

Circuit Court for Talbot County
Case No. C-20-CV-23-000150

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 329

September Term, 2024

TIMOTHY DOBSON

v.

TALBOT COUNTY, MARYLAND

Reed,
Zic,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: October 29, 2025

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

This case arises from a complaint filed in the Circuit Court for Talbot County by Timothy Dobson, appellant, for negligent maintenance of a ladder attached to a public dock. Talbot County (“County”), appellee, filed a motion to dismiss, or in the alternative, for summary judgment. The circuit court denied the motion, after which the County filed a motion for reconsideration. Following a hearing, the circuit court reversed its earlier decision and granted summary judgment for the County, ruling that the County had governmental immunity.

Mr. Dobson timely appealed and presented two questions for our review, which we have recast and rephrased as one:¹ Whether the County enjoys governmental immunity for the maintenance of a ladder affixed to a dock at a public landing. For the following reasons, we affirm.

BACKGROUND

Mr. Dobson, a commercial waterman, docked his boat at Neavitt Landing, a public boat landing owned by the County. After docking, Mr. Dobson attempted to climb from his vessel to the dock using a ladder attached to the dock. During Mr. Dobson’s climb, the ladder broke, causing him to fall and sustain “significant” injuries.

¹ Mr. Dobson phrased the questions as follows:

1. Does the public ways exception to local governmental immunity extend to safe travel to and from Maryland’s waterways which are owned by the State?
2. Did the trial court properly exercise its discretion in finding that Talbot County was performing a purely governmental function in its operation of Neavitt Landing?

Mr. Dobson filed a complaint against the County for negligence. The County moved to dismiss Mr. Dobson’s complaint, or in the alternative, for summary judgment. The County argued that Mr. Dobson “failed to allege compliance with the Local Government Tort Claims Act (‘LGTCA’)” and that the County had governmental immunity. Mr. Dobson opposed the motion.

The circuit court heard argument on the County’s motion. The court denied the County’s motion, ruling that the public ways exception to governmental immunity applied because the ladder at Neavitt Landing provides access to a waterway owned by the State of Maryland. The court also allowed Mr. Dobson to amend his pleading to cure the failure to allege compliance with the LGTCA’s notice requirement. The County later waived this compliance issue, and Mr. Dobson cured the deficiency.

The County filed a motion for reconsideration, arguing that a waterway had “never” been deemed a public way under Maryland’s jurisprudence. Mr. Dobson again opposed the motion.

The circuit court held a hearing on the motion. The court reversed its earlier denial of the County’s motion for summary judgment, ruling that Neavitt Landing “exists” pursuant to Chapter 121 of the Talbot County Code, which allows the County to maintain public landings, and that the County “is offering a public service by providing access to waterways of Talbot County.” The court ultimately granted the County’s motion for summary judgment, and Mr. Dobson timely appealed.

STANDARD OF REVIEW

Summary judgment is proper when “there is no genuine dispute as to any material fact and [] the party in whose favor judgment is entered is entitled to judgment as a matter of law.” Md. Rule 2-501(f). Maryland appellate courts “review [a] circuit court’s grant of summary judgment *de novo*.” *Bd. of Cnty. Comm’rs of St. Mary’s Cnty. v. Aiken*, 483 Md. 590, 616 (2023) (citation omitted). “We conduct an independent review of the record to determine whether a general dispute of material facts exists and whether the moving party is entitled to judgment as a matter of law.” *Id.* (citation omitted). “We do not endeavor to resolve factual disputes, but merely determine whether they exist and are sufficiently material to be tried.” *Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 297 (2022) (citation omitted). Moreover, it is a “well-established ‘general rule that in appeals from the granting of a motion for summary judgment, absent exceptional circumstances, Maryland appellate courts will only consider the grounds upon which the circuit court granted summary judgment.’” *Selective Way Ins. Co. v. Fireman’s Fund Ins. Co.*, 257 Md. App. 1, 34 (2023) (quoting *Irwin Industrial Tool Co. v. Pifer*, 478 Md. 645, 682 (2022)) (internal marks omitted).

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT BECAUSE THE COUNTY HAS GOVERNMENTAL IMMUNITY.

