Circuit Court for Harford County
Case No. C-12-CV-20-000844

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0679

September Term, 2023

UPPER CHESAPEAKE MEDICAL CENTER, INC.

v.

KENYETTA LEWIS, ET AL.

Leahy,
Reed,
Raker, Irma S.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: April 10, 2026

* 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 is an appeal of a jury verdict in a medical negligence case in which Appellant, Upper Chesapeake Medical Center, Inc. (hereafter, "UCMC" or "Appellant"), was found vicariously liable for the negligence of a doctor, and directly liable for the actions of nurses employed by UCMC. Appellant presents two questions for our review which we rephrase as follows:[1]

1. Did the trial court err by failing to dismiss Dr. Morey from the case after discovering he had entered into an agreement with the Appellees?

2. Did the trial court err by refusing to grant a mistrial after discovering the existence of the Agreement, and after discovering the terms of the Agreement?

For the following reasons, we reverse the rulings of the circuit court.

FACTUAL & PROCEDURAL BACKGROUND

Appellant takes issue with a jury verdict in favor of Appellees, Kenyetta Lewis and her child. The verdict followed a twelve-day jury trial on Appellees' medical negligence claims against UCMC and obstetrician Dr. Arthur Morey as co-defendants.

[1] The questions were phrased by Appellant as follows:

1. Hospitals cannot be vicariously liable for the negligence of agents who settle with plaintiffs for valuable consideration and are dismissed from the case. Here, the court found that Dr. Morey had settled with Plaintiff for valuable consideration, but it would not dismiss him. The jury found the Hospital vicariously liable for Dr. Morey's purported negligence. Does this require a new trial limited to the Hospital nurses' conduct?

2. Mary Carter agreements require adequate disclosures to prevent unfair trials. When trial began, Defendant Dr. Morey told his co-Defendant Hospital that he had a secret agreement with Plaintiff. Plaintiff promised that it was not a Mary Carter agreement and did not disclose its terms until the third week of trial. The court held that it was a Mary Carter agreement but denied the motions for mistrial. Did this deny the Hospital a fair trial?

Here, the child suffered a birth injury in 2004 when Dr. Morey was the obstetrician responsible for her care at UCMC. The details of the birth injury are not relevant to this appeal, but Appellees sued the hospital for negligence due to the errors of their nurses, and vicarious liability for Dr. Morey's negligence. The jury trial commenced on July 11, 2022.

UCMC and Dr. Morey were represented by separate counsel. After the jury was impaneled, but before opening statements, Appellees' counsel revealed that they had struck a deal (hereinafter "the Agreement") with Dr. Morey but did not disclose the Agreement's terms.

UCMC argued that the Agreement was a "Mary Carter Agreement," and thus the terms of the Agreement were required to be disclosed to UCMC and the jury. A Mary Carter agreement is a secret agreement between a plaintiff and a co-defendant, in which that co-defendant's liability is limited or extinguished, but they remain in the case as a named defendant. We explain Mary Carter agreements in greater depth later in this opinion. *See infra pp. 3-5.* Appellees denied that the Agreement was a Mary Carter agreement and refused to disclose the terms.

The trial judge was not provided the terms of the Agreement. After hearing argument, the trial judge did not immediately rule whether the Agreement was a Mary Carter agreement and did not immediately require disclosure.

Not knowing the terms of the deal, UCMC argued throughout trial that Dr. Morey was neither their employee nor their agent, so UCMC was not vicariously liable for his negligence.

After all evidence had been presented, but before either party had rested, the trial

judge revisited the Agreement. At this point the terms of the Agreement were disclosed to the trial judge and to opposing counsel, but not to the jury. The trial judge determined that the Agreement was indeed a Mary Carter agreement which required disclosure to the jury. UCMC moved for a mistrial on the basis that the Agreement was not disclosed until the last day of trial.

The trial judge then heard argument regarding the form in which the Agreement would be presented to the jury and ultimately decided to present them the email memorializing the Agreement in its entirety. The trial judge also allowed either party to recall witnesses to testify about the Agreement, but neither party opted to elicit any further testimony. UCMC moved again for a mistrial, which the court denied.

Alongside the Agreement itself, the trial judge delivered a stipulated statement of facts explaining the timing of the Agreement to the jury and provided further clarification upon UCMC's request. After being presented the terms of the Agreement and hearing closing argument, the jury found UCMC directly negligent through its nurse's conduct and vicariously liable for Dr. Morey's negligence. The jury awarded Appellees a $13,385,000 verdict. The circuit court entered a final judgment totaling $12,020,000. This appeal followed.

