Circuit Court for Baltimore City
Case No.: 24C19002397

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 756

September Term, 2022

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LUIS RIVERA-RAMIREZ, M.D., ET AL.

v.

DAVID J. HALL

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Leahy,
Albright,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Harrell, J.

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Filed: February 14, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

After a jury trial in the Circuit Court for Baltimore City, the court entered an order awarding Appellee, David Hall, $770,000 in damages. On appeal, Appellants, Corizon, LLC, Corizon Health, Inc. and Luis Rivera-Ramirez present the following questions:

1. Did the trial court abuse its discretion by permitting Mr. Hall to make a per diem argument after prohibiting the introduction of Mr. Hall's medical bills and lost wages?

2. Did the trial court abuse its discretion by permitting a per diem argument without providing a cautionary instruction to the jury?

3. Did the trial court abuse its discretion by failing to issue a written opinion denying Appellants' motion for a new trial?

For the reasons we shall discuss, we answer appellants' questions in the negative, and we affirm the judgment of the circuit court.

## BACKGROUND

Appellants Corizon, LLC and Corizon Health, Inc. (collectively, "Corizon") provide medical services to correctional facilities in and outside of the State of Maryland. On 1 July 2016, Hall was incarcerated at Ordnance Road Correctional Center in Glen Burnie, Maryland, when he was involved in a fight with another inmate. During the altercation, Hall suffered an injury to his left wrist. On 5 July 2016, Hall was seen by Corizon employee, serving as Ordnance Road Correctional Center's Site Medical Director, Appellant, Dr. Rivera-Ramirez. Dr. Rivera-Ramirez diagnosed Hall with a fractured wrist, gave him an Ace bandage, and told him that his wrist would "self-heal."

Hall continued to suffer pain and immobility in his wrist. On 19 August 2016, after filing several complaints with the correctional facility regarding his ongoing wrist pain, Hall was evaluated by an orthopedic specialist. At that time, Hall was noted to have a

"severe wrist facture that had collapsed and will require extensive surgery from a hand surgeon[.]"

In April of 2019, Hall filed a complaint against Appellants. In November of 2019, Corizon stipulated to liability. Hall dismissed Dr. Rivera-Ramirez from the litigation.[1] In October of 2021, the case proceeded to a two-day jury trial on damages.

Prior to trial, Hall filed a motion in limine, asserting that he would be seeking non-economic damages only. Accordingly, he sought to prohibit the introduction of information relating to his medical bills or lost wages, which he asserted were both irrelevant to his pain and suffering and would be misleading to a jury. Appellants opposed the motion, asserting that Hall's medical expenses and lost wages were "very relevant" to his claims. At the beginning of trial, the court heard argument and granted Hall's motion in limine, ruling that his medical bills were "not relevant to [his] actual pain and suffering[,]" and that "the probative value of the bills would be outweighed by the unfair prejudice that could be brought on by the bills."

At trial, Hall introduced expert testimony showing that the delay in treatment resulted in a malunion of the bones, causing a permanent injury to his wrist. He introduced also evidence and expert testimony regarding his life expectancy, demonstrating that he was expected to live approximately 50 more years.[2] During closing argument, his counsel

[1] Nonetheless, because Dr. Rivera-Ramirez is a named Appellant to this appeal, for consistency we shall use "Appellants" to refer collectively to Corizon and Dr. Rivera-Ramirez in our discussion of the proceedings before both this Court and the circuit court.

[2] Appellants did not object to this evidence or testimony.

requested an award of $100 per day for Hall's remaining life expectancy, to which Corizon objected. The following exchange occurred:

