Circuit Court for Baltimore City
Case No.: 24-C-13-002175

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 00308

September Term, 2015

KEVIN CARTER

v.

TAL ASSOCIATES

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*Krauser, C.J.,
Meredith,
Berger,

JJ.

Opinion by Meredith, J.

Filed: August 15, 2018

* Krauser, Peter B., J., now retired, participated in the hearing of this case while an active member of this Court and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

Kevin Carter, appellant, sued TAL Associates, appellee, alleging that he had sustained permanent injury caused by his exposure to lead paint while frequently visiting a home located at 103 E. 22nd Street in Baltimore City ("the Subject Property") when he was a young child. In this appeal, appellant contends that the Circuit Court for Baltimore City erroneously granted a motion *in limine* to preclude the testimony of his expert witness, Dr. Stephen Siebert, and then further erred in granting the appellee's motion for summary judgment.

QUESTIONS PRESENTED

Appellant presents the following questions for this Court's review:

> 1. Did the circuit court err when it determined that Stephen W. Siebert, M.D., M.P.H., a medical doctor and public health professional, was unqualified and lacked a sufficient factual basis to render an opinion that [appellant's] lead exposure at 103 E. 22nd Street substantially contributed to his elevated blood lead levels?
>
> 2. Did the circuit court err in ruling that the evidence independent of expert testimony was insufficient to establish link two under *Ross* and defeat summary judgment?[1]

[1] The reference is to *Ross v. Housing Authority of Baltimore City*, 430 Md. 648, 668 (2013), a case in which the Court of Appeals described three "links" a plaintiff needed to prove in a lead poisoning claim:

> The theory of causation presented in this case can be conceived of as a series of links: (1) the link between the defendant's property and the plaintiff's exposure to lead; (2) the link between specific exposure to lead and the elevated blood lead levels, and (3) the link between those blood lead levels and the injuries allegedly suffered by the plaintiff. To be a substantial factor in causing Ms. Ross' alleged injuries, the Payson Street home must have been a source of Ms. Ross' exposure to lead, that exposure must have contributed to the elevated blood lead levels, and the associated

continued…

We answer "yes" to question 1, and conclude that the summary judgment ruling must be reversed. We remand the case for further proceedings.

FACTS AND PROCEDURAL HISTORY

This is a lead-paint case. On December 6, 2013, appellant filed the amended complaint at issue in this appeal.[2] The amended complaint contained twelve counts, and asserted that appellant had sustained damages from lead poisoning he suffered at three rental properties owned by various defendants. Counts I, II, and III related to 103 E. 22nd Street ("the Subject Property") in Baltimore, which was the residence of appellant's aunt. Appellant, who was born on April 19, 1992, alleged that, "during the approximate time period from 1992 through 1994," he regularly visited his aunts and cousins at the Subject Property, which "contained dangerous lead-based paint that was maintained in a deteriorated condition such that it was chipping, flaking and peeling from the walls, woodwork, and windowsills." The amended complaint further alleged that appellant ingested lead-containing paint chips and sustained various neurological injuries. Appellee was the owner of the Subject Property at the relevant time.

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continued…

> increase in blood lead levels must have been substantial enough to contribute to her injuries.

(Footnote omitted.)

[2] The amended complaint was filed on behalf of appellant and his brother, Keyon Dickerson, but Dickerson filed a voluntary dismissal with prejudice of his claims against appellee on April 13, 2015.

In this appeal, as we will explain, we are concerned with whether, and if so, to what extent, the Subject Property was a substantial contributing factor to appellant's lead poisoning; if expert testimony was necessary to establish that fact; and if appellant's designated expert (Dr. Siebert) should have been permitted to testify that it was his opinion that the lead present at the Subject Property was a substantial contributing factor in causing appellant's injuries.