A. Parties’ Contentions

Citing to *Haley v. Mayor & City of Baltimore*, 211 Md. 269 (1956), and the “evol[ution]” of the public ways exception case law, Mr. Dobson argues that the “parking

lot at Neavitt Landing is a paved public way . . . and [] the dock and ladder are adjacent, and commonly utilized by commercial and non-commercial vessels to access Maryland’s public waterways.” In the alternative, Mr. Dobson contends that because the dock and the ladder are “unpaved areas that lead (a) outside a public park, [and] are (b) contiguous and adjacent to a public way, and (c) are where the government should expect that pedestrians might walk, [or climb,]” the operation and maintenance of Neavitt Landing is a proprietary, non-governmental function.² (alterations in original.)

The County maintains that the circuit court did not err in ruling that “the County has governmental immunity for the operation of its public landings.” According to the County, the public ways exception does not apply because Neavitt Landing “is not a paved public street or sidewalk[.]” The County further argues that the landing and ladder are neither contiguous nor adjacent to a public way because “neither the parking lot nor the waterway constitute[s] a public way[.]”

B. Legal Framework

We begin with an overview of the doctrine of governmental immunity and its application to local governments.

² Mr. Dobson also argues that there was insufficient evidence for the circuit court to rule that the County was performing a purely governmental function. He specifically challenges the evidence contained in the affidavit of the “Director of Talbot County’s Parks & Recreation[.]” He asks this Court to remand the case for further discovery on profits and emoluments because “the record is silent on any indirect revenue gained by Talbot County from the commercial utilization of its Landings[.]” The County responds that Mr. Dobson did not preserve this issue for appeal because he did not raise it before the circuit court. The County alternatively argues that Mr. Dobson’s claim is a “bald assertion” that is not properly supported under Maryland Rule 2-501.

As a general matter, it is well-established that the State enjoys absolute immunity from suit, absent an express waiver of that immunity. *E.g.*, *Williams v. Morgan State Univ.*, 484 Md. 534, 538 (2023); *Mayor & City Council of Baltimore v. Whalen*, 395 Md. 154, 162-63 (2006). The policy rationales of governmental immunity are to “protect[] the State from burdensome interference with its governmental functions and preserve[] its control over State agencies and funds.” *Williams*, 484 Md. at 547 (second alteration added) (quoting *Bd. of Educ. of Baltimore Cnty. v. Zimmer-Rubert*, 409 Md. 200, 211 (2009) (citation omitted)).

In contrast to the State, “counties generally enjoy immunity only when performing governmental, as opposed to proprietary, functions.” *Anne Arundel Cnty. v. Fratantuono*, 239 Md. App. 126, 133 (2018) (citations omitted). Distinguishing between the two is “often difficult[.]”³ *Mayor & City Council of Baltimore v. Eagers*, 167 Md. 128, 136 (1934); *see also Fratantuono*, 239 Md. App. at 133 n.1 (observing that Maryland appellate courts have “sometimes questioned [the distinction’s] logic[,]” and that this Court has “labeled ‘the placement of the maintenance of streets, highways, and walkways in the proprietary column rather than in the governmental column’ as ‘bizarre’”).

Maryland courts have nonetheless consistently used the distinction between municipal functions undertaken for the general public benefit without profit and those that resemble private enterprises to ascertain whether the doctrine of governmental immunity applies.

³ Indeed, here, the circuit court reversed itself on the issue of governmental immunity as applied to Neavitt Landing.

A key articulation of this distinction appears in *Mayor and City Council of Baltimore City v. State, ex rel. Blueford*, in which the Supreme Court of Maryland considered whether the maintenance of a public swimming pool, which was located inside of a public park and charged a nominal entry fee, was a governmental function.

173 Md. 267, 268, 271 (1937). The Court formulated the following rule:

Where the act in question is sanctioned by legislative authority, is solely for the public benefit, with no profit or emolument inuring to the municipality, and tends to benefit the public health and promote the welfare of the whole public, and has in it no element of private interest, it is governmental in its nature.

Id. at 276.

Applying the rule, the Court concluded that the maintenance of public swimming pools is a governmental, non-proprietary function, and that its holding was not “affected by the fact that a nominal fee was exacted for the privilege of using the pool[.]” *Id.* Relatedly, this governmental versus proprietary distinction has also been used to conclude that the maintenance of public parks is a “governmental duty, discretionary in nature,” for which a municipality cannot be held liable in tort. *Mayor & City Council of Baltimore v. State, to Use of Ahrens*, 168 Md. 619, 628 (1935). Additional examples of “governmental functions” which have since been recognized include operation of a day camp and a civic ballet. *See, e.g., Austin v. City of Baltimore*, 286 Md. 51, 64-66 (1979); *and Burns v. Mayor & City Council of Rockville*, 71 Md. App. 293, 308 (1987).

