

Circuit Court for Prince George's County
Case No.: CAL18-32177

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 342

September Term, 2023

BRENDA MITCHELL

v.

WATERFORD COVE HOMEOWNERS
ASSOCIATION, INC.

Wells, C.J.,
Beachley,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: March 15, 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).

This case involves the Circuit Court for Prince George’s County’s denial of a counterclaim filed by Brenda Mitchell, M.D., against Waterford Cove Homeowners Association, Inc. (“Waterford Cove” or the “HOA”) alleging abuse of process, interference with a prospective advantage, and defamation.¹ After a bench trial, the court ruled in favor of the HOA on all counts. Dr. Mitchell filed a motion for reconsideration of the court’s judgment, which the court denied after a hearing. Dr. Mitchell noted this timely appeal challenging only the court’s dismissal of her defamation action, and presents the following questions for our review:

1. Whether the trial court erred in concluding that the defamatory statements at issue were not defamatory *per se*.
2. Whether the trial court erred in failing to find that the HOA Board adopted and republished the defamatory statements.
3. Whether the trial court erred in concluding that the special interest privilege applied to the defamatory statements adopted and republished by the HOA, when the HOA never plead the special interest privilege as an affirmative defense.
4. Whether the trial court erred in concluding Dr. Mitchell suffered no damages when the undisputed testimony supported the conclusion that she suffered mental anguish and emotional distress, and lost patients in her medical practice as a result of the defamatory statements[.]

We hold that the trial court did not err in concluding that Dr. Mitchell failed to prove her cause of action for defamation against Waterford Cove. We therefore affirm.

BACKGROUND

Dr. Mitchell was elected president of the HOA board in 2012. When she was

¹ Waterford Cove’s claims against Dr. Mitchell were dismissed with prejudice and are not relevant to this appeal.

elected, the HOA was run by a management company. Dr. Mitchell and the other board members decided to self-manage the HOA in 2014 to reduce expenses. Dr. Mitchell continued to be reelected to the board at each subsequent election until March 27, 2018. At the election in November 2017, Dr. Mitchell and her slate of candidates (including her husband, Dana Mitchell) were opposed by a slate of candidates that included Dr. Walter Bowman, Erica Bolling, and Eureka Norment. Although Dr. Mitchell's slate of candidates won the election, the results of the election were challenged by Dr. Bowman and his slate of candidates. In the months following the November 2017 election, Dr. Bowman alleged that the votes were counted incorrectly and that certain procedures required by the HOA's bylaws were not followed. Dr. Bowman purported to hold a second election in December 2017. The HOA board obtained a temporary restraining order against Dr. Bowman related to his comments and actions.

Dr. Bowman then subpoenaed the HOA's bank records and compared them to audits the HOA released in November 2017. He believed that there were certain expenses that were not adequately explained by the audit, such as a \$31,000 transfer to another bank account, cash withdrawals, a check written to Dr. Mitchell's husband, and purchases at grocery stores. He also believed that the audit and bank records did not account for over \$35,000 in HOA dues. Dr. Bowman decided to communicate his conclusions to the other community members by creating a flyer listing the alleged discrepancies and placing it in community members' mailboxes.

Additionally, Dr. Bowman alerted the Attorney General's Office to the problems he

encountered in the November 2017 election. As a result, Dr. Mitchell’s HOA board agreed to hold a special election overseen by the director of the Attorney General’s Office Mediation Unit.

The special election was held on March 27, 2018. Although Dr. Mitchell again ran for reelection, certain other HOA board members who had been elected in November 2017 declined to run again, including Dana Mitchell. Dr. Bowman also did not run in the March 2018 election. Opposing Dr. Mitchell’s slate of candidates at the special election was a slate that included Erica Bolling and Eureka Norment. At the special election, all candidates were given an opportunity to speak to the community before votes were cast. Ultimately, Ms. Bolling and Ms. Norment’s slate won, with Ms. Bolling being elected president and Ms. Norment being elected vice president.