In Count I, appellant asserted a negligence claim against appellee and two individuals alleged to have been general partners of appellee, Kennedy and LeFaivre.[3] Count II was a claim for unfair and deceptive trade practices in violation of Maryland's Consumer Protection Act.[4] Count III asserted that appellant's ingestion of lead at the Subject Property constituted a battery.

Counts IV, V, and VI made the same allegations regarding a property at 1031 N. Carrollton Avenue, which allegedly was a lead-containing property visited by appellant between 1994 and 1998.[5] Appellant alleged he was exposed to, and ingested, lead at this property, as a result of which he sustained damages. As in the counts pertaining to the

[3] The record reflects that "the Estate of Thomas Kennedy, Jr." was dismissed, pursuant to Rule 2-507(b), in an order filed on April 9, 2014, and Joan LeFaivre was voluntarily dismissed without prejudice pursuant to Rule 2-506(a), via an order of April 11, 2014.

[4] Maryland Code (1975, 2013 Repl. Vol.), Commercial Law Article ("CL"), § 13-101 et. seq.

[5] The claims against the former owners of 1031 N. Carrollton Avenue were voluntarily dismissed without prejudice on January 30, 2014.

Subject Property, the three counts pertaining to 1031 N. Carrollton Avenue sounded in negligence, the Consumer Protection Act, and battery.

Counts VII through XII all pertained to a property at 1506 N. Mount Street, which allegedly was a property visited by appellant between 1994 and 1996. Counts VII, VIII, and IX were against one set of owners of 1506 N. Mount Street, the Harans, and sounded in negligence (Count VII), the Consumer Protection Act (Count VIII), and battery (Count IX). Counts X, XI, and XII also pertained to 1506 N. Mount Street, and asserted the same three theories against a different set of owners, the Dackmans.[6]

Appellant designated Dr. Stephen Siebert as an expert witness who was expected to opine on the sources of appellant's lead exposure and whether such exposure was a substantial factor contributing to the cause of appellant's injuries. Dr. Siebert is a board-certified psychiatrist with a master's degree in public health from the Bloomberg School of Public Health at Johns Hopkins University. In appellant's designation of Dr. Siebert, appellant indicated that he expected Dr. Siebert to testify about the extent of appellant's damages, as well as "the source of [appellant's] exposure to lead on the Defendants' properties." Dr. Siebert reviewed records, including environmental records pertaining to the subject properties, appellant's school and medical records, and evaluations of appellant conducted by two neuropsychologists. Dr. Siebert also reviewed an

[6] All the claims as to 1506 N. Mount Street were dismissed upon the grant of the motion for summary judgment filed by counsel for the combined Harans/Dackman defendants. The motion for summary judgment as to 1506 N. Mount Street was granted on March 2, 2015.

employability assessment of appellant conducted by appellant's designated vocational-rehabilitation expert. And Dr. Siebert personally interviewed appellant, which included having appellant attempt to complete a number of tests.

Following his review and evaluation, Dr. Siebert furnished a report that opined that appellant was cognitively impaired, which included "attentional problems and learning difficulties," and that appellant's "diagnoses of cognitive disorder, attention deficit disorder, and learning disorder represent permanent injuries that have occurred as the result of childhood lead poisoning." Dr. Siebert identified four properties (including the Subject Property) as sources of the lead that caused appellant's injuries. Only two of the source properties were targeted in the amended complaint.

Dr. Siebert identified 1719 North Carey Street as a source of appellant's lead poisoning, but the property at 1719 North Carey Street was not a target of the amended complaint. Dr. Siebert noted in his report that appellant "was exposed to lead hazards while living at 1719 North Carey Street from 1/93-12/94," supporting that conclusion by pointing to facts that indicated: a February 1993 inspection identified "positive areas [of lead paint] on the woodwork and doors"; "[a]nother child was noted to have an elevated blood lead level of 28 while living at this property"; an inspection by the Baltimore City Health Department on September 28, 1993, noted "loose paint in the hallway": and an inspection with a device called an XK-3 on October 13, 1993, "found lead-based paint hazards at 63 locations that were not abated until 5/96." In addition, appellant had an elevated blood-lead level of 13 µg/dl in February 1993 that rose to 39.5 µg/dl by July 6,

