Circuit Court for Baltimore City
Case No.: 24-C-22-005128

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 372

September Term, 2024

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MAYOR AND CITY COUNCIL OF BALTIMORE

v.

THERESA ABEL, ET AL.

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Shaw,
Kehoe, S.,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Eyler, James R., J.

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Filed: March 17, 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 Rule 1-104(a)(2)(B).

After a jury trial in the Circuit Court for Baltimore City, the Mayor and City Council of Baltimore (the "City"), appellant, was found liable in nuisance following a sewage backup in the home of Theresa and Christopher Abel, appellees. On appeal, the City maintains that the evidence at trial was insufficient to establish a nuisance, and accordingly, the court erred in denying its motion for judgment. For the reasons we shall discuss, we disagree and shall affirm the judgment of the circuit court.

## BACKGROUND

The recitation of the procedural history and the evidence is recounted only to the extent that it is pertinent.

On the morning of December 28, 2019, Ms. Abel noticed brown, malodorous water coming from underneath of the base of the toilet outside of her and her husband's basement bedroom in Baltimore City. Mr. Abel put towels around the toilet to collect the leaking water and called a plumber. A plumber arrived but was unable to determine the cause of the leak. The Abels left for the day. When they returned home around 9:00 p.m., they discovered that the towels were "soaking wet[,]" their bathtub appeared to be full of four to five inches of what looked like "mud[,]" and the water had spread farther into the basement. They called Baltimore City's non-emergency service line, 311, shortly after 9:00 p.m., and went to sleep on couches upstairs.[1]

The next morning, they discovered that the flood had spread farther into their basement. Around 10:00 a.m., Ms. Abel called 311 again. The Abels continued laying

[1] The home had two bedrooms on the top floor which, at that time, were being used by Ms. Abel's mother and for storage for Ms. Abel's daughter and grandson.

towels down in an attempt to contain the flood. Around noon, Ms. Abel called 311 for the third time and spoke to a supervisor. A representative from the City's Department of Public Works ("DPW") arrived around 2:30 p.m., approximately seventeen hours after the Abels' first call to 311. Approximately fifteen minutes later, the flood stopped. By that time, the sewage had spread significantly, including to the furnace, hot water heater, deep freezer, and clothes. As Ms. Abel testified, "[m]y furnace was sitting in probably two, three inches of sewage water."

Ms. Abel testified that it was her understanding that the backup was caused by a clog in the main sewer line. A service report from the City Bureau of Water and Wastewater confirms the accuracy of that understanding.

The Abels sued the City for negligence and nuisance.[2] Prior to trial, the City unsuccessfully moved for summary judgment. At trial, it was undisputed that the backup was caused by a clog in the City's main sewage line.[3] The Abels testified regarding the

[2] The lawsuit included allegations of an additional sewage backup that occurred in 2022. The jury found the City liable in negligence and nuisance for damages caused by that backup. According to the City, because of the finding of negligence, it did not challenge that award.

[3] As a DPW employee explained at trial, as opposed to the "lateral" sewage lines that service each house, the "main" sewage line is where all sewage flows in the middle of the street:

> [Defense Counsel:] Can you describe to the jury what a main line is?
>
> [DPW employee:] The main line is the main -- it's the circle of pipe that's in the middle of the street where all your sewage goes to from the laterals.
>
> [Defense Counsel:] And can you explain a lateral, please?

(continued…)

backup and its aftermath, including that they suffered nausea and headaches, that they could smell sewage in their home for between one week and one month, and that they slept on couches for several months thereafter due to the resulting damage in and around their bedroom. As Ms. Abel put it, "[i]f you've ever been to the hippo house at the zoo, that's what it smelled like."

The Abels called an expert witness to testify, Anthony Paglia, a civil engineer with expertise in sewer systems. Mr. Paglia testified that, on December 23, 2019, a sewer backup occurred in a house several houses down from the Abels, which had been caused by a clog in the main sewer line. Mr. Paglia testified that "it takes a considerable amount of time, much, much more than five days, for [a backup] to reoccur from a -- in a sewer that is -- is or has been cleaned[,]" and that

> by not cleaning that area, additional debris accumulated in -- as stated in the reports, rags, grease, debris, it accumulated on an existing sedative, the existing solids, the existing debris that was left in the sewer and created another main-line blockage, as is my professional experience also that rags, debris, blockages [in] main lines don't incur within a five-day period.