On September 11, 2018, the HOA filed suit against Dr. Mitchell.² This lawsuit contained seven counts, including negligent and malicious interference with economic relations and conversion related to Dr. Mitchell’s failure to turn over various documents. Dr. Mitchell filed a counterclaim, alleging tortious interference with prospective advantage, defamation, and malicious use of process. On May 16, 2019, the HOA’s claims were dismissed, leaving only Dr. Mitchell’s counterclaims at issue.

² On April 17, 2018, Ms. Bolling initially filed a lawsuit against Dr. Mitchell on behalf of the HOA, seeking to compel Dr. Mitchell to cooperate in transferring the HOA bank account and certain documents to the new board. However, this lawsuit was dismissed because Ms. Bolling is not a lawyer and therefore was not authorized to file suit on behalf of the HOA.

Trial on the counterclaims began on February 19, 2020, and continued into February 20, 2020. However, as a result of the COVID-19 pandemic, the third day of trial was not held until September 21, 2021, a delay of more than eighteen months. Various other scheduling delays resulted in trial dates months apart, with the seventh and final day of trial being held on September 8, 2022.

Numerous witnesses testified at trial. Their accounts of the relevant statements and events differ significantly. We shall summarize the relevant testimony on the defamation claim and ultimately conclude that the trial judge did not clearly err in weighing the evidence and determining that Dr. Mitchell failed to satisfy her burden of proof.

Eureka Norment testified that, since she has been on the board, meeting minutes have only been prepared for “[t]wo or three” meetings, and that none of the minutes reference Dr. Mitchell. However, she remembered that at multiple meetings, community members asked about a white-collar crime investigation related to Dr. Mitchell, but Ms. Norment affirmed that the board had not requested a criminal investigation against Dr. Mitchell. When asked whether she stated at a meeting after the special election that there may have been misappropriation or misuse of funds “during Dr. Mitchell’s tenure,” Ms. Norment replied, “Yes, perhaps I did,” but clarified that her statement would have been in relation to Dr. Mitchell’s failure to provide the new board with documents necessary to conduct an audit. When asked whether Dr. Mitchell “took withdrawals for herself personally outside of use for HOA purposes,” Ms. Norment replied, “We had no idea what they were for.” Ms. Norment agreed that, in response to questions from community

members, she had “heard Erica Bolling as president on behalf of the board, make statements that there might be white collar crimes that were committed by Dr. [Mitchell],” and that information had been turned over to the Attorney General’s Office. Aside from that statement, she only heard comments about white-collar crimes from members of the community, not other board members.

When she took over as president of the HOA after Ms. Bolling resigned, Ms. Norment made no inquiry into the progress of the investigation mentioned by Ms. Bolling. On the second day of her testimony (more than two years after she first testified), she denied that she accused Dr. Mitchell of taking money from the community at the special election. She also testified that she never believed that Dr. Mitchell used HOA funds for her own benefit, and specifically denied making any statements about Dr. Mitchell.

Paul Gilmore, a resident of the Waterford Cove community, testified on the second day of trial. He recalled that, at meetings after the special election, “a lot of the residents had questions pertaining to a substantial amount of funds, community funds, that were devoted to legal expenses[,]” and that “what [he] gathered is that litigation was necessary . . . in order to address certain issues that were noticed by the current board based on examining documents of the former board.” He recalled that a member of the community raised the issue of white-collar crime at a meeting, and that the board’s response “was somewhat nebulous[,] somewhat unclear. It was almost as though, okay, let’s move on.” Mr. Gilmore stated, “the board . . . didn’t necessary refute it. The board continued to say that we clearly can’t discuss these things.” He testified that the board was “guarded” on

the issue and “didn’t want to divulge information.” He also testified that he did not remember anyone referring specifically to Dr. Mitchell with regard to white-collar crime, nor did he remember Dr. Mitchell’s name being mentioned at any of the meetings he attended.³

Dana Mitchell, Dr. Mitchell’s husband, also testified on the second day of trial. He testified that, at the special election, Ms. Norment referenced the flyer created by Dr. Bowman and stated, “I’m a numbers person, and this doesn’t make sense.” He described the events of the first public meeting after the special election:

I remember [the board] going out of their way to trash [Dr. Mitchell] . . . insofar as saying that they were not able to get any information from her; that they went to the bank to try to transfer the funds and she didn’t show up. And then discussions I think from the floor were they going to prosecute her or, you know, take legal action to get money that she took from the community. Those I think were like the highlights or probably the focus of the whole meeting.