> [HALL'S COUNSEL]: And for all of those years, surgery, no surgery, carpal tunnel surgery, no surgery, he's going to be suffering from a permanent condition as a result of [Corizon's] negligence. Therefore, I ask that you award Mr. Hall for the remaining years of his estimated life a hundred dollars a day. Thank you.
>
> THE COURT: Thank you. We'll now hear from the defense.
>
> [CORIZON'S COUNSEL]: May we approach first, Your Honor?
>
> THE COURT: Sure.
>
> * * *
>
> [CORIZON'S COUNSEL]: I'm going to object. I don't think it's appropriate to suggest a number, particularly because we did not try the case on economic damages. I think it's highly prejudicial to make that suggestion.
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> THE COURT: What's your basis? I mean, is there some rule or case law or are you just saying in general it's prejudicial?
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> [CORIZON'S COUNSEL]: In general, yeah, I mean, I just was not expecting somebody to make that kind of suggestion, because I never seen [sic] it before. I think it's improper.
>
> THE COURT: I mean, I think you can argue that there's no evidence to support that number or that it's random, but I don't know of any rule -- I don't think it's particularly prejudicial. I mean, he explained how he came up with it, so I don't think it's particularly prejudicial, just because that's the number he came up with.
>
> [CORIZON'S COUNSEL]: All right.
>
> THE COURT: So, I don't know of any other rule or case law that says that it's not allowed, that you're not allowed to ask for a number, so overruled.

Ultimately, the jury returned an award of three million dollars for Hall, which was reduced to $770,000 pursuant to the statutory limits enumerated in Md. Code Ann., Courts and Judicial Proceedings ("CJP"), § 3-2A-09(b)(1).

Appellants filed a motion for a new trial again challenging Hall's closing argument. Specifically, Appellants asserted that 1) Hall should not have been permitted to make a per diem argument to the jury, and 2) that his per diem argument should have been accompanied by a cautionary instruction to the jury. Hall opposed the motion.

The court denied Appellants' motion for a new trial, without issuing a written opinion. On 1 April 2022, the court entered a modified judgment in the amount of $770,000 against Corizon (the "final judgment").[3] This appeal followed.

## STANDARD OF REVIEW

"Generally, a party holds great leeway when presenting their closing remarks." *Cagle v. State*, 462 Md. 67, 75 (2018). Accordingly, "'[t]he permissible scope of closing argument is a matter left to the sound discretion of the trial court.'" *Id*. at 74 (quoting *Ware v. State*, 360 Md. 650, 682 (2000)). Moreover, "[t]he decision of whether to give supplemental instructions is within the sound discretion of the trial judge and will not be disturbed on appeal absent a clear abuse of discretion." *Sidbury v. State*, 414 Md. 180, 186 (2010).

[3] The final judgment vacated two prior judgments – judgments entered on October 12, 2021 and on March 22, 2022 – which had been erroneously entered against Dr. Rivera-Ramirez, despite the fact that he had already been dismissed from the case. On appeal, Appellants assert that due to a clerical mistake, the docket continues to reflect a judgment entered against Dr. Rivera-Ramirez, which we shall address *infra*.

Further, "[t]he granting or denial of a motion for new trial is a matter within the sound discretion of the trial court." *Montgomery Cnty. v. Voorhees*, 86 Md. App. 294, 302–03 (1991). Accordingly, this Court will reverse the denial of a motion for a new trial "only upon a showing that the trial court abused its discretion." *Exxon Mobil Corp. v. Ford*, 433 Md. 426, 477, *as supplemented on denial of reconsideration*, 433 Md. 493 (2013). An abuse of discretion is "discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Goodman v. Com. Credit Corp.*, 364 Md. 483, 492 (2001) (quotation marks and citation omitted).

**DISCUSSION**

Appellants assert that the trial court erred by allowing Hall to make a per diem closing argument, particularly because they were prohibited from introducing evidence at trial of Hall's economic damages. Appellants contend that the resulting prejudice was pronounced because "the only effective rebuttal to Hall's argument would have been to make reference to the very same evidence of Hall's economic damages." Appellants maintain further that the court erred in failing to sua sponte provide a cautionary instruction to the jury. Lastly, Appellants assert that the court erred in denying their motion for a new trial without issuing a written opinion because whether "the trial court abused its discretion is not as easily determined without an opinion of the court."

Hall responds that the circuit court determined correctly that his medical bills were not relevant to his pain and suffering, and that there is no support for the assertion that per diem arguments are not permitted when a litigant seeks non-economic damages solely. Further, he contends that the court was not obligated to provide a cautionary instruction

where, as here, it was not requested. Finally, Hall asserts that the court provided its "reasoning during trial" for denying Appellants' objection to his per diem argument, and thus that the court did not err in failing to issue a written opinion denying Appellants' motion for a new trial.