After the close of evidence, the City again unsuccessfully moved for judgment.

Prior to jury deliberation, the court instructed the jury, including an instruction on the elements of nuisance[4]:

> A nuisance is any unreasonable use of land that causes real, substantial, and unreasonable damage to or interference with another person's ordinary use and enjoyment of his or her property. Generally,

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> [DPW employee:] The laterals is connected to the main line, which goes in the middle of the street. The laterals to go to each -- service of each house or building.

[4] The parties agree that the jury instructions were proper.

> nuisance is all conduct that endangers life or health, offends the senses, violates the laws of decency, or obstructs the reasonable and comfortable use and enjoyment of property. The test is not [d]efendant's negligence or whether the interference complies with applicable laws and regulations, but whether the interference is substantial and unreasonable.

The jury found the City not liable for negligence, liable for nuisance, and awarded the Abels a judgment in the amount of $18,240.00 on the nuisance claim. The City noted the instant appeal.

On appeal, the City's sole claim of error is that the court erred in denying its motion for judgment.

## STANDARD OF REVIEW

We review the court's denial of a motion for judgment de novo. *Corman Marine Constr., Inc. v. McGeady*, 262 Md. App. 585, 596, *cert. denied sub nom. McGeady v. Corman Marine Constr., Inc.*, 489 Md. 203 (2024). Accordingly, "we must conduct the same analysis as the trial court, viewing all evidence in the light most favorable to the non-moving party." *Nationwide Mut. Fire Ins. Co. v. Tufts*, 118 Md. App. 180, 189 (1997). Furthermore, "[w]e must affirm the denial of a motion for judgment or judgment notwithstanding the verdict if there is 'any evidence, no matter how slight, that is legally sufficient to generate a jury question.'" *Jones v. State*, 425 Md. 1, 31 (2012) (quoting *C & M Builders, LLC v. Strub*, 420 Md. 268, 291 (2011)). "Put another way, we will reverse the trial court's denial of a motion for judgment or judgment notwithstanding the verdict only if the facts and circumstances permit but a single inference as relates to the appellate issue presented." *Id*.

## DISCUSSION

The City does not challenge the jury's implicit finding that the backup was an unreasonable interference with the Abels' use of their property. The City contends that (1) merely establishing and maintaining a sewer system does not support a finding of nuisance; (2) such a finding requires legally sufficient evidence that it committed a wrongful act and that the backup was a continuous or recurring infringement on the Abels' enjoyment of their property; and (3) the required evidence is nonexistent.

"Nuisance is 'one of the most ancient concepts in the Anglo–American common law,' existing at least as far back as 1066 A.D." *Wietzke v. Chesapeake Conf. Ass'n*, 421 Md. 355, 373 (2011) (quoting David A. Thomas, *Thompson on Real Property* § 67.01, at 111 (2d ed., 2010 Supp.)). It has become "one of the primary tools for protecting private landholders against 'substantial interferences' with their possession of the land." *Id*. at 373-74. "To prove the existence of a nuisance, . . . the complained of interference must cause actual physical discomfort and annoyance to those of ordinary sensibilities, tastes and habits; it must interfere seriously with the ordinary comfort and enjoyment of the property." *Washington Suburban Sanitary Comm'n v. CAE-Link Corp.*, 330 Md. 115, 126 (1993) ("*WSSC*") (internal citation omitted). As the Maryland Supreme Court has made clear, "[v]irtually any disturbance of the enjoyment of the property may amount to a nuisance so long as the interference is substantial and unreasonable and such as would be offensive or inconvenient to the normal person." *Id*. at 125 (citing *Gorman v. Sabo*, 210 Md. 155, 159 (1956)).

*Presence of Sewer System as Unreasonable Use*

The City contends that "the issue in this appeal is whether the governmental entity that owns and maintains th[e] sewer system is automatically liable for the damages resulting from such a backup from the very first time it happens, regardless of whether that governmental entity did anything wrong to cause the backup." (Emphasis in original.)