He clarified that the question “are they going to prosecute” was from a community member, not the board, but that Ms. Bolling’s response was “[i]n the affirmative, that they were pursuing it.” When Mr. Mitchell attempted to speak up and refute the allegations that Dr. Mitchell did not cooperate with transferring the HOA bank account, “People from the board had said . . . you’re a liar. . . . [W]e were there.” According to Mr. Mitchell, at that first meeting of the new board Dr. Bowman asked, “Are you still following up on the white

³ Mr. Gilmore did state that as he “gather[ed] information from various sources” to “formulate [his] own conclusions,” he was under the “impression” that “this idea of white collar crime” was attributable to Dr. Mitchell. This testimony—gathered from “various sources”—does not clearly implicate the board.

collar crime?” and the board responded affirmatively. Mr. Mitchell testified that the board informed the community that “They were . . . pursuing legal action to try to get the money back.” Mr. Mitchell recalled that these statements specifically referred to Dr. Mitchell, and other former board members were not mentioned at the meeting.

Mr. Mitchell recounted that, at a meeting in November 2018, Ms. Bolling stated “[t]hat they were trying to do an audit, but that they did not have . . . the source data to conduct the audit[,]” though she did not specify why the audit was needed or what data was missing. When Dr. Bowman asked at the November 2018 meeting “Where are we with the white collar crimes?” Ms. Bolling’s response was “Something like it’s still in the works. Or I don’t remember exactly what she said, but it was an affirmative response.” Mr. Mitchell testified that the board commented on the ongoing litigation with Dr. Mitchell at meetings in 2019, “but they went to great lengths to not use the word Mitchell. They referred to it as a former board member.” Mr. Mitchell died during the lengthy period between the second and third days of trial and was therefore not subject to cross-examination.

Cherron Roberson King, a resident of the Waterford Cove community, testified that she was on Dr. Mitchell’s slate of candidates for the special election. She testified that, at the special election, Ms. Bolling and Ms. Norment’s slate of candidates stated that, “if elected as a board, that they were going to pursue the discrepancies . . . that they had outlaid on [Dr. Bowman’s flyer,] that Brenda Mitchell was responsible for the discrepancies,” and “that they were going to pursue an investigation to make sure they got the money back that

was missing.” After the special election, Ms. King only attended one meeting, where the only mention of Dr. Mitchell was to inform the community that she was suing the board. At that meeting, “No mention of any status of any investigation was mentioned.”

Dominique Stumpf, a resident of Waterford Cove from 2007 to 2021 whose husband was on the HOA board with Dr. Mitchell, testified concerning HOA meetings she attended. According to Ms. Stumpf, at the special election, the candidates opposing Dr. Mitchell “were very specific in . . . telling the community that [Dr. Mitchell] had done some wrongdoings in misappropriation of funds.” However, at the first meeting of the new board, “it became very clear that it was a legal matter and that there was an investigation. So not really an open discussion point[.]” In an email to Ms. Stumpf after the special election, Ms. Norment stated, “I can assure you there will never be debits from Giant or Whole [F]oods (as noted on the bank statements) totaling \$3,000 from our accounts.” Significantly, Dr. Mitchell was not mentioned in the email, yet Ms. Stumpf testified that she inferred from the email “that there was a misuse of funds by the prior board or Brenda Mitchell specially.”

Dr. Mitchell had little first-hand knowledge of allegedly defamatory statements attributable to Waterford Cove after the special election.⁴ Dr. Mitchell testified without objection that Ms. Stumpf told her that, at a meeting in late 2018 or early 2019, “white

⁴ Dr. Mitchell testified that, at the special election, Ms. Norment stated, “over \$90,000 is missing, and I’m going to get to the bottom of it if I’m elected to the board.” Because this occurred before Ms. Norment was a board member, this statement would not be attributable to Waterford Cove, even if it were defamatory.

collar crimes were brought up . . . by Eureka Norment, and she was saying that they were going to pursue it. And Erica Bolling had also mentioned she was going to pursue it as a board, but they had to do the footwork first.” We note that Ms. Stumpf did not corroborate this conversation and, in fact, testified that the issue was “not really an open discussion point.” Dr. Mitchell was not aware of any further discussions about an investigation against her. She did not attend any HOA meetings after the special election.