Narrowing Maryland’s governmental immunity doctrine is the “firmly embedded” yet dubiously logical public ways exception.⁴ *Blueford*, 173 Md. at 273. This exception establishes a “municipal duty to keep highways and streets in safe condition for public travel.” *Harford Cnty. Comm’rs v. Love*, 173 Md. 429, 432 (1938) (citations omitted). In *Haley*, the Supreme Court of Maryland applied the public ways exception to analyze whether the maintenance of concrete steps that were “completely within” a public park was a governmental or proprietary function. 211 Md. at 272. In doing so, the Court explained that “[t]he mere physical location of the passageway within the park does not of itself decide the function. *The use of a particular facility is a determining factor[.]*” *Id.* (emphasis added).⁵ Because the steps at issue were used “to travel between points which

⁴ The public ways exception arose

[f]or historical reasons that are not well documented or articulated. . . . [A] municipality is *not* immune from a negligence action arising out of its maintenance of its public streets and highways, even though the building and maintenance of public streets and sidewalks is primarily for the public benefit and promotes public safety and welfare. Although there is little evidence that any municipality incurs a profit or compensation for road building, governmental immunity is not available to local governments for this function.

Bagheri v. Montgomery Cnty., 180 Md. App. 93, 97 (2008) (citing Karen J. Kruger, *Governmental Immunity in Maryland: A Practitioner’s Guide to Making and Defending Tort Claims*, 36 U. Balt. L. Rev. 37, 65-66 (2006)) (internal marks omitted). *See also Harford Cnty. Comm’rs v. Love*, 173 Md. 429, 432 (1938) (citations omitted) (“[T]he difficulty of assigning a logical reason for [the public ways] exception has been conceded[.]”).

⁵ This Court noted in *Higgins v. City of Rockville* that:

(continued)

were outside the park and not for recreational purposes[,]” the Court concluded that the steps were “part of the public highway” and, accordingly, that the municipality was not immune from liability. *Id.* at 273-74.

Whether an accident occurs “in an area of public travel” is not, however, solely determinative of whether a municipality is engaged in a governmental or proprietary function. *Bagheri v. Montgomery Cnty.*, 180 Md. App. 93, 101 (2008) (citations omitted). In *Bagheri*, we held that the maintenance of a public parking garage was a governmental function because the county’s “act of maintaining the parking garage in question was: 1) sanctioned by legislative authority, 2) operated solely for the public benefit, with no profit or emolument inuring to the [c]ounty, and 3) intended to benefit the public health and promote the welfare of the whole public.” *Id.* at 96.

The Supreme Court has also distinguished between where an injury occurs and where the hazard that caused the injury originated. *Whalen*, 395 Md. at 167-68. “[A] municipality may be responsible for protecting individuals who are physically within the bounds of a public way from hazards . . . which may come from outside the boundaries of the public way onto the public way that could have and should have been foreseen and

The neat distinction between a governmental function and a proprietary function—between immunity and liability—loses its clarity [] when applied to a hybrid function. What happens when a public roadway or public walkway (proprietary) goes through or simply into a park or other recreational area (governmental)? Is a centaur more like a man or more like a horse? The [Supreme Court] has grappled with the classifying of the hybrid[.]

86 Md. App. 670, 680 (1991).

prevented[.]” *Id.* at 167. In contrast, a municipality is immune and “is [not] liable to a person who leaves a public way and while not in a public way, encounters a hazard in a public park.” *Id.* at 167-68.

More recently, in *Fratantuono*, this Court summarized the abundance of Maryland governmental immunity jurisprudence to define three situations in which there is no governmental immunity:

[Scenario One:] If the injury occurs on a paved public way (i.e., a paved public street or sidewalk), there is no governmental immunity. That is true regardless of where the local government’s negligence originates.

[Scenario Two:] If the injury occurs within the boundaries of a public park, swimming pool, or similar area where the local government’s maintenance obligation is governmental in nature, governmental immunity applies, unless the injury occurs on a paved public way through the park. That is true even if the area within the park, pool, or similar area is contiguous and adjacent to a public way.

[Scenario Three:] If the injury occurs on an unpaved area that is (a) outside of a public park, swimming pool, or similar area, (b) contiguous and adjacent to a public way, and (c) where the government should expect that pedestrians might walk, governmental immunity does not apply. In that situation, however, the standard of care owed by the government is less than that owed in conjunction with a paved public way.