1994. Appellant was hospitalized for 33 days for chelation therapy from July 6, 1994, to August 4, 1994. He returned to 1719 North Carey Street following his discharge from inpatient chelation therapy and his lead levels continued to rise: "The rising lead from 29 to 32 µg/dl (9/21/94-11/16/94) is evidence that [appellant] had additional exposure to lead hazards before he moved out of the home in 12/94." While appellant lived at 1719 North Carey Street, he regularly visited other properties named in the amended complaint.

Dr. Siebert reported that appellant also "was exposed to lead hazards while living at 1506 North Mount Street from 12/94-10/96," pointing to the fact that the house on Mount Street was an old house, "constructed in 1900," with chipping paint, according to the deposition testimony of appellant's mother. Dr. Siebert noted in his report that appellant had rising blood lead levels while living in the Mount Street property, and that this was evidence that he "had additional exposure to lead hazards before he moved out of the home in 10/96."

Dr. Siebert identified two additional sources of appellant's lead exposure, both of which were residences of family members that appellant was said to have frequently visited during the relevant time period. The first residence was appellant's grandmother's house at 2411 Francis Street, about which Dr. Siebert wrote: it "was reportedly inspected in 1989 or 1990 and lead hazards were found"; it had been built in 1920; and appellant's mother had said it had chipping and flaking paint, both inside and outside. But 2411 Francis Street was not a target of the amended complaint.

Finally, Dr. Siebert identified the Subject Property as a source of appellant's lead exposure. The Subject Property was the home of appellant's aunt, and a place that, according to his mother's deposition testimony, appellant and his brothers frequently visited. According to testimony given at appellant's mother's deposition, as highlighted in Dr. Siebert's report, the house on the Subject Property was "an old house with chipping paint around the baseboards, windowsill, and [ ] door." An inspection conducted on January 23, 1990, revealed the presence of lead paint, and an inspection by the Baltimore City Health Department on April 27, 1994, "found lead-based paint hazards at 41 locations."

Dr. Siebert opined in his report that "[appellant's] lead exposure at 1719 North Carey Street, 1506 North Mount Street, 2411 Francis Street, and 103 East 22nd Street were all substantial factors that caused or contributed to [appellant's] cognitive disorder, attention deficits, and learning difficulties," and that, as a result of his lead exposure, appellant was "not employable and will not be able to live independently without supervision."

Dr. Siebert's deposition was taken on September 15, 2014, and September 29, 2014. He testified that his qualifications include both a medical degree (earned in 1981) and a master's degree in public health (earned in 1983) from Johns Hopkins. Dr. Siebert testified that the "majority" of the courses he took while pursuing his master's degree in public health were epidemiology courses, and, although he did not hold himself out as an epidemiologist, he considered himself an expert in that field. He is a board-certified

psychiatrist who "routinely" sees "adolescents and children that have histories of lead poisoning" in his psychiatric practice, but he acknowledged that he is not involved, clinically, in the care or management of a child or adolescent with an acute elevated blood lead level. His last experience "treat[ing] children in a pediatric setting" was during his internship in "1981 and '82."

On January 21, 2015, appellee filed a motion *in limine* to exclude the opinions and testimony of Dr. Siebert regarding the Subject Property being a source of, and substantial contributing factor to, appellant's claimed injuries and damages. Appellee made two arguments: one, that, pursuant to Maryland Rule 5-702, Dr. Siebert was not qualified to express an opinion as an expert as to the source of appellant's lead exposure; and two, that there was not a sufficient factual basis or scientific foundation for Dr. Siebert's opinion that exposure to lead hazards at the Subject Property was a substantial contributing factor to appellant's claimed injuries and damages. Appellee argued that Dr. Siebert's testimony was not going to be of assistance to the jury, as required by Rule 5-702. Appellee requested a hearing on its motion *in limine*, and also filed a motion for summary judgment.