Karen Straughn, director of the Mediation Unit for the Maryland Attorney General’s Office, testified about the special election. She testified that Dr. Bowman filed a complaint on December 4, 2017, concerning the November 2017 election. His complaint was processed through the Mediation Unit. She also recounted that someone sent her an email prior to the special election “concerning an allegation that there was money misappropriated from the budget.” Ms. Straughn attended the special election to ensure that the votes were fairly counted. She did not see Dr. Bowman’s flyer, and testified that, if there had been any inappropriate comments, she would have stepped in to maintain order, but she did not have to do so at the special election. After the special election, the Attorney General’s Office did not continue an investigation into the alleged misappropriation.

Dr. Bowman, who has never held a position with Waterford Cove, testified that the reason he created the flyer was “to understand the financing of the community . . . to have Dr. Mitchell explain to us what these purchases were . . . for.” He testified that, at the special election, the candidates opposing Dr. Mitchell stated “That they would be forthcoming with the accounting of the community. They simply addressed my concerns,

along with everyone else’s as they were expressed.” He denied that he ever made a comment about white collar crime or inquiry into a criminal investigation. However, he asked the new board to investigate the financial discrepancies. The board’s response to his request was to tell him that Dr. Mitchell refused to provide them with necessary documents.

The court delivered its bench opinion on December 9, 2022, ruling in favor of Waterford Cove on all counts. In its discussion of the tortious interference with a prospective advantage count, the court found: “[A]s far as the damages to Dr. Mitchell’s practice, this [c]ourt found that she really didn’t prove damages to her practice and that there was, you know, that type of economic loss to her practice.” The court then made the following findings concerning the defamation count:

So now the last count is the defamation count. And the [c]ourt would say that based upon the evidence that is somewhat of a very close call under Maryland law. . . .

Dr. Mitchell is a private figure and under defamation 12-2 of the Civil Pattern Instructions, defamation of a private figure means a statement made about a private figure[] is defamatory only if the party making the statement should have known that the statement was false.

There was a lot of evidence in this case about the piece of paper that circulated, some people said, at some of the meetings. Others, it was dropped off at their door regarding the fact that there was missing money and things of that nature from the homeowners association.

We heard extensive testimony from Dr. Walter Bowman who . . . was pretty forthright in saying . . . that . . . he created the document, and that . . . he had these concerns, and this is what he was bringing up, and he was concerned about this. And, you know, the [c]ourt would say, if anything, it is Dr. Bowman who, I know, had a contentious relationship with Dr. Mitchell’s husband, was one of the main -- I don’t want to say instigator -- but main person voicing his concerns about how Dr. Mitchell’s board . . . was running the homeowners association.

And the question, really, is did the Waterford Homeowners Association acquiesce or adopt that and, you know, continue those statements about the alleged stolen money that the board, Dr. Mitchell's -- the board that Dr. Mitchell was on should have been false.

You had conflicting testimony on that. And, you know, under Maryland law the false statement is a statement that is substantially incorrect. And minor errors don't make a statement false if the substance or main thrust of the statement is true. You had conflicting testimony on that issue. The suit wasn't against Dr. Bowman. The suit was against the homeowners association.

And there were concerns, I think, voiced by Dr. Bowman . . . and there was testimony that other people in the homeowners association had concern about, you know, how the funds were being used or the -- just the transparency on how expenses were being paid. And there was that information about the \$100,000 grant that allegedly the board was supposed to get to do some repairs. And so there were questions.

There was conflicting testimony on whether the missing money -- I will just call it that -- was attributed to the actions of Dr. Mitchell or whether they were just concerns that were raised about more transparency in the accounting of the homeowners association and not specifically Dr. Mitchell. So that is why the [c]ourt says it is a closer call on the issue of defamation as to Dr. Mitchell herself.