239 Md. App. at 139 (internal citations omitted). Applying Scenario Three, this Court held that governmental immunity did not apply to injuries suffered by a pedestrian walking on a grassy strip that was both contiguous and adjacent to a paved public road and sidewalk “where pedestrian traffic was expected.” *Id.* at 140-41 (“[T]he injured party was traversing the unpaved area to get from one paved area to another.”).

Although these scenarios may not apply neatly to every case, *Higgins v. City of Rockville*, 86 Md. App. 670, 679-80 (1991), they are instructive and guide our analysis here.⁶

C. Analysis

We first analyze whether the operation of Neavitt Landing is a governmental or proprietary function using the *Fratantuono* scenarios and *Blueford*. We then consider whether the public ways exception negates the County’s immunity.

1. The operation of Neavitt Landing is a governmental function.

Following Scenario One, Mr. Dobson argues that the “parking lot at Neavitt Landing is a paved public way[] . . . and that the dock and ladder are adjacent, and commonly utilized by commercial and non-commercial vessels to access Maryland’s public waterways.” We disagree.

Pursuant to Chapter 121 of the Talbot County Code, “the term ‘public landings’ shall include all public landings, public wharves, public docks, public piers, public marinas, and public harbors, including the riparian waterways, real property, and adjacent public rights-of-way owned, maintained, and operated by Talbot County.” § 121-1(B). “All public landings are open for use by the general public for water-related activities, subject to the restrictions of this chapter.” *Id.* at § 121-1(A).

⁶ As now-Chief Justice Matthew J. Fader stated in *Fratantuono*: “We join in applying this well-established, though perhaps not logically consistent, distinction.” 239 Md. App. at 133 n.1.

Public “park[s,]” meanwhile, include “[a]ny land or water devoted to park or recreational uses and owned, operated, or established by the County, including but not limited to all parks, playgrounds, recreational areas, facilities, buildings, grounds, and water operated or administered by the [County’s Department of Parks and Recreation] for recreational purposes.” Talbot Cnty. Code § 102-2(A). Thus, the County’s regulatory scheme for parks incorporates public landings to the extent they are operated or administered for recreational purposes. *See id.*

The similarity between parks and public landings is also apparent based on their shared oversight and recreational purposes. Here, the County’s Department of Parks and Recreation (1) oversees public parks and (2) has enforcement authority for public landings’ “[p]arking and hours of operation.” Talbot Cnty. Code § 121-9; *see also* §§ 102-4; 121-2. Moreover, the Department of Parks and Recreation houses the “Landings Office,” which is charged with processing boat slip applications, issuing requested landing permits, and enforcing rules and regulations for use of public landings. TALBOT CNTY. DEP’T PARKS & RECREATION, *Permits & Landings*, [<https://perma.cc/D8BZ-3PF8>]. Though each public landing in the County is unique, potential uses include fishing, crabbing, restrooms, kayak launch, boat slips, boat ramp, pier, playground, basketball courts, beach, picnic area, parking, and marine pump out station. *Id.* Thus, the County contemplates public landings as having a recreational purpose.

Neavitt Landing includes a paved parking lot, dock, boat slips, and a boat ramp. The Department of Parks and Recreation expressly recognizes Neavitt Landing’s capacity

for fishing, crabbing, and boating. *Id.* These uses reflect a broader public service function that transcends the traditional role of a public way as a thoroughfare for travel.

Comparing public landings and public parks, we conclude that public landings (including any connected docks and ladders) are more analogous to public parks than paved sidewalks or roadways.⁷ Therefore, *Fratantuono* Scenario One does not apply to the instant case.

Alternatively, Mr. Dobson argues that this set of facts falls under *Fratantuono* Scenario Two⁸ because the ladder can be considered a “paved public way through [a] park,” akin to *Haley*. (alteration in original.) We dispose of this argument for two reasons.

First, Neavitt Landing’s dock ladder does not “constitute a public highway” as the *Haley* steps did. 211 Md. at 273. There is a critical geographic distinction between the steps in *Haley* and Neavitt Landing’s dock ladder. The *Haley* steps “were a part of a concrete walk connecting two intersections: one formed by St. Paul Street, Franklin Street[,] and the Orleans Street Viaduct on the upper level, and the second formed by St. Paul Place and Franklin Street on the lower level.” *Id.* at 271. By connecting two intersections of public roads, the concrete steps were used “as part of the public highway

⁷ At oral argument, Mr. Dobson’s counsel conceded that Neavitt Landing is a “park” because public landings fall under the authority of the County’s Department of Parks and Recreation.