## I. The circuit court did not err in permitting Mr. Hall's per diem closing argument.

A request for a specific amount of dollars per day has been referred to as a "per diem" argument. *Giant Food Inc. v. Satterfield*, 90 Md. App. 660, 665 (1992). We noted in *Giant Food* that, although the use of per diem arguments has been "greatly debated" in various courts outside of the State of Maryland, "it is clear that per diem arguments are permissible in this State." *Id.* at 666, 668. Relying upon the Supreme Court of Maryland's[4] decision in *E. Shore Pub. Serv. Co. v. Corbett*, 227 Md. 411, 429, *adhered to sub nom.*, 180 A.2d 681 (Md. 1962), we noted that "the benefits gained from a per diem argument outweigh the disadvantages of the argument." *Giant Food*, 90 Md. App. at 668.

Here, Appellants acknowledge that per diem arguments are permitted in Maryland, but assert that reversal is required in part because Hall's "counsel selected an arbitrary number" that "was not based in or tied to any evidence." The circuit court considered this assertion and determined that Hall's closing argument was not prejudicial "just because that's the number he came up with[,]" adding that there was no "rule or case law that says that it's not allowed[.]" This Court is unaware of any support for the proposition that Hall's

[4] At the 8 November 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on 14 December 2022.

per diem argument was beyond the "great leeway" afforded to parties in their closing remarks. *Cagle*, 462 Md. at 75.

Nor are we persuaded by Appellants' assertion that they were denied a "meaningful opportunity to rebut Hall's per diem argument" because they were prohibited from introducing evidence of his economic damages. Although Appellants contend that "the only effective rebuttal" to Hall's closing argument "would have been to make reference to" his economic damages, we disagree. As Appellants acknowledge, this Court has noted previously that there is "no relevance in the submission of a bill for services submitted by a physician to the severity of appellant's pain and suffering." *Wright v. Hixon*, 42 Md. App. 448, 456 (1979). We are unpersuaded that Hall's medical bills would have been "the only effective rebuttal[,]" let alone relevant to his claims for noneconomic damages. *See also* CJP § 3-2A-01(h) (defining noneconomic damages as those for "pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary injury").

## II. The circuit court did not err in failing to sua sponte provide a cautionary instruction to the jury.

This Court has noted that when a per diem closing argument is used, "*if requested*[,]" a "cautionary instruction" advising the jury "that the argument is not evidence" shall be provided. *Giant Food*, 90 Md. App. at 668–69 (quotation marks and citation omitted) (emphasis added). The Supreme Court of Maryland has also made clear that a court may, sua sponte, provide a cautionary instruction if the trial judge "thinks it [is] proper[.]" *E. Shore*, 227 Md. at 429.

Appellants provide no support for their proposition that a "specific cautionary instruction which addresses the per diem argument" is "required[,]" and this Court is not aware of any. Rather, Appellants cite to *Giant Food* and *Bauman v. Woodfield*, 244 Md. 207, 224 (1966), neither of which support their position. We made clear in *Giant Food* that a court may provide, on its initiative, a cautionary instruction when the trial judge "deems it appropriate[.]" 90 Md. App. at 669. Moreover, the Court in *Bauman* noted that a trial judge may provide a cautionary instruction sua sponte "if he thinks proper." 244 Md. at 224.

Both cases cited by Appellants indicate that a judge is permitted to sua sponte provide a cautionary instruction where, in the trial court's discretion, such an instruction is appropriate. Here, the record indicates plainly that the circuit court determined, within its discretion, that Hall's per diem argument was not prejudicial. We are unpersuaded that this was a clear abuse of the court's discretion.

## III. The circuit court did not err in failing to issue a written opinion denying appellants' motion for a new trial.

This Court has stated that "there is no requirement in Maryland that a trial court state on the record its reasons for interfering or not interfering with a jury verdict." *Fraidin v. Weitzman*, 93 Md. App. 168, 210 (1992). Rather, "[w]e presume that a trial judge correctly exercised discretion, knows the law, and performed his or her duties properly." *Abrishamian v. Barbely*, 188 Md. App. 334, 350 (2009). Moreover, "[a] judge does not need to state every consideration or factor, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion."

*Id.*; *see also Cousin v. Cousin*, 97 Md. App. 506, 518 (1993) ("The chancellor is not required to articulate every fact upon which he relies.").