On February 9, 2015, appellant filed an opposition to the motion *in limine*, arguing that Dr. Siebert possessed "substantial qualifications to testify as to the source" of appellant's lead exposure; that he employed a reliable, accepted methodology; that he had a sufficient factual basis for his opinion that the Subject Property was a source of, and substantial contributing factor to, appellant's lead poisoning; and that he was "not

required to specifically quantify the increase in blood lead level due to exposure at" the Subject Property in order to reach his conclusion that the Subject Property was a substantial contributing factor.

Following a hearing on March 2, 2015, the court denied appellee's motion *in limine* to exclude Dr. Siebert, and denied appellee's motion for summary judgment as to the negligence claim (Count I). The court granted appellee's motion for summary judgment as to the Consumer Protection Act and battery claims (Counts II and III respectively). Appellant does not argue on appeal that the circuit court erred in granting summary judgment in appellee's favor on the CPA and battery claims.

On March 24, 2015, appellee again filed its motion *in limine* to exclude the opinions and testimony of Dr. Siebert. Appellant filed an opposition on April 7, 2015, and the motion *in limine* was argued on April 8, 2015. This time, the court granted the motion *in limine* to exclude Dr. Siebert's opinion that the Subject Property was a source of appellant's lead poisoning. Appellee then orally renewed its motion for summary judgment, and the court directed the parties to return on April 10 for argument on that issue. Following oral argument on April 10, the court granted appellee's motion for summary judgment.

This appeal followed.

DISCUSSION

Maryland Rule 5-702 provides:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of

> fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

In this case, the trial court granted appellee's motion *in limine* to preclude Dr. Siebert's testimony as an expert, and provided the following explanation:

> [BY THE COURT]: [In deciding whether to exclude] Dr. Siebert as an expert as it relates to the source of the lead in this case of Kevin Carter's alleged exposure, as well as to whether or not the Court should [ac]cept him as he opines [on] the substantial factor of this property that caused his injuries[, t]he Court relies very heavily on *Ross v. Housing Authority of Baltimore*[,] 430 Md. 648, as well as [*City Homes v. Hazelwood*, 210 Md. App. 615 (2013)] in the discussions that they had concerning both Dr. Blackwell, as well as Doctor --- and I believe it was Dr. Sundel in the *City Homes* matter.
>
> I don't believe that the court has gone so far as to say that if you are a medical doctor you can't be an expert to identify source. But there are some reasons I believe as to why it boils down that the cases, the two cases in particular that I have relied on, eliminated or excluded the particular medical doctors, if you will, from being experts. And it had mostly to do with their experience in identifying the source of a child's lead exposure.
>
> The --- I also indicated earlier and the question that I'd asked as what it is as that expert in this particular case . . . Dr. Siebert in particular is going to be able to tell a jury by way of expert testimony and with a stamp of expert being placed on his head, which carries a lot of weight, actually, when a Court qualifies and accepts someone --- not qualifies him, but accepts someone as an expert, and tells the jury that they are to be considered an expert. It sort of heightens what their opinions are. Even though in our instructions we tell the juries that, you know, they are to weigh the opinions of an expert along with all other testimony that we have here, expert still puts a, I guess, an extra [oo]mph, if you will, to the testimony of that particular person.
>
> So what I have to figure out is whether or not this particular witness can first be able to explain something to a jury that can't be explained or

argued by the attorney[]s at the appropriate time and combining all of the evidence.

I also am looking at what is that the defendants have indicated, particularly when it comes to the substantial factor in this matter is that Dr. Siebert cannot and has not said that he can pinpoint any increase in the blood lead level of Kevin while he was at [the Subject Property]. Because I guess this is a --- not I guess, but you all argued that this is [a] case where he's visited this particular property on the weekends.