⁸ *Fratantuono* Scenario Two dictates that there is no governmental immunity where “the injury occurs on a paved public way through [a] park.” 239 Md. App. at 139.

in order to travel between points which were outside the park and not for recreational purposes.” *Id.* at 273.

Here, in stark contrast, the dock ladder borders, on one side, the dock parking lot (which is not a public way), and, on the other side, the Chesapeake Bay (a waterway, which is also not a public way).⁹ Maryland courts have repeatedly declined to recognize public parking garages as “public ways” for purposes of the public ways exception. See *Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 197-98 (2015) (internal citation omitted) (“This proposed expansion of a local government’s duty to maintain its sidewalks and footways, to include all of the parking spaces within a public parking garage, would violate the basic contours of the governmental immunity doctrine.”); *Bagheri*, 180 Md. App. at 96, 102. Therefore, we conclude that the private, permit-only dock parking lot here is not a public way.

Although the dock ladder may be used to travel, it does not connect two public ways because there is not a public way on either side. The dock ladder does not do the same work as the *Haley* steps; consequently, we are unpersuaded that the dock ladder is a component of the “public highway.” See *Haley*, 211 Md. at 273.

Second, we disagree with Mr. Dobson that a ladder attached to a wooden dock constitutes a “paved public way[.]” Mr. Dobson concedes that the dock and ladder are not literally paved, but contends that we should not construe the meaning of “paved”

⁹ As addressed below, the Chesapeake Bay is not a public way because waterways do not fall under the public ways exception.

strictly for purposes of the governmental immunity doctrine because the steps in *Haley* were not “paved.”¹⁰

All three *Fratantuono* scenarios explicitly contemplate governmental immunity where the injury occurs in relation to a paved or unpaved public way. 239 Md. App. at 139 (holding there is no governmental immunity where: “injury occurs on a *paved* public way”; “injury occurs on a *paved* public way through [a] park, swimming pool, or similar area”; and “injury occurs in an *unpaved* area” outside of a park or similar area that is contiguous and adjacent to a public way, and where it should be expected that pedestrians will walk) (emphases added). Therefore, to determine whether the public ways exception applies, we must ascertain whether the area in dispute is paved or unpaved.

We also note that, in situations involving an “unpaved area[,] . . . the standard of care owed by the government is less than that owed in conjunction with a paved public way.” *Id.* Thus, not only does the imposition of any governmental liability hinge on whether the area was paved, but the precise duty of care owed also depends on whether the area is paved or unpaved. *See id.*

¹⁰ At oral argument, counsel on behalf of Mr. Dobson argued that this Court “can’t take the terms of ‘paved’ and have strict application because the stairs in the park [in *Haley*] weren’t strictly applied.” We take Mr. Dobson to be arguing to expand the ordinary meaning of the word “paved,” as he does not put forth an alternative argument for how we should define “paved,” as a matter of law. The definition of “pave” is “to lay or cover with material (such as asphalt or concrete) that forms a firm level surface for travel.” MERRIAM-WEBSTER ONLINE DICTIONARY, [<https://perma.cc/LCN4-GSR3>]. Contrary to Mr. Dobson’s argument, the *Haley* stairs were paved because they were covered with concrete. 211 Md. at 271. Therefore, contrary to Mr. Dobson’s argument, *Haley* supports a literal construction of “paved.”

We decline to adopt Mr. Dobson’s proposed expansion of the definition of “paved” public ways. The *Fratantuono* scenarios are primarily concerned with whether a particular area is paved or unpaved. To expand the literal definition of “paved” would be contrary to the significance of this distinction. Therefore, because the ladder here is not paved, Scenario Two does not apply.

Alternatively, Mr. Dobson argues that the maintenance of Neavitt Landing was a proprietary function falling under Scenario Three. Citing to *Fratantuono*, 239 Md. App. at 139, he contends that governmental immunity does not apply because the dock and ladder “are unpaved areas that lead (a) outside of a public park,[] are (b) contiguous and adjacent to a public way, and (c) are where the government should expect that pedestrians might walk [or climb].” (alterations in original.) This argument fails on the second element because the dock and ladder are not “contiguous and adjacent to a public way[.]” *Id.* As referenced above, neither waterways nor parking lots are public ways. For this reason, we cannot construe either the Chesapeake Bay or the Neavitt Landing parking lot as public ways, and *Fratantuono* Scenario Three cannot apply to the instant case.