The [c]ourt found Ms. Norm[ent]'s testimony credible. And, you know, found Dr. Mitchell's testimony also credible. And so the [c]ourt really couldn't determine as it relates to the homeowners association whether the homeowners association -- whether [Dr. Mitchell] was able to prove her -- meet her burden as to defamation in this case. And so the [c]ourt, you know, is really at equipoise. . . .

But the main person voicing these opinions who drafted the letter or the -- whatever that sheet was -- was -- and he still, at the time of the trial, was voicing his concerns about the board and how it was the transparency of the board was Dr. Bowman. Dr. Bowman was not the [counter-defendant] in this case.

But the [c]ourt would also say, even if [Dr. Mitchell] had met her burden as to defamation, and the [c]ourt doesn't find that she did because the [c]ourt doesn't find that it is more probabl[e] than not, in looking at the

totality of the evidence, there is also the issue of, you know, whether there was any damages.

And the [c]ourt really didn't find any damages in this case as to . . . Dr. Mitchell. . . .

So for that reason, the [c]ourt does not find that [Dr. Mitchell] did meet her burden as to the issue of defamation. The [c]ourt could not determine, you know, that it was more probable than not that the homeowners association engaged in defamation based upon the testimony of the witnesses and the parties.

(Emphasis added). The court's judgment was entered on December 12, 2022.

On December 21, 2022, Dr. Mitchell filed a motion for reconsideration challenging only the court's ruling on the defamation count. She argued that it was "undisputed" that Waterford Cove "adopted and ratified" Dr. Bowman's statements and that the court therefore should have found defamation per se, and that Waterford Cove acted with actual malice. She further argued that, because Waterford Cove did not raise any privilege defense in its answer to the counterclaim, that the trial court erred in finding that a privilege applied.

On March 22, 2023, at the conclusion of a hearing on the motion, the court denied the motion to reconsider. The court explained that, although Dr. Bowman was central to the case, "Dr. Bowman wasn't the one sued. It was the homeowner's association." The court found that Waterford Cove and various community members were "concerned about alleged expenditures, checks being written, money being used and how that money was spent[,] and comments by board members in response to these concerns were not defamatory per se. Rather, to the extent that Waterford Cove made comments specifically about Dr. Mitchell, those comments concerned Dr. Mitchell "in her fiduciary capacity" as

HOA president. Therefore, the court concluded that, even if it had found Waterford Cove’s statements to be defamatory, those statements would be “covered by a qualified privilege.” However, consistent with its bench opinion, the court emphasized that it did not find that Waterford Cove made any defamatory statements.

Dr. Mitchell noted this timely appeal.

DISCUSSION

Dr. Mitchell argues that the trial court erred for three reasons: (1) the statements of Waterford Cove were defamatory per se;⁵ (2) Waterford Cove did not raise a privilege defense in their answer to the counterclaim and therefore waived it; and (3) the finding that Dr. Mitchell did not suffer any damages was clearly erroneous. We shall hold that the court did not err in finding that Dr. Mitchell failed to satisfy her burden of proof as to defamation, and therefore we need not address Dr. Mitchell’s second and third arguments.

To establish a cause of action for defamation, a plaintiff must prove “that the defendant made a defamatory statement to a third person; that the statement was false; that the defendant was legally at fault in making the statement; and that the plaintiff thereby suffered harm.” *Gohari v. Darvish*, 363 Md. 42, 54 (2001) (quoting *Rosenberg v. Helinski*, 328 Md. 664, 675 (1992)). “A defamatory statement is one ‘which tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or associating with, that person.’” *Id.* (quoting *Rosenberg*,

⁵ Dr. Mitchell raises four questions presented in her appellate brief; however, her first two questions both relate to whether Dr. Mitchell proved the basic elements of defamation.

328 Md. at 675). A statement is false only where it is “not substantially correct.” *Piscatelli v. Van Smith*, 424 Md. 294, 306 (2012) (quoting *Batson v. Shiflett*, 325 Md. 684, 726 (1992)).