The --- the other part of that that sort of makes sense to the Court is I'm not sure which of the cases that --- I think [it] may be one of the Dackman cases said --- that talks about, you know, it's not impossible to prove a case like this when there are several sources, and it's not about whether you are excluding so much as it is about whether you are able to rule it in, whether you are able to rule this case in by saying that it was [a] substantial factor.

And I looked at what the report and I looked particularly [at] Dr. Siebert's report, and I looked at particularly what he had written as it relates to the evidence that he considered and for [the Subject Property] as a source for the lead poisoning. And for the most part --- not the part, for the entire part, he is certainly just regurgitating, if you will, information that he has gotten from somewhere else.

I don't think he could give the jury any particular expertise as to how any of the information was obtained, particular what the XRF test and any of the swipes and the like. He may not be able to talk about that, but he is just giving information.

And merely reciting certain information that he has taken into account does not an expert method make. It is just him giving the information, and saying this is what I believe that it comes from, but nothing that would support it.

And so the Court --- and I also will go so far as to say that he --- any of the clinical experience that was talked about earlier, it was 30 years ago --- thank you so much --- that --- and these are my words because I never know what the correct terms are.

That he does lack experience in investigating sources. He does lack experience in any way. He's not a risk assessor. He has no environmental

> lead assessment knowledge, and I may be getting all of those terms sort of mixed up. But **there is no knowledge that he can impart to this jury** that says, hey, I'm an expert, **as to source, nor can he express to the jury any factual basis for which he can say that this particular property is a substantial factor**.
>
> So I will grant the defense's motion as it relates to Dr. Siebert. And that's my ruling in a nutshell, well.

(Emphasis added.)

In *Levitas v. Christian*, 454 Md. 233, 245-47, the Court of Appeals provided this overview of Maryland law regarding the qualification of expert witnesses:

> We have repeatedly explained that an expert may be qualified to testify if he "is reasonably familiar with the subject under investigation." *Roy*, 455 Md. at 41, 124 A.3d 169 (emphasis added [sic]) (quoting *Radman*, 279 Md. at 169, 367 A.2d 472). This familiarity can come from "professional training, observation, actual experience, or any combination of these factors." *Radman*, 279 Md. at 169, 367 A.2d 472. An expert, therefore, does not need to have hands-on experience with the subject about which he proposes to testify. *Id*. at 170–71, 367 A.2d 472 (citations omitted). The often-cited illustration of this concept is a law professor who is an expert in trial procedure even though she has never tried a case. *Id*. at 171, 367 A.2d 472 (citation omitted). Similarly, a doctor may be qualified to testify as a medical expert even though she does not have experience with a particular procedure or area of specialization. *Id.*
>
> An expert's testimony is admitted "because it is based on his special knowledge derived not only from his own experience, but also from the experiments and reasoning of others, communicated by personal association or through books or other sources." *Id*. at 170, 367 A.2d 472 (citation omitted). "It is sufficient if the court is satisfied that the expert has in some way gained such experience in the matter as would entitle his evidence to credit." *Id*. at 169, 367 A.2d 472 (citation omitted). A trial court may not exclude an expert if "his reading can be assumed to constitute part of his general knowledge adequate to enable him to form a reasonable opinion of his own." *Id*. at 170, 367 A.2d 472 (citation omitted).
>
> Expert testimony must also have an adequate factual basis so that it is "more than mere speculation or conjecture." *Exxon Mobil Corp. v. Ford*,