Having established that the present circumstance does not fall cleanly within any of the scenarios described in *Fratantuono*, we turn to the three factors set forth in *Blueford*, 173 Md. at 276.

First, we ask whether “the act in question is sanctioned by legislative authority[.]” *Id.* Pursuant to Chapter 121-2(A) of the Talbot County Code, “[t]he County Manager or his/her designee ([] ‘Administrator’) is authorized to supervise, manage, and oversee the

operation and maintenance of all public landings.” Thus, the County’s maintenance and operation of Neavitt Landing is legislatively authorized.¹¹

Second, we ask whether the function is operated “solely for the public benefit, with no profit or emolument inuring to the County.” *Blueford*, 173 Md. at 276. The Supreme Court of Maryland has held a function to be proprietary “where [the government] owned a market and ‘derived revenue’ by renting the market’s stalls, emphasizing that it had a duty to keep the market ‘reasonably safe for public travel.’” *McCarthy v. Bd. of Comm’rs for Frederick Cnty.*, 266 Md. App. 234, 144 (2025) (quoting *Reed v. Mayor & City Council of Baltimore*, 171 Md. 115, 118-19 (1936)). A

¹¹ While Mr. Dobson appears to concede that the County’s “supervision of Neavitt Landing is sanctioned by legislative authority,” he nevertheless argues that provisions in the Talbot County Code indirectly support the conclusion that the County has waived immunity by self-imposing the responsibility of safe travel to commercial vessels utilizing Maryland’s waterways.

“[A]ny waiver of immunity must emanate from the legislature.” *Austin*, 286 Md. at 56. “When interpreting waivers of the State’s immunity, we employ the ‘traditional rules of statutory interpretation[.]’” *Williams v. Morgan State Univ.*, 484 Md. 534, 547 (2023) (citation omitted). We first attempt to discern the intent of the legislature by looking at “the normal, plain meaning of the language of the statute.” *Lockshin v. Semsker*, 412 Md. 257, 275 (2010) (citations omitted). “[W]e neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words that the [legislative body] used” *Bellard v. State*, 452, 467, 481 (2017).

In our review of the Code provisions cited by Mr. Dobson, we discern no language bearing on waiver of governmental immunity. Chapter 121 “authorize[s]” the County to exert discretionary authority to close the County’s public landings. Talbot Cnty. Code § 121-13. Though Chapter 121 requires the Administrator to enforce provisions regarding violations and penalties pertaining to unpermitted use of public landings, *see, e.g.*, § 121-14(A), nothing in these provisions references the County’s waiver of governmental immunity or procedures for individuals to sue the County. Further, Mr. Dobson did not include this specific argument in any of his pleadings before the circuit court. 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[.]”).

function is also proprietary where “it resulted in significant profit.” *Id.* (citing *Tadger v. Montgomery Cnty.*, 300 Md. 539, 549-50 (1984)).

Conversely, a function is governmental where it derives “little or no dollar profit or emolument,” even where the government charges a fee. *See Burns v. Mayor & City Council of Rockville*, 71 Md. App. 293, 308 (1987) (holding that theater operation was a governmental function even when city charged for tickets to an event); *see also Tadger*, 300 Md. at 548 (holding that operation of a landfill was a governmental function even when city “charged for material deposited in the landfill”); *Mayor and City Council of Baltimore City v. State, ex rel. Blueford*, 173 Md. 267, 276 (1937) (holding that maintenance of public pool was a governmental function even when city charged “nominal” entry fee).

The Supreme Court of Maryland held in *Austin* that there was no “profit or emolument inuring to the [c]ity within the contemplation of the *Blueford* guidelines” where the city “had a substantial capital investment in the ([c]amp) [] [c]enter . . . and that it was required to subsidize the day-to-day operation[s].” 286 Md. at 66 (emphasis added). The Court held that operation of the day camp was a governmental function, even though the city collected fees that went to daily expenses, because there was a budgetary shortfall that the city fulfilled. *Id.*

Additionally, this Court held that maintenance of a parking garage was “operated solely for the public benefit, with no profit or emolument inuring to the [c]ounty” where “funds [were] collected for the operation of the garage.” *See Bagheri*, 180 Md. App. at 95-96. In that case, funds raised from operation of the parking garage were applied

toward the parking facilities “and to reimburse the County for the general revenues advanced to the parking [d]istrict,” with any remaining balance held “until the next fiscal year and then appl[ied] . . . in the same manner as current revenues are applied.” *Id.* We determined that the garage “d[id] not operate for profit nor was it designated to operate at a profit.” *Id.* at 96.