A determination of whether a statement is defamatory is a matter of law. *Id.* However, “[i]f words are capable of more than one meaning or a defamatory meaning could be inferred, then the meaning to be attributed to them is a question of fact.” *Batson*, 325 Md. at 723 (citing *Hohman v. A.S. Abell Co.*, 44 Md. App. 193, 198 (1979)). We review the trial court’s factual findings for clear error. *Plank v. Cherneski*, 469 Md. 548, 568 (2020). “A trial court’s findings are not clearly erroneous if ‘any competent material evidence exists in support of the trial court’s factual findings[.]’” *Id.* (alteration in original) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)).

Dr. Mitchell argues that Waterford Cove made defamatory statements in two different ways: *first*, by adopting and repeating the statements made in Dr. Bowman’s flyer, and *second*, by making statements about an ongoing investigation concerning Dr. Mitchell. We shall address each of these arguments in turn, concluding that the circuit court did not clearly err in finding that Dr. Mitchell failed to prove by a preponderance of the evidence that Waterford Cove made defamatory statements.

I. Adoption of Statements in Dr. Bowman’s Flyer

Prior to the special election, Dr. Bowman distributed a flyer containing the following statements:

HOA FINANCIAL ACCOUNTS PENDING MAJOR CONCERNS AND
FINANCIAL DISCREPANCIES:

–Unreported Opinion–

\$3,030.00	(Brenda Mitchell Cash Withdrawal 11-28 Day of 2018 Annual Meeting & Election)
\$1,308.00	(Dana Mitchell Check Payment 3-15)
\$7,378.25	(2017-18 Board Cash Withdrawals)
\$11,451.00	(Payments to Charles Walton in last 4-months)
\$1,507.70	(2017-18 Personal Grocery Shopping)
\$1,909.25	(2017-18 Unclear Transactions)
\$31,389.78	(Unaccounted Funds Transfer to new accounts #1538c/0056s)
\$35,383.88	(Unaccounted for Outstanding HOA Dues Missing From Records)

-\$ (93,357.86)

DISCREPANCIES IN HOA FUNDS

Assuming *arguendo* that the statements in Dr. Bowman’s flyer were defamatory as to Dr. Mitchell, the circuit court did not err in finding that these statements were not adopted or repeated by Waterford Cove.⁶ Although there was evidence that the flyer was handed out before the special election of the new board, none of the witnesses testified that any member of the newly elected HOA board referenced Dr. Bowman’s flyer at any point *after* the special election. Indeed, some witnesses stated that they did not hear any mention of the flyer even at the special election.

The only definite statement related to the flyer and attributable to Waterford Cove that Dr. Mitchell alleges was defamatory was Ms. Norment’s statement in a May 2018

⁶ The court correctly noted that Dr. Bowman was not a party in the case.

email that “I can assure you there will never be debits from Giant or Whole [F]oods (as noted on the bank statements) totaling \$3,000 from our accounts.”⁷ Dr. Mitchell argues that this statement was defamatory in light of the statement in Dr. Bowman’s flyer about “Personal Grocery Shopping.”

Dr. Mitchell admitted that there were grocery purchases on the HOA bank account, although she disputed the amount. She explained that the purchases were for food served at various community events. To the extent that Ms. Norment’s email insinuates that such spending was inappropriate, it does not implicate Dr. Mitchell specifically. Neither Ms. Norment’s email nor the email she was responding to make any mention of Dr. Mitchell, but instead refer to the prior board as a whole.⁸ The email also does not reference Dr. Bowman’s flyer, and the amount Ms. Norment alleges was spent on groceries is almost twice the amount listed on the flyer, making any possible allusion to the flyer unlikely. In fact, Ms. Norment states in her email that the information about grocery spending came from “bank statements.” Moreover, the statement “I can assure you there will never be debits from Giant or Whole [F]oods . . . from our accounts[,]” could reasonably be interpreted to mean that, as a policy matter, the new board did not intend to allow anyone to make direct purchases from grocery stores. Because more than one meaning can be

⁷ The record does not reveal whether Ms. Norment’s statement—that bank statements reflect the former HOA board spending \$3,000 at Giant and Whole Foods—was substantially true.

