation, that she was "not an expert" but that she "did [her] research [] related to those injuries." However, as McCormick acknowledges, she does not have the "knowledge, skill, experience, training, or education," to properly testify regarding whether soil erosion could cause the specific injuries she alleges. Md. Rule 5-702. Nonetheless, she called no expert witnesses and failed to introduce any evidence indicating that soil erosion causes the injuries she alleges.

Nor can we say that the causal link between soil erosion and the injuries alleged—including "calcium deposits, muscle tightness, anxiety, popping in the left ear, abdominal tenderness, retinitis, back pain, constipation, tendonitis in the left ear, temporomandibular joint dysfunction, gastrointestinal illnesses, vaginal infections, stomach bloating, bad shoulder pain, and heart palpitations"—is "clearly apparent" or one of "common experience, knowledge, or observation" which would make expert testimony on the matter unnecessary. *Wilhelm*, 230 Md. at 99. Such a finding would have been based upon no more

than "mere speculation" under the record before us. *Davis*, 249 Md. App. at 216. Accordingly, because McCormick failed to prove causation, judgment in favor of HABC as to her negligence claim was proper.

Finally, as to McCormick's assertion that HABC's actions constitute *res ipsa loquitor* negligence, we agree that this claim is not preserved for review.[8] At trial, HABC asserted that *res ipsa loquitur* did not apply, which McCormick did not dispute:

> [HABC:] In order to establish res ips[a loquitur], you -- she must show that the casualty is of a kind that does not ordinarily occur absent negligence, that it was caused by instrumentally, exclusively in the Defendant's control and that it was not caused by an act or omission of the Plaintiff. We still don't understand what the actual instrument of the injury was, let alone what caused it or under whose control it was. The tenant, Ms. McCormick, was the only tenant in the premises so we don't know whether -- what she was exposed to in her unit or elsewhere to know what caused her injuries.

Instead, the transcript indicates that she challenged HABC's assertions only as they related to her fraud and product liability claims. Further, McCormick answered in the negative when specifically asked whether she had anything further for the court's consideration:

> THE COURT: Anything else you want to say based on [HABC's] motion [for judgment]?
>
> MS. MCCORMICK: No, ma'am.

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[8] *Res ipsa loquitur*, Latin for "the thing speaks for itself[,]" permits "a plaintiff to establish a *prima facie* case of negligence when direct evidence of the cause of the accident is unavailable and the circumstantial evidence permits the drawing of an inference by the fact-finder that the defendant's negligence was the cause." *D.C. v. Singleton*, 425 Md. 398, 407 (2012). It is available when "'the facts are so clear and certain that the inference [of negligence] arises naturally from them.'" *Id.* (quoting *Knippenberg v. Windemuth*, 249 Md. 159, 161 (1968)).

Accordingly, because McCormick failed to raise her claim before the circuit court, we decline to address it on appeal. *See* Md. Rule 8-131(a) ("Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").[9]

B. McCormick failed to present evidence of breach of contract by a preponderance of the evidence.

To state a claim for breach of contract, a plaintiff must demonstrate "the existence of a contractual obligation owed by the defendant to the plaintiff, and a material breach of that obligation by the defendant." *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 658 (2010). In accordance therewith, "the burden of proof is on the plaintiff[.]" *Corry v. O'Neill*, 105 Md. App. 112, 125 (1995). "The phrase 'burden of proof' encompasses two distinct burdens: the burden of production and the burden of persuasion." *Bd. of Trustees, Cmty. Coll. of Baltimore Cnty. v. Patient First Corp.*, 444 Md. 452, 469 (2015). To survive a motion for judgment, "the party that bears the burden of production must produce sufficient evidence on an issue to present a triable issue of fact[.]" *Id.* The burden of persuasion means that "the plaintiff must prove that its case is more likely true than not true." *Est. of Blair by Blair v. Austin*, 469 Md. 1, 21 (2020).

Here, we note that the record before us contains no contract between the parties, nor does it provide any explanation for its absence. On appeal, McCormick asserts that a copy

[9] Even had Ms. McCormick preserved her assertion for our review, we are unpersuaded that the connection between soil erosion and the varying illnesses Ms. McCormick alleges is "so clear and certain that the inference [of negligence] arises naturally from them" to fall within the doctrine of *res ipsa loquitur*. *Singleton*, 425 Md. at 407.

of the lease was not required because a letter from HABC attached to her complaint, dated August 25, 2016, "acknowledg[ed] that it had a lease agreement with Ms. McCormick[.]" While true, that letter does little to indicate what the terms of any alleged contract were, or which provision HABC breached. Merely because HABC may have "acknowledged[,]" in August of 2016, that a lease existed with McCormick, does not, by a preponderance of the evidence, prove a breach thereof.

As the circuit court explained at trial, "[t]here's no []lease here to create a contractual obligation[,]" and "even if I said, fine, she live[d] in this place. [] I still need to know the terms by which you were living [t]here." *See also Dolan v. McQuaide*, 215 Md. App. 24, 31 (2013) ("A claim for breach of contract cannot stand if its essential terms are vague or uncertain"); *8621 Ltd. P'ship v. LDG, Inc.*, 169 Md. App. 214, 227 (2006) ("A court cannot enforce a contract unless it can determine what it is.") (quotation marks and citation omitted*); Gordy v. Ocean Park, Inc.*, 218 Md. 52, 60 (1958) ("[B]efore the court can construe a contract, there must exist a contract[.]"). Accordingly, because McCormick failed to produce sufficient evidence "to present a triable issue of fact" in support of her breach of contract claim, the court's grant of HABC's motion for judgment was proper. *Bd. of Trustees, Cmty. Coll. of Baltimore Cnty.*, 444 Md. at 469.