Mr. Dobson argues that the affidavit submitted by the County does not unequivocally demonstrate that the County receives no “emolument or benefit” from the operation of Neavitt Landing. The County argues that it receives no emolument or benefit because “[i]t is undisputed that the County does not profit from the operation of its public landings.”¹²

¹² Relatedly, we note that Mr. Dobson appears to also argue that the circuit court committed reversible error in ruling that the County was performing a purely governmental function because the County’s affidavit did not include “indirect revenue gained by [the] County from the commercial utilization of its Landings.” Mr. Dobson requested that the circuit court grant “a period of limited discovery” regarding Neavitt Landing’s profitability. Before us, the County argues that Mr. Dobson did not preserve this argument below, or alternatively, that the argument amounts to “bald assertions” insufficient to overcome a motion for summary judgment.

Maryland Rule 2-501(b) requires a party opposing a motion for summary judgment to include in its “response asserting the existence of a material fact or controverting any fact contained in the record . . . an affidavit or other written statement under oath.” Here, Mr. Dobson did not specifically challenge that the affidavit was factually omissive. Most notably, Mr. Dobson did not provide an “affidavit or other written statement under oath” to support his statements regarding additional streams of revenue.

Mr. Dobson’s unsupported claims regarding discovery are insufficient to warrant a remand for additional discovery. *Hoffman Chevrolet, Inc. v. Washington Cnty. Nat’l Savings Bank*, 297 Md. 691, 712 (1983). *See also Vogel v. Touhey*, 151 Md. App. 682, 704-05 (2003) (“Neither general allegations nor mere formal denials are sufficient to establish a material factual dispute.” (citations omitted)).

The instant case is most analogous to *Austin* and *Bagheri* because the County consistently operates Neavitt Landing at a loss, even after charging for parking permits and slip rentals. Here, akin to *Bagheri*, the Talbot County Code requires that “[a]ll receipts from permits and slip rentals [] be placed in a County revenue fund to be used for operation and maintenance of public landings.” § 121-2(D). The County provided to the circuit court, alongside its motion to dismiss the complaint, or in the alternative, motion for summary judgment, budget documents and an affidavit from its Director of Parks & Recreation indicating that, in budget year 2023, the County operated Neavitt Landing at a loss of \$82,710.01. Because the County does not derive even “modest profit” from the operation of Neavitt Landing and has operated Neavitt Landing “at a loss . . . for the past 10 budget years,” the profits and emoluments factor strongly supports a governmental function determination.

Third, we ask whether the function “tends to benefit the public health and promote the welfare of the whole public, and has in it no element of private interest[.]” *Blueford*, 173 Md. at 276. The County maintains that Neavitt Landing is “specifically for the public benefit” because it operates Neavitt Landing as a service for the citizens of Talbot County to take their boats out to the Chesapeake Bay, and it does so “at a substantial loss.” “All public landings are open for use by the general public for water-related activities[.]” Talbot Cnty. Code § 121-1(A). Based on these descriptions of Neavitt Landing, we conclude that its operation “tends to benefit the public health and promote the welfare of the whole public.” *Blueford*, 173 Md. at 276.

For the foregoing reasons, we hold that the operation of Neavitt Landing is a governmental function.

2. *The public ways exception to governmental immunity is inapposite.*

We turn to Mr. Dobson’s argument that the dock ladder at Neavitt Landing falls within the public ways exception because it provides access to State-owned waterways that are used for travel. In contrast, the County argues that waterways are not public ways because the government has no way to control or maintain them, as waterways are “completely naturally occurring.”

The Supreme Court of Maryland has specifically distinguished waterways from roadways in the governmental immunity context, holding that municipalities have no duty in connection with bodies of water comparable to their duty regarding streets and highways. *Baltimore v. State, ex rel. Ahrens*, 168 Md. 619, 626-27 (1935). The Court explained that “[l]and covered by water is necessarily more or less beyond the ordinary control of man[,]” such that imposing maintenance obligations for waterways “would be to demand the impossible.” *Id.* at 627.