Mary Carter Agreements

i. Mary Carter Agreements Generally

The term "Mary Carter Agreement"

> appl[ies] to any agreement between the plaintiff and some (but less than all) defendants whereby the parties place limitations on the financial responsibility of the agreeing defendants, the amount of which is variable

> and usually in some inverse ratio to the amount of recovery which the plaintiff is able to make against the nonagreeing defendant or defendants.

Gen. Motors Corp. v. Lahocki, 286 Md. 714, 720 (1980). Maryland appellate decisions have identified three particular features of Mary Carter Agreements:

> (1) The agreeing defendant is to remain a party and is to defend himself in court. However, his liability is limited by the agreement. In some instances, this will call for increased liability on the part of other co-defendants. (2) The agreement is secret. (3) The agreeing defendant guarantees to the plaintiff that he will receive a certain amount, notwithstanding the fact that he may not recover a judgment against the agreeing defendant or that the verdict may be less than that specified in the agreement.

Franklin v. Morrison, 350 Md. 144, 171 (1998) (quoting *Lahocki*, 286 Md. at 720). These three features are useful "guidance" in determining whether a settlement is a Mary Carter agreement, "but they are not exclusive or exhaustive." *Franklin*, 350 Md. at 174 (1998).

Carter Mary Agreements are permitted in Maryland but are prohibited in many jurisdictions. *Compare id.* ("We do not go so far as to proclaim such an agreement void as against public policy. The public policy is to encourage settlements.") *with Elbaor v. Smith*, 845 S.W.2d 240, 250 (Tex. 1992) ("This case typifies the kind of procedural and substantive damage Mary Carter agreements can inflict upon our adversarial system. Thus, we declare them void as violative of sound public policy.").

Mary Carter Agreements present several public policy concerns, particularly that "parties to a settlement agreement may deceive juries by proceeding at trial as if their interests were adverse to one another, when in fact, their claims against each other are no longer extant." *Franklin*, 350 Md. at 170. In other words, a co-defendant remaining in the case despite having settled with the plaintiff risks creating a "sham of adversity." *Id.*

To prevent a "sham of adversity," trial judges may disclose the existence and terms of a Mary Carter Agreement to the jury. *Lahocki*, 286 Md. at 730 ("We hold that the procedure which should have been followed is to inform the jury precisely as to exactly what the circumstances are between the parties."); *Franklin*, 350 Md. at 173–74 ("Trial judges have the power, exercisable at their discretion, to order disclosure to the jury of a settlement agreement, if that action appears to be necessary in order for there to be a fair trial. That determination is wedded to the circumstances of the particular case."). Disclosure can be accomplished "either by presenting the jury with the agreement itself or by reciting to the jury the terms of the agreement." *Franklin*, 350 Md. at 171.

ii. Appellees' Agreement with Dr. Morey

The Agreement in this case was memorialized in an email between Appellees' counsel and Dr. Morey's counsel on July 11, 2022, at 10:29 p.m.:

> Tom, good evening. It was a pleasure speaking with you earlier tonight. [I]'m going to take this opportunity to memorialize our agreement concerning Dr. Morey. We have agreed that if a judgment is issued against Dr. Morey that we will not seek to enforce the judgement against him. We are seeking to have him be declared an agent of the hospital. We agree that the only party we will seek to collect from, if a plaintiffs verdict is entered, is the hospital either vicariously for Dr. Morey and /or the nurses. It was agreed that should Dr. Morey testify inconsistently with his deposition, this deal can be terminated. As long as he stays consistent about the agency issues, informed consent, and his interpretation of the strips during his deposition the deal will remain in place. In return for this you have agreed that all counsel for Dr. Morey will not take any further action in the trial. No openings, no evidence and no objections. This is a confidential agreement.

This email was admitted to the jury on the last day of trial.

STANDARD OF REVIEW

The trial court's refusal to dismiss Dr. Morey is a mixed question of law and fact.

We will affirm the trial court's rulings unless they were clearly erroneous, or if there was an erroneous application of the law. *Fischbach v. Fischbach*, 187 Md. App. 61, 88 (2009). The trial court's refusals to grant a mistrial is reviewed for abuse of discretion. *Nash v. State*, 439 Md. 53, 66–67 (2014).

DISCUSSION

As a threshold matter, we agree with the trial judge's finding that the Agreement here was a Mary Carter Agreement and the judge had discretion to disclose the Agreement to the jury. There is no question that the Agreement has the first two identifying features of a Mary Carter Agreement. *First*, Dr. Morey remained in the trial as a named defendant. *Second*, the Agreement, as established by its own terms and as demonstrated by Appellees' repeated refusal to disclose its terms, was a secret.