Here, Appellants' motion for a new trial challenged, in part, the same issue Appellants challenged at trial – the propriety of Hall's per diem closing argument. As we discussed *supra*, the circuit court determined at trial that Hall's closing argument was not prejudicial. Accordingly, the record supports a "reasonable conclusion that appropriate factors were taken into account in the exercise of discretion" on this issue. *Abrishamian*, 188 Md. App. at 350.

Appellants' motion for a new trial raised one additional argument – namely, that the circuit court was required, even in the absence of a request by a party, to provide a cautionary instruction to the jury. Appellants' motion made this assertion, as they do on appeal, without support. Accordingly, this Court may "presume that [the] trial judge correctly exercised discretion, knows the law, and performed his or her duties properly" on this issue as well. *Id*. *See also Washington v. State*, 191 Md. App. 48, 122 (2010) (upholding the trial court's denial of a motion for a new trial despite the fact that the court did so "without a hearing and without comment"); *Abrishamian*, 188 Md. App. at 351 (upholding the trial court's denial of a motion for a new trial and noting that "because Maryland law does not require a written statement of reasons for the court's decision, we cannot say that the trial court erred or abused its discretion solely because it failed to issue a written [opinion]"); *Mason v. Lynch*, 388 Md. 37, 46 (2005) (upholding the trial court's denial of a motion for a new trial "without opinion").

As a final matter, Appellants request, pursuant to Md. Rule 2-535(d), leave from this Court to allow the circuit court to correct a clerical mistake in the record. Specifically, as Appellants point out:

> [i]n its April 1, 2022 Order Correcting the Record and Judgment (E590-E591), the trial court ordered, among other things, that the previously-entered judgment against Dr. Rivera be vacated, and that judgment be entered against Corizon LLC and Corizon Health, Inc. The court further ordered the clerk to record the judgment consistent with this order. However, the judgment docket shows judgment entered against Dr. Rivera in the amount of $770,000.00[] on April 6, 2022.

Hall does not respond specifically to the assertion that the docket entries reflect a clerical mistake, but asserts generally that there was no error.[5]

Md. Rule 2-535(d) provides that:

> Clerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed by the appellate court, and thereafter with leave of the appellate court.

This Court has explained that a clerical mistake is one "which will not have the effect to change the judgment pronounced in the slightest degree, but merely to correct the

[5] Hall asserts also that although trial occurred in October of 2021, that the court's final judgment was not entered until several months later, and that "[i]f this Court is inclined to modify anything done by the trial court, [Hall] asks that the date of judgment be set to the date of trial." This argument resembles less of a counter-argument to Appellants' request for leave for the circuit court to correct a clerical mistake, and more of the nature of a cross-appeal. We have made clear that "if a timely cross-appeal is not filed, we will ordinarily review only those issues properly raised by the appellant[.]" *Maxwell v. Ingerman*, 107 Md. App. 677, 681 (1996). Hall did not file a cross-appeal pursuant to Md. Rule 8-202(e). Accordingly, our review will be limited to those questions presented by Appellants in their brief. *Kunda v. Morse*, 229 Md. App. 295, 302 n.4 (2016).

record evidence of such judgment." *Prince George's Cnty. v. Commonwealth Land Title Ins. Co.*, 47 Md. App. 380, 386 (1980) (quotation marks and citation omitted). Here, the court's final judgment notes clearly that the prior judgments entered against Dr. Rivera-Ramirez were entered in error and vacates those judgments. Nonetheless, as Appellants point out, the circuit court docket entries continue to reflect a judgment entered against Dr. Rivera-Ramirez on 6 April 2022, just five days after the entrance of the final judgment. Accordingly, because Appellants' request does not change the final judgment "in the slightest degree" and is "merely to correct the record evidence of such [final] judgment[,]" we shall grant the request. *Id.* (quotation marks and citation omitted). Pursuant to Md. Rule 2-535(d), we hereby grant leave for the circuit court to correct the record consistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. CASE REMANDED TO THE CIRCUIT COURT WITH INSTRUCTIONS TO CORRECT A CLERICAL MISTAKE IN THE CIRCUIT COURT'S DOCKET ENTRIES REFLECTING THAT JUDGMENT WAS ENTERED AGAINST DR. RIVERA-RAMIREZ. COSTS TO BE PAID BY APPELLANTS.**