This Court recently affirmed the narrow scope of the public ways exception in *Creighton v. Montgomery Cnty.*, 254 Md. App. 248, 256 (2022):

In our view, maintenance of a public way is a proprietary function for the safety of its users. To maintain a *roadway* is to keep it in existence or to keep it in due condition, operation, or force. In other words, the maintenance goal is to protect the operational integrity of the *roadway* for its intended purpose of providing users of the *roadway* reasonably safe travel.

(emphases added) (internal marks, citations, and footnote omitted). Synthesizing Maryland’s governmental immunity jurisprudence, this Court declined to apply the public ways exception to a county’s use of sodium chloride as part of its roadway snow removal program. *Id.* at 253, 256. In *Creighton*, a resident whose property abutted a public roadway alleged that the county had contaminated her drinking water well with “runoff from the improper salting of roads.” *Id.* at 251-52. This Court ruled that the “use of salt to clear a road of snow and ice” constitutes a governmental function because it is a “discretionary planning and policy decision[]” related to roadway safety. *Id.* at 254-56. We further noted that, even if such decisions were considered to be proprietary, the public ways exception would limit liability to individuals injured on the roadway itself, and not to abutting property owners[.]” *Id.*

Moreover, “Maryland case law makes it clear that whether or not an accident occurs ‘in an area of public travel’ is not determinative of the question of whether a municipality was engaged in a proprietary function in maintaining such an area.” *Bagheri*, 180 Md. App. at 101 (citations omitted).¹³ Accordingly, whether the Chesapeake Bay facilitates travel is irrelevant to our analysis of governmental immunity.

The definition of “public way” is well-established: “any passageway (as an alley, road, highway, boulevard, turnpike) or part thereof (as a bridge) open as of right to the

¹³ Absent any case law contemplating water as a “public way,” we decline to recognize the Chesapeake Bay as such. Before the circuit court, Mr. Dobson acknowledged that “there is a lack of [public ways exception] case law as it relates to using the water for travel.” Mr. Dobson conceded to this Court that “[w]e are talking about uncharted territory here.”

public and designed for travel by vehicle, on foot, or in a manner limited by statute[.]” *Public way*, MERRIAM-WEBSTER, [<https://perma.cc/LCN4-GSR3>]. Notably absent from this definition and Maryland case law is any reference to bodies of water. *See Pierce v. City of Baltimore*, 220 Md. 286, 290 (1959) (“[A] municipality has a duty to maintain streets, sidewalks, and footways[.]”) (emphasis added); *Mayor & City Council of Baltimore v. Eagers*, 167 Md. 128, 136 (1934) (recognizing the “duty to keep the street and footways of the municipality in a safe condition”) (emphasis added). In short, Maryland appellate courts have consistently limited the public ways exception to terrestrial pathways: streets, sidewalks, and areas immediately adjacent to them. *See Fratantuono*, 239 Md. App. at 133 (citing *Higgins v. City of Rockville*, 86 Md. App. 670, 679 (1991)).

Mr. Dobson also raised at oral argument, but did not argue in his brief, that Maryland uses waterways differently than any other state because the State’s waterways are used for travel. Therefore, he contends, Maryland’s waterways should be treated as public ways. We decline to address this argument for failure to comply with Maryland Rule 8-504(a)(6). The Maryland Rules require that a brief supply an “[a]rgument in support of the party’s position on each issue” and, in the event of noncompliance, allow an appellate court to “dismiss the appeal or make any other appropriate order with respect to the case.” Md. Rule 8-504(a)(6), (c). Because this argument was not included in Mr. Dobson’s brief, we decline to address it.

Maryland’s public ways exception to governmental immunity is narrowly defined and limited to specific circumstances involving paved roadways and walkways.

Waterways, regardless of their public ownership or accessibility, do not fall within the established parameters of “public ways” under Maryland law. Maryland courts have never applied the public ways exception to waterways, and we decline to extend it in this case.

CONCLUSION

We hold that the circuit court did not err in granting summary judgment and finding that the County was immune from tort liability because the maintenance of the ladder at Neavitt Landing is a governmental function.

Furthermore, the court correctly determined that the public ways exception does not apply to these facts. We, accordingly, affirm the grant of summary judgment in favor of the County.

**JUDGMENT OF THE CIRCUIT COURT
FOR TALBOT COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**