⁸ Indeed, the only individual former board member mentioned in Ms. Norment’s email was Ms. Stumpf’s husband, who Ms. Norment suggested might be able to provide information to the new board regarding vendor contracts, HOA dues, tax returns, etc.

inferred from Ms. Norment’s email, the issue of whether it is capable of a defamatory meaning is a question of fact to be determined by the fact-finder. *See Batson*, 325 Md. at 723 (citing *Hohman*, 44 Md. App. at 198). We reiterate that “[a]ppellate courts are bound by a trial court’s findings of fact unless there is no competent and material evidence in the record to support to them.” *Thornton Mellon, LLC v. Adrienne Dennis Exempt Trust*, 250 Md. App. 302, 329 (2021) (citing *Mayor of Balt. City v. Thornton Mellon, LLC*, 249 Md. App. 231, 238 (2021)), *aff’d*, 478 Md. 280 (2022).

We conclude that the court did not clearly err in finding that the board did not adopt statements contained within Dr. Bowman’s flyer at any point after the new board was installed pursuant to the special election, and that the court was not clearly erroneous in finding that Dr. Mitchell failed to satisfy her burden of proof that Ms. Norment’s May 2018 email was defamatory.

II. Statements Concerning an Ongoing Investigation

Dr. Mitchell also argues that Waterford Cove made defamatory statements about Dr. Mitchell being criminally investigated. However, this argument suffers from the same flaw as her argument that Waterford Cove adopted the statements within Dr. Bowman’s flyer, in that it was not clear from the evidence exactly what statements Waterford Cove made concerning Dr. Mitchell. Mr. Gilmore, Ms. Stumpf, Ms. King, and Dr. Bowman all testified that Waterford Cove avoided discussing issues having to do with Dr. Mitchell. To be sure, Ms. Norment testified that she “perhaps” made a statement that there may have been misuse of funds “during Dr. Mitchell’s tenure” (although she later clarified her

statement), and that Ms. Bolling stated that Dr. Mitchell “might” have committed white-collar crimes.⁹ Additionally, Mr. Mitchell testified that Waterford Cove stated that they were “pursuing legal action to try to get the money back,” allegedly taken by Dr. Mitchell. Thus, although there was some evidence supporting Dr. Mitchell’s defamation claim, that evidence was relatively minimal when considered in light of the hundreds of pages of transcribed testimony.

Here, the court appropriately noted that there was conflicting evidence concerning the alleged defamatory statements, and ultimately concluded that Dr. Mitchell had not proved that it was more probable than not that Waterford Cove actually made defamatory statements. The court’s finding that Dr. Mitchell did not sustain her burden of proof is not clearly erroneous, particularly in light of Dr. Mitchell’s concession in her reply brief that she “does not dispute the trial court’s factual findings in this case.” *See Cherry v. Mayor of Balt. City*, 475 Md. 565, 594 (2021) (“[I]f there is any competent, material evidence to support the factual findings below, the weight and value of such evidence must be left to the trier of facts, as it is not our function to determine the comparative weight of conflicting evidence.” (alteration in original) (quoting *Leavy v. Am. Fed. Sav. Bank*, 136 Md. App. 181, 200 (2000))); *Starke v. Starke*, 134 Md. App. 663, 688 (2000) (noting that “the evidence, at least arguably, cut both ways. It was clearly, therefore, grist for the fact-finding mill. Whatever the fact finder does in such circumstances is, by definition, not

⁹ Ms. Bolling did not testify at trial.

clearly erroneous”); *Giardina v. Farms Co.*, 25 Md. App. 201, 217 (1975) (“On the basis of conflicting evidence [the trial judge] concluded that Giardina had failed in his burden of proof. We cannot say his conclusion was clearly erroneous.”).

In light of the lack of clear evidence on what statements were even made by or attributable to Waterford Cove, we cannot conclude that the court clearly erred in finding that Dr. Mitchell failed to sustain her burden of proof regarding her defamation claim against Waterford Cove. We therefore affirm.¹⁰

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

¹⁰ As noted above, Dr. Mitchell also challenges the court’s findings concerning the conditional privilege defense and damages. However, these findings were secondary to the finding that Dr. Mitchell failed to prove that Waterford Cove made defamatory statements. Without the initial finding of defamation, proof of damages and use of defenses are not applicable. The underlying cause of action was not proven by a preponderance of the evidence. Without error in that finding, our inquiry ends there.