Appellees argues that the Agreement is not a Mary Carter Agreement because it does not exhibit the third identifying feature. Specifically, Appellee argues that nothing of value was exchanged between her and Dr. Morey. The trial judge disagreed:

> It seems to me that, that exalts form over substance. The essence of the third factor is that there is some exchange of benefit, which alters the actual realities of the case, which make them different from what is being presented to the jury. And it is that sham of adversity that I see as being the essence of Mary Carter [A]greements and as being the reason that the Courts and the rule to permit the Court to exercise its discretion to admit evidence of such agreements.
>
> I have read the *Franklin* case, the *Sipes* case, the *Lahocki* case, actually, several of them multiple times to attempt to distill this down to principles which can be taken from one set of facts to another, so the Court can actually have some guidance in this. And I believe that what we are talking about here is an agreement which skews what is actually going on in the courtroom. What the appearance of what is going on in the courtroom is in fact different from the actual relationships after the agreement is entered. And so, for that

> reason, I believe that all of the elements have been met. A benefit is being exchanged with regard to the third factor, the doctor on one hand and the Plaintiffs on the other.
>
> I don't believe that it has to be a payment of money. Although, certainly, the exoneration would be -- exoneration is not the right word. The fact that Dr. Morey is not ever going to be required to pay any money in this case is a pecuniary benefit. And ultimately, the hope of the Plaintiffs is that Dr. Morey's cooperation ultimately will have a pecuniary benefit in the terms of their ability to more easily establish, if they are able to establish, liability on behalf of the hospital.

We agree with the trial judge. The Agreement risked introducing a "sham of adversity" by misrepresenting the real dynamics between the parties to the jury. Any exchange of benefits—whether financial or not—which creates the impression of adversarial roles not actually in existence can be misleading. The trial judge explained the exact misrepresentation the failure to disclose the agreement risked in this case:

> Without evidence of this agreement, Dr. Morey can be cast as this somewhat heroic figure who made a grave error he deeply regrets. He has honorably admitted that he is wrong, and he is taking full responsibility for that wrong. In fact, he may be taking moral responsibility under this agreement... but no financial responsibility.

To avoid misleading the jury about the real relationship between Dr. Morey and Appellees, the trial judge had discretion to disclose the agreement to the jury.

i. The Court Did Not Err in Failing to Dismiss Dr. Morey.

Appellant argues throughout its brief that Dr. Morey should have been dismissed as a defendant because his agreement with Appellees made him a "nominal defendant." However, the Maryland law on Mary Carter Agreements does not require dismissal of the agreeing defendant. The correct course of action is to reveal the existence and terms of the agreement to the jury. *Lahocki*, 286 Md. at 730. In this case, after finding that the

Agreement here was a Mary Carter Agreement, the trial court ordered the appropriate disclosures, and the jury was provided a copy of the email memorializing the Agreement.

We recognize that there was a significant delay between the initial disclosure of the Agreement's existence on July 12, 2022, and the eventual disclosure of its terms to the court, Appellant, and the jury on July 25, 2022. Nonetheless, the Agreement was ultimately disclosed in its entirety.

Appellant cites *Anne Arundel Medical Center Inc. v. Condon*, 102 Md. App. 408 (1994), to support the proposition that Dr. Morey's "settlement for valuable consideration, as a matter of Maryland law, required his dismissal and should have prevented any verdict on vicarious liability-claims based on his conduct." The case cited states, in relevant part, that "when liability of the principal is solely vicarious in nature and is not based upon the principal's independent actionable fault, a release of the agent acts as a release of the principal as a matter of law." *Id.* at 416.

In other words, *Condon* holds that a plaintiff may not release an agent who was solely responsible for the injury but continue to sue the principal as vicariously liable for the released agent. This is not the situation in this case. The Agreement did not release Dr. Morey; he remained a named co-defendant. Moreover, Appellees' complaint did not allege Appellant's liability was solely vicarious to Dr. Morey's. The jury also returned a verdict that UCMC was directly negligent through its nurse's actions.

Because there is no requirement that a defendant who has entered into a Mary Carter agreement be dismissed, the trial judge did not err by allowing the Dr. Morey to stay in the case.

ii. The Court Erred in Allowing the Trial to Continue Before Disclosing the Agreement.

Appellant finally argues that by allowing the trial to continue, and because the existence and terms of the Agreement were not disclosed to the jury until near the end of the trial, it was denied a fair trial. We agree. We address each of Appellant's prejudice claims individually.

Dr. Morey's Testimony Misled the Jury

We agree with Appellant that the trial court erred by allowing Dr. Morey to testify prior to revealing the existence and terms of the Agreement to the jury. Appellant's concern is that without knowing about the Agreement the jury could have been misled by Dr. Morey's contrition. As we discussed previously, the trial judge echoed these concerns and acknowledged the risk that the jury would be misled as to Dr. Morey's motive for testifying. *See supra* p. 7.