III. THE RECORD INDICATES THAT THE COURT CORRECTLY GRANTED A MOTION FOR JUDGMENT, NOT A MOTION FOR SUMMARY JUDGMENT.

McCormick asserts that the court erroneously dismissed the matter by granting a motion for summary judgment, not a motion for judgment. HABC responds that

McCormick's position misstates the record, and that the court properly granted HABC's only then-pending motion: a motion for judgment. We agree.

Although the record reflects that the court referred to HABC's motion for judgment as a "motion for summary judgment[,]" once in the transcript before us, McCormick fails to read the court's statement in the context within which it appears. The record indicates that the only motion pending at the time of the court's ruling was HABC's motion for judgment. No motion for summary judgment was before the court at that time. The court explained this to McCormick prior to granting HABC's motion, noting that HABC was "not arguing summary judgment at this point." Further, the court correctly referred to HABC's motion as a "motion for judgment" in the immediately preceding sentence, as well as three other times in the transcript.

As the Supreme Court of Maryland has stated, "[a]lmost anyone can make a slip of the tongue, and judges are not immune from such errors." *Reed v. State*, 225 Md. 566, 570 (1961). Indeed, and "[a]fter a careful study of the entire colloquy[,]" it is clear that a "slip of the tongue" is exactly what occurred under these facts. *Id*. at 570-71. Accordingly, the court properly granted a motion for judgment under these facts.[10]

[10] It appears that the circuit court docket entries also erroneously reflect that the motion granted was a motion for summary judgment. We note that pursuant to Md. Rule 2-535(d), clerical mistakes in the record may be corrected by the court at any time on its own initiative, or on motion of any party.

IV. McCormick Failed to Preserve Her Assertions Regarding Her Motion *in Limine* and Various Procedural Errors.

McCormick asserts that HABC failed to provide its list of witnesses prior to trial, and thus that the court erred in denying her motion *in limine* to exclude those witnesses. HABC responds that McCormick waived this issue for review, and in any event, that "HABC did not present any witness[es], rendering the motion to exclude witnesses moot and any error harmless." We agree.

The transcript indicates that in response to McCormick's motion *in limine*, the court offered to continue the trial, but that McCormick declined:

> [THE COURT]: [B]ased on the rules of procedure, she can, in fact, have these witnesses.
>
> Now what can happen is if these witnesses -- there can be a determination for you that if these witnesses are such a surprise that you need a continuance based on what you believe or don't believe that they're going to testify to, I can hear that because I don't want you to proceed in any way that's prejudicial to you if you haven't had an opportunity or you don't think, at this point, because she has these two persons that even though you were aware of, wasn't aware that they were going to come to testify.
>
> So we can have a discussion about what prejudice this may post and a request for a continuance, if you want to -- if you want to do that.
>
> MS. MCCORMICK: No, Your Honor. I'm fine.
>
> THE COURT: You're fine?
>
> MS. MCCORMICK: Yes ma'am.

Accordingly, McCormick waived consideration of this issue on appeal. *In re Nicole B.*, 410 Md. at 64. Even had she preserved her contention, it is unpersuasive. The court granted HABC's motion for judgment at the conclusion of McCormick's case, before HABC called any witnesses. Therefore, it is unclear how any alleged error may have had

a "'prejudicial effect on the outcome of the case[.]'" *Fry v. Carter*, 375 Md. 341, 356 (2003) (*quoting Beahm v. Shortall*, 279 Md. 321, 331 (1977)).

Nor do we find any merit to the several "strange trial transactions"—ranging from the clerk's announcement that court was in session to the court's reference to HABC's exhibit list—presented in McCormick's brief.[11] However, because McCormick failed to object to any of these issues at trial, we need not address them on appeal. *See* Md. Rule 8-131(a).

Finally, we disagree with McCormick's assertion that the circuit court failed to comply with this Court's previously-issued mandate. Nothing within our prior opinion disposed of McCormick's burden to prove her claims by the preponderance of the

[11] Specifically, she asserts that:

A.) The Clerk incorrectly called the 2/2/2023 trial in session, as Part Two is now In Session; it was only this trial. Shown in Revised transcript pg. 4, lines 4 &5

B.) An UNIDENTIFIED SPEAKER is giving "aid" to the trial Judge once her computer comes on and then she leaves podium for a few minutes which is recorded in the revised transcript; See Revised Transcript: pg. 4, lines 10-18

C.) Judge desperately needed Appellee's counsel "list of exhibits" to help her navigate through trial because the case files were unorganized. Told Apellant she will override if she object. Shown in revised transcript on pg. 5, lines 19-25.

D.) Judge do not have a copy of complaint available. Claimed it is in COSA's files. See revised transcript on pg. 29, lines 20-22.

E.) Appellee allowed to interrupt Appellant testimony to request a preliminary motion (?) for an alleged witness without a testimony to be seated beside counsel at the trial table. Because she normally don't sit alone at trials? Which the Judge approved. See revised transcript on pg. 12, lines 11-25 (it's a distraction)

F.) Appellant's photo of bottles of soil erosion not shown in Transcript listing.

evidence. Because McCormick failed to do so, the grant of HABC's motion for judgment was proper.[12]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[12] We also decline, within our discretion, HABC's request for sanctions under Md. Rule 8-501(m). *Steamfitters Loc. Union No. 602 v. Erie Ins. Exch.*, 241 Md. App. 94, 112 (2019), *aff'd*, 469 Md. 704 (2020).