Contrary to the City's argument, liability did not occur "automatically." The jury was properly instructed on the law. We agree that liability cannot be based on the mere use of land for a sewer system. *See Pope v. Clark*, 122 Md. 1, 11 (1913) (stating that a sewer system "is certainly not to be regarded as *per se* a nuisance"). That is not the basis for liability. The only question before us is whether the evidence was legally sufficient to establish the elements of nuisance, specifically, whether the condition created was either continuous or a recurring infringement on the Abels' enjoyment of their property.

*Wrongful Act*

The City argues that nuisance requires a wrongful act.

A finding of nuisance requires evidence of an unreasonable and substantial interference with a plaintiff's use and enjoyment of his or her property. *WSSC*, 330 Md. at 140-44. It does not turn on a showing of a failure to act reasonably or reckless, intentional, or abnormally dangerous conduct. Whether an interference is unreasonable is determined by the injury caused by the condition and not by the conduct of the party creating the condition. *Id*. at 140-42 (citing *Graber v. Peoria,* 753 P.2d 1209, 1211 (Ariz. Ct. App. 1988)).

In support of its argument that a wrongful act is necessary, the City relies, *inter alia*, on *Toy v. Atl. Gulf & Pac. Co*., 176 Md. 197 (1939). In that case, the defendant dredged the Chesapeake and Delaware Canal and deposited the sledge material behind an embankment, all in accordance with United States specifications. *Id*. at 208. The embankment moved, however, which caused the material to flow into and block the channel of a nearby creek. That caused a diminution in value of the plaintiff's property, a nearby fish farmer. The plaintiff sued, alleging negligence only. The trial court directed a verdict in favor of the defendant at the close of the plaintiff's case on the ground that there was no legally sufficient evidence of negligence. *Id.* at 208-09.

On appeal, in affirming, the Supreme Court of Maryland discussed liability without fault based on an abnormally dangerous condition, as originally set forth in *Rylands v. Fletcher*, 3 H. & C. 774 (1865), *rev'd* L.R. 1 Ex. 265 (1866), *aff'd* L.R. 3 H.L. 330 (1868), and concluded that the *Rylands* line of cases would not give rise to liability on the facts before it. *Toy*, 176 Md. at 213-14. In addition, it discussed nuisance and stated that "[i]f the defendant had caused the earth and debris to be cast into the channel opposite the shore of the plaintiffs," and they had sustained damages to their property, the plaintiffs would have a cause of action. *Id*. at 214. In other words, because the defendant was not negligent, there would have had to been testimony that some act of the defendant had caused the filling and blocking of the channel. *Id.* That is a causation, not a conduct, issue. The Court's use of the term "wrongful act" was in the context of its discussion of negligence. *Id*. at 207-08. Thus, the question in this case is whether the conduct of the defendant caused an unreasonable interference with the use and enjoyment of the plaintiffs' property.

In *WSSC*, the defendant operated a sewage sludge composting facility. 330 Md. at 119. The circuit court granted a motion to dismiss a nuisance count on the ground that there was no evidence of negligence and no evidence of substantial diminution in use by the plaintiffs of their property. *Id.* at 123. The Supreme Court held that nuisance was a jury question based on the operation of the facility and evidence that it emitted odors causing physical discomfort thereby diminishing the value of the plaintiffs' property. *Id.* at 147.

> Though not a nuisance per se, any business so conducted as to become such may be enjoined. *Bonaparte v. Denmead,* 108 Md. 174. Neither is the element of legality nor public use and high quality conclusive.
>
> The law is clear that where a trade or business as carried on interferes with the reasonable and comfortable enjoyment by another of his property a wrong is done to a neighboring owner for which an action lies at law or equity. In such cases it makes no difference that the business was lawful and one useful to the public and conducted in the most approved method. *Susquehanna Fertilizer Co. v. Malone*, 73 Md. 268; *Scott v. Bay*, 3 Md. 431; *Lurssen v. Lloyd*, 76 Md. 360; *Northern Cent. Ry. Co. v. Oldenburg & Kelley*, 122 Md. 236. *Jackson v. Shawinigan, etc., Co*., 132 Md. 128.