The trial judge could not eliminate the risk of the jury drawing improper conclusions regarding Dr. Morey's motives with the late disclosure of the Agreement. Appellant's counsel was unable to question Dr. Morey about his motives in entering the Agreement. Moreover, Appellant was unable to use the Agreement to color Dr. Morey's testimony with the argument that the reason he "accepted responsibility" was because he had nothing to lose.

By the time the Agreement's full terms were disclosed, the jury had spent days evaluating Dr. Morey's testimony without all the necessary information—this amounts to substantial prejudice against Appellant.

Appellant Lost its "Empty Chair" Defense

We also agree with Appellant that the late disclosure of the Agreement caused Appellant to lose its potential "empty chair" defense. The "empty chair" defense is a strategy often used in multi-defendant litigation, where one party deflects blame onto a co-defendant who is either absent from the trial or not perceived as fully accountable. Appellant lost its opportunity to mount an effective "empty chair" defense on behalf of its nurses due to late disclosure of the Agreement's terms. Had Appellant known sooner that Dr. Morey would not actively defend himself against the plaintiff's claims, it could have focused its defense strategy on blaming Dr. Morey exclusively.

That said, we note there is no guarantee that an "empty chair" defense would have absolved the nurses of liability. It is unclear how Appellant could have shifted any additional blame onto Dr. Morey, who contritely admitted to making medical mistakes throughout the trial.

Regardless, we conclude that requiring Appellant to defend Dr. Morey's actions while unaware of the terms of the Agreement was prejudicial to Appellant's ability to mount its defense.

Appellees Did Not Set a "Trap" for Appellant

Though we find that Appellant was prejudiced by the late disclosure of the Agreement's terms, we do not agree that the Agreement was a "trap." Appellant repeatedly alleges in its briefs that Appellees laid a "trap" by revealing the Agreement just before the close of evidence. Appellant believes that it was put in an untenable position—it could only inform the jury of Dr. Morey's participation in the Agreement at the cost of revealing

the two sentences they viewed as detrimental to their client.

Appellant wanted the following two sentences from the email memorializing the Agreement to be withheld from the jury: "We are seeking to have him be declared an agent of the hospital. We agree that the only party we will seek to collect from, if a plaintiff's verdict is entered, is the hospital either vicariously for Dr. Morey and /or the nurses." Appellant argues these sentences are not relevant to the terms of the Agreement, and instead merely describe "Plaintiff's counsel's strategy to pin all liability on the Hospital without hurting Dr. Morey."

Using Mary Carter Agreements as a Trojan Horse to admit favorable evidence is a serious concern that has been addressed by the Maryland cases discussing such agreements. *Lahocki*, 286 Md. at 728 ("There has been a suggestion that in some circumstances it might be wise not to admit into evidence a full, unedited agreement because the parties might insert a number of self-serving declarations into the contract.").

Here, the trial court found that redacting those sentences would deprive the jury of necessary context to understand the Agreement. The judge pointed out that the purpose of introducing the Agreement into evidence was to make the conditions under which Dr. Morey testified transparent to the jury:

> The purpose of giving the jury the details of the agreement is so that they can see the actual relationships between the parties. And with -- particularly with regard to Dr. Morey's credibility, the fact that it is actually discussed what Dr. Morey, and more properly, what Dr. Morey's counsel would be allowed to do under the agreement, and what would be expected specifically of Dr. Morey with regard to his testimony. . . .

As to the first sentence, the judge found that it "could be considered simply a restatement of that they will still be seeking vicarious liability on the part of the hospital for Dr. Morey. But it at least makes it clear so that the jury can understand it, and it is part of the discussion and part of the agreement."

As to the second sentence, the trial judge found it "is part of the agreement. That is the specifics of the agreement with regard to the expectation Dr. Morey can have of the Plaintiffs. So, I believe that that has to remain."

We agree with the trial judge's findings that the sentences Appellant wanted redacted provided the jury necessary context to understand the Agreement. Therefore, we hold that declining to redact portions of the Agreement was not an abuse of discretion.

CONCLUSION

We note that the Maryland case law on Mary Carter Agreements does not mandate a specific time when the terms of an agreement must be disclosed. In this case we need not declare a bright line rule but hold only that in the circumstances of this case, the disclosure came too late to cure the prejudice caused by the Agreement's secrecy throughout trial. Accordingly, we find that the trial judge erred in failing to grant a mistrial.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY REVERSED AND REMANDED FOR A NEW HEARING ON APPELLANT'S MOTION FOR MISTRIAL. COSTS TO BE PAID BY APPELLEES.