> 433 Md. 426, 478, 71 A.3d 105, *as supplemented on denial of reconsideration*, 433 Md. 493, 71 A.3d 144 (2013) (citation omitted). If an expert's conclusions are not supported by an adequate factual basis, his opinion has no probative force. *Beatty v. Trailmaster Prod., Inc.*, 330 Md. 726, 741, 625 A.2d 1005 (1993) (citation omitted). The probative value of an expert's testimony is directly related to the "soundness of [the] reasons given" for his conclusions. *Id*. (citation omitted). An adequate factual basis requires: (1) an adequate supply of data; and (2) a reliable methodology for analyzing the data. *Roy*, 445 Md. at 42–43, 124 A.3d 169 (citation omitted); *Ford*, 433 Md. at 478, 71 A.3d 105 (citation omitted). In addition, if the facts and data that an expert relies on are "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject," they need not be independently admissible at trial. Md. Rule 5–703(a).
>
> In assessing the expert-witness factors, the trial court is only concerned with whether the expert's testimony is admissible. "[O]bjections attacking an expert's training, expertise or basis of knowledge go to the weight of the evidence and not its admissibility." *Baltimore Gas & Elec. Co. v. Flippo*, 112 Md. App. 75, 98, 684 A.2d 456 (1996), *aff'd*, 348 Md. 680, 705 A.2d 1144 (1998) (citation omitted). An expert's qualifications and methods may be teased out during cross-examination, and the jury can then assess how much weight to give his testimony. *Roy*, 445 Md. at 43, 124 A.3d 169. "Even if a witness is qualified as an expert, the fact finder need not accept the expert's opinion." *Walker v. Grow*, 170 Md. App. 255, 275, 907 A.2d 255 (2006).

See also Stanley Sugarman v. Chauncey Liles, Jr., ___ Md. ___, No. 80, September Term 2017, Slip op. at 16 (filed July 31, 2018) ("A 'sufficient factual basis' requires both 'an adequate supply of data and a reliable methodology.'").

In *Levitas*, the Court of Appeals held that the trial court had abused its discretion by "relying on the wrong legal standard" in excluding the plaintiff's expert who was offered to testify that the defendant's property was a probable source of the plaintiff's injury. The Court's analysis in *Levitas* is instructive, and bears quoting at length:

Lead–Source Causation

The third factor in Rule 5-702 --- "sufficient factual basis" --- garners the most debate between the parties. The Circuit Court restricted Dr. Klein's testimony on the ground that he did not have a "substantial factual basis" for his opinion that lead inside [the Spaulding property] caused Christian's elevated blood lead levels because he lacked "information concerning other possible sources." Levitas asks us to affirm this ruling. Relying on *Ross v. Housing Authority of Baltimore City*, 430 Md. 648, 63 A.3d 1 (2013), Levitas argues that Dr. Klein could not conclude that Spaulding was a source of Christian's lead exposure because he did not consider other properties or conduct an independent investigation. We are not persuaded.

Ross lends scant support to Levitas --- markedly more facts underlie Dr. Klein's opinion than were present in that case. In *Ross*, lead testing was conducted on the subject property, but the testing only detected lead-based paint on the exterior and one interior surface. *Ross*, 430 Md. at 654–55, 63 A.3d 1. The testimony of the expert, Pamela Blackwell–White, M.D., was quite equivocal --- saying that if there was any lead-based paint in a property, she assumed it was the most probable source of lead exposure "until proven otherwise," especially if it was built before 1970. *Id*. at 660, 63 A.3d 1. Importantly, she testified that "she was merely identifying 'potential risk' and could not make any statement as to causation with certainty." *Id*. at 664, 63 A.3d 1. We concluded that she lacked an adequate factual basis to opine that the subject property was the source of the plaintiff's lead exposure. *Id*. at 663, 63 A.3d 1. We reasoned that because Dr. Blackwell–White could not explain how she weighed certain pieces of information in reaching her conclusion, her opinion would confuse rather than assist the trier of fact. *Id*.