*Meadowbrook Swimming Club v. Albert*, 173 Md. 641, 644-45 (1938) (cleaned up) (amusement facility produced noise that interfered with enjoyment of nearby properties); *see Taylor v. City of Baltimore,* 130 Md. 133 (1917) (reversing a judgment for directed verdict, entered against plaintiff's nuisance claim, where the evidence indicated that a lawfully created sewage treatment plant emitted a continuing stench permeating the surrounding area).

Here, the City maintained the main sewer line. There was evidence that the City cleared a clog from the line five days before the sewage backup in question. There was evidence from which the jury could infer that the act of clearing was not done properly.

The jury could find that the prior act caused or contributed to the backup in question, thus satisfying the causation requirement, i.e., the link between conduct and injury.

*Continuous or Repetitive Event*

The City relies upon *Echard v. Kraft*, 159 Md. App. 110 (2004) in support of its assertion that the backup constituted a "singular occurrence" and, thus, was not a nuisance. Although in *Echard* we noted that "'one act of misconduct, though it causes discomfiture or inconvenience to others in the use and enjoyment of property, is not actionable as a nuisance[,]'" *id.* at 119 (quoting *Reese v. Wells*, 73 A.2d 899, 902 (D.C. 1950)), we did so specifically in the context of the element of harm – which we found lacking in that case – while noting that "significant harm is necessary to establish liability for a private nuisance[.]" *Id.*

The City argues that "[c]ases where municipalities are held liable *in nuisance* for a single instance of a sewer breaking, clogging, or overflowing simply do not seem to exist[,]" and that instead, those cases "appear to be universally resolved on the question of negligence[,]" citing to *True v. Mayor & Comm'rs of Westernport*, 196 Md. 280 (1950) and *City of Baltimore v. Schnitker*, 84 Md. 34 (1896). However, neither *True* nor *Schnitker* decided nor even considered claims for nuisance. *True*, 196 Md. at 289 (reversing judgment notwithstanding verdict as to appellant's negligence claim where the jury "could have found" the municipality negligent); *Schnitker*, 84 Md. at 41 (reversing negligence finding following flood during "extraordinary" rainfall). In any event, the fact that those cases were resolved solely on claims of negligence does little to prove that the facts before us failed to generate a jury question on the Abels' nuisance claim.

Here, the City does not dispute that the Abels were significantly harmed, and indeed concedes that such sewage backups are "truly disgusting" and can result in "serious emotional trauma." Nor does the City dispute the fact that sewage continued to accumulate in the Abels' home for over seventeen hours, despite several calls for help, and resulted in lingering sewage smells in the home for one week or more.

There was evidence that the backup was both ongoing and that it interfered with the Abels' reasonable use and enjoyment of their home. The backup began early in the day on December 28th and the Abels began calling for help around 9 p.m. that evening. Sewage continued backing up into their home, despite additional calls for help, for another seventeen hours before the City arrived around 2:30 p.m. on December 29th. During the backup, the Abels suffered nausea, dry-heaving, headaches and emotional trauma. After the backup, their home smelled like "the hippo house at the zoo" for at least one week, and the jury could find that it was longer, and they were displaced from their bedroom for months. *Taylor*, 130 Md. at 148 ("In this state it is well settled that when a municipal corporation has the power to abate a nuisance it is liable to persons injured in consequence of its failure to exercise such power[.]").

In addition, a jury could find repetitive acts in that the City failed to clean the sewer line properly days before the backup in question and also failed to respond timely to abate the situation with respect to stopping the backup and the lingering odors. Based upon these facts, a jury could reasonably find that the interference was continuous or repetitive, substantial, and "offensive or inconvenient to the normal person." *WSSC*, 330 Md. at 125.

The facts support the jury's conclusion that the Abels' use and enjoyment of their home was unreasonably interfered with following a clog in the City's main line and resulting sewage backup into their home. Accordingly, viewing the evidence in a light most favorable to the Abels, the evidence was "legally sufficient to create a jury question[,]" and the court properly denied the City's motion for judgment. *Nationwide Mut. Fire Ins. Co.*, 118 Md. App. at 189.

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