By contrast, Dr. Klein concluded --- with a reasonable degree of medical certainty --- that Spaulding was a reasonably probable source of Christian's lead exposure for several reasons:

- The 2012 Arc Report found that 31 interior locations and five exterior locations tested positive for lead;
- Lead paint was banned federally in 1978, and therefore it was unlikely that Spaulding had been painted with lead-based paint **since** Christian lived there in the 1990s;
- DHCD records described the poor condition of the property;
- An MDE certification indicated that Spaulding was not lead free;

- Christian's FEP and blood lead levels were **first found to be elevated while he was living at Spaulding, when he had not yet lived anywhere else**;
- Family members testified that Spaulding was in a deteriorated condition while Christian was living there and that Christian touched peeling paint at the property; and
- Christian **regularly stayed at Spaulding** during the day while his mother was at work, **both when he lived there and when he lived at Denmore**.

Dr. Klein acknowledged that [the property at] Denmore was also a source of Christian's lead exposure. Thus, unlike the expert in *Ross*, he did not jump to the conclusion that Spaulding was a source merely because it contained lead paint. Spaulding's lead testing was one of multiple facts that Dr. Klein considered when developing his lead-source opinion.

The Dissent claims that expert witnesses in lead paint cases must exclude other properties to opine that a particular property was a substantial contributing factor to the plaintiff's injuries. Dissent Op. at 274–76, 164 A.3d at 252–53. It also contends that the plaintiff must establish that "the subject property was a more probable source" of his injuries than other possible sources. *Id*. at 259, 164 A.3d at 244. Both of these assertions stem from a fundamental misunderstanding of the substantial factor test. The substantial factor test applies when "two or more independent negligent acts bring about an injury." *Pittway Corp. v. Collins*, 409 Md. 218, 244, 973 A.2d 771 (2009). Under the test, an actor's conduct is a cause-in-fact of the plaintiff's injuries when it is "a substantial factor in bringing about the harm." *Id*. (quoting Restatement (Second) of Torts § 431 (Am. Law Inst. 1965)). The substantial factor test does not require experts to exclude other properties as possible contributing sources or the plaintiff to show that one cause had a greater impact than any other substantial factor causing the harm. *See Eagle–Picher Indus., Inc. v. Balbos*, 326 Md. 179, 209, 604 A.2d 445 (1992). It would be illogical for us to require an expert to narrow the plaintiff's lead exposure down to a single source when the substantial factor test, by its very definition, permits more than one cause of injury.

The discretion accorded to trial judges in evidentiary rulings calls for an exercise of judgment using applicable legal standards. *Neustadter*, 418 Md. at 241–42, 13 A.3d 1227. Here, the trial court excluded Dr. Klein's proffered testimony about source causation because he had "very little . . . information concerning other sources [of lead exposure]." In doing so, it thus relied on a purported rule of law that an expert must exclude other

> properties before he can testify that the plaintiff was exposed to lead at the subject property. But, as discussed supra, this is not the rule. Moreover, in *Hamilton v. Kirson*, 439 Md. 501, 96 A.3d 714 (2014), we dismissed concerns over the experts being "provided with little information on other potential sources of lead exposure." *Id*. at 544, 96 A.3d 714. We explained, "[T]here may be other ways that an injured plaintiff may establish that it was probable that the interior of a subject house contained lead" besides eliminating other possible sources of lead exposure. *Id*. We have only required that an expert be able to adequately explain how he determined that a property was a source of the plaintiff's lead exposure so that the trier of fact can evaluate his reasoning. *Ross*, 430 Md. at 663–64, 63 A.3d 1 (citation omitted). By relying on the wrong legal standard, the trial court abused its discretion.

454 Md. at 247-51 (footnotes omitted).

Applying similar analysis to Dr. Siebert's qualifications as a proffered expert in this case, we conclude that the circuit court erred in granting the motion *in limine* to exclude his opinions. As the appellant points out in his brief:

> In this case Dr. Siebert conducted a comprehensive evaluation of the Plaintiff that consisted of an interview for psychosocial history, a psychiatric examination and Plaintiff's self-report of functional capacity and perceived impairments. He reviewed numerous medical records, academic records, two sets of neuropsychological testing and an employability assessment. Dr. Siebert also reviewed environmental records concerning multiple properties, including Baltimore City Health Department inspection records and narrative histories, and housing records from the Maryland Department of the Environment, the Department of Health and Mental Hygiene and the Housing Authority of Baltimore City. Dr. Siebert also considered detailed deposition testimony concerning where the Plaintiff lived and visited, when he did so and the condition of those properties.
>
> Supplied with this extensive information, Dr. Siebert . . . opined that the E. 22nd Street property [*i.e.*, the Subject Property] "was a source and a substantial factor that contributed to [appellant's] lead poisoning and his injuries, including his cognitive disorder, attention deficits and learning difficulties." Dr. Siebert considered:

> the age of the house and the condition of the house and the presence of lead hazards that would contribute to lead in the household dust and the age of the child that would result in an increased lead level . . . regardless of whether or not he was observed to ingest lead. In other words, he doesn't have to be observed eating paint chips in order to get a significant lead level. . . And the fact that lead-contaminated household dust is the major source of lead exposure to children.

And, [Dr. Siebert] concluded:

> My opinion would be if [appellant] is spending two days a week in a house with lead hazards at this age, he was more likely than not accumulating lead from the dust in the home and it was causing his blood lead level to rise.

Dr. Siebert determined that both the Plaintiff's home at 1719 Carey Street and [the Subject Property at] 103 E. 22nd Street were substantial contributing sources of Plaintiff's blood lead levels. He did not apportion their relative contributions or assign to the visitation property a specific blood lead level impact.

As in *Levitas*, Dr. Siebert "did not jump to the conclusion that [the Subject Property] was a source merely because it contained lead paint." As in *Levitas*, the history of lead testing at the Subject Property "was one of multiple facts that Dr. [Siebert] considered when developing his lead-source opinion." *See Levitas*, 454 Md. at 249-50.

And, as the Court of Appeals observed in *Levitas*: "**The substantial factor test does not require experts to exclude other properties as possible contributing sources or the plaintiff to show that one cause had a greater impact than any other substantial factor causing the harm**." 454 Md. at 250 (emphasis added). Here, the fact that Dr. Siebert was not able to express an opinion that the Subject Property was the *primary* cause of appellant's elevated blood lead level is not a reason to exclude his

opinion that the Subject Property was a *substantial* factor in causing appellant's injuries attributable to exposure to lead. Dr. Siebert was able to base his opinion that the Subject Property was a substantial factor on the evidence that, during the timeframe when appellant was a frequent visitor as a young child with extensive hand-to-mouth activity, the Subject Property had flaking paint on interior windowsills, baseboards, doorframes, hallway, and the stairwell. During the time period when appellant was a frequent visitor, the Baltimore City Health Department had inspected the Subject Property --- because appellant's cousin had elevated blood lead levels --- and issued a violation notice after detecting lead in 30 interior areas.

We conclude, as did the Court of Appeals in *Levitas*, that the motion judge erred in granting the motion *in limine* to exclude Dr. Siebert's opinion that the lead at the Subject Property during the time when appellant was a very frequent visitor as a young child was a substantial factor in causing his injuries. As the *Levitas* Court stated: "We have only required that an expert be able to adequately explain how he determined that a property was a source of the plaintiff's lead exposure so that the trier of fact can evaluate his reasoning. *Ross*, 430 Md. at 663–64, 63 A.3d 1 (citation omitted). By relying on the wrong legal standard, the trial court abused its discretion [in excluding the expert's testimony]." 454 Md. at 251.

In light of our conclusion that the circuit court erred in precluding Dr. Siebert from offering an expert opinion on source of lead causation, it follows that the court erred as a matter of law in granting summary judgment in favor of appellee.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS.
COSTS TO BE PAID BY THE APPELLEE.