Circuit Court for Garrett County
Case No. C-11-CV-19-000092

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 819

September Term, 2021

CAROL R. WOLFF

v.

CHARLES P. MAGAL, M.D., *et al.*

Kehoe,
Berger,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: June 23, 2022

Carol Wolff, acting individually and as the personal representative of the estate of James Michael Dean, Jr., initiated a civil action in the Circuit Court for Garrett County alleging that Charles P. Magal, M.D., and Allegany Imaging, P.C. (collectively "Appellees"), had committed medical malpractice in failing to diagnose the cancer that ultimately took Mr. Dean's life. Appellees thereafter filed a motion for summary judgment, arguing that Ms. Wolff had failed to present any evidence that the alleged malpractice had resulted in a recoverable harm. Following a hearing, the circuit court granted Appellees' motion. Ms. Wolff filed the instant appeal, presenting a single question for our review:

> Did the circuit court err in granting Appellees' motion for summary judgment?

For reasons to follow, we hold that the circuit court did not err. We therefore affirm the court's judgment.

BACKGROUND

On May 26, 2015, Mr. Dean, age 54, presented at the Garrett County Memorial Hospital's emergency room complaining of abdominal pain, back pain, and nausea. The emergency room physicians performed several diagnostic procedures, including imaging of Mr. Dean's abdomen. Those images were later reviewed by Dr. Magal. After Dr. Magal concluded that Mr. Dean's imaging revealed no notable abnormalities, Mr. Dean was discharged with a diagnosis of pancreatitis.

On November 7, 2015, Mr. Dean again went to the emergency room complaining of abdominal pain, and additional images of his abdomen were taken. Upon reviewing

those images, the treating physicians discovered a "3.5 cm pancreatic body mass," and Mr. Dean was diagnosed with advanced pancreatic cancer. On December 27, 2015, Mr. Dean died of pancreatic cancer.

Civil Complaint

In 2019, Mr. Dean's mother, Ms. Wolff, acting individually and as the personal representative of Mr. Dean's estate, filed a complaint against Dr. Magal and his radiology practice, Allegany Imaging, P.C.[1] Ms. Wolff's complaint set forth two causes of action, which were titled "Count I – Negligence (Survival Action)" and "Count II – Wrongful Death."

Under the first count (the "Survival Action"), Ms. Wolff alleged that, when Mr. Dean presented to the hospital in May 2015, he was not simply suffering from pancreatitis, as diagnosed by Dr. Magal, but rather had a "1.7 cm low density lesion in the body of the pancreas." Ms. Wolff alleged that Dr. Magal breached the standard of care in failing to recognize and diagnose the lesion as pancreatic cancer. Ms. Wolff alleged that, had Dr. Magal properly diagnosed the mass, Mr. Dean would have received appropriate treatment, such that it was "more likely than not that he would have survived." Ms. Wolff alleged that, as a result of Dr. Magal's negligence, Mr. Dean suffered damages including: severe physical pain; being robbed of the opportunity for proper treatment; being robbed of time to spend with his family; emotional pain and suffering upon being told in November 2015 that he had cancer; and losing the chance of treatment and survival.

[1] There were additional parties named, both as plaintiffs and defendants. None of those parties is a party to the instant appeal.

Under the second count (the "Wrongful Death" action), Ms. Wolff alleged that Dr. Magal's negligence caused the death of Mr. Dean and resulted in various damages. Ms. Wolff also alleged, as she did in the Survival Action, that Dr. Magal's negligence caused "the loss of chance of survival" for Mr. Dean.

Deposition Testimony of Ms. Wolff's Expert Witness, Daniel Laheru, M.D.

Following the filing of her complaint, Ms. Wolff designated Daniel Laheru, an oncologist, as her expert witness. In December 2020, Dr. Laheru provided deposition testimony as to his expert conclusions regarding the facts of the case. Dr. Laheru testified that he reached those conclusions after reviewing, among other things, emergency room notes and images from Mr. Dean's initial visit to the hospital in May 2015, Mr. Dean's medical records and images from when he was diagnosed with cancer in November 2015, and oncology notes from the doctor who briefly treated Mr. Dean following his cancer diagnosis.

Dr. Laheru testified that, in looking at the medical records from May 2015, it appeared that Mr. Dean had "a mass in the body of the pancreas" that "could have been biopsied that wasn't." Dr. Laheru testified that, under those circumstances, Mr. Dean would have had a number of treatment options that "would have changed the quantity, potentially, and, hopefully, the quality of his life[.]"

Dr. Laheru testified that, when Mr. Dean returned to the hospital in November 2015, it was clear that he had Stage IV pancreatic cancer. Dr. Laheru testified that Mr. Dean had "a mass in the body of the pancreas" and "multiple liver lesions," which indicated that the cancerous mass in the pancreas had metastasized to the liver. Dr. Laheru testified that, by

that time, Mr. Dean was too weak to receive any of the treatments that may have been recommended based on the circumstances known in May 2015.

Dr. Laheru also testified that it was "very likely" and "clear" that Mr. Dean had "metastatic disease to the liver back in May of 2015." Dr. Laheru opined that Mr. Dean's pancreatic cancer had already progressed to Stage IV when he was evaluated by Dr. Magal in May 2015. Dr. Laheru testified that, given that the cancer had already reached Stage IV by the time of Dr. Magal's evaluation, Mr. Dean's treatment options were severely limited and "would not have changed his diagnosis in the sense that it was metastatic pancreas cancer." Dr. Laheru added that "at some point, the chemotherapy would not have responded, and this would have taken his life, unfortunately, at some point." Dr. Laheru testified that the average survival rate for someone with Stage IV pancreatic cancer was "somewhere in the order of a year" and that the five-year survival rate was less than 2%.

Appellees' Motion for Summary Judgment

In April 2021, Appellees filed a motion for summary judgment and included, as an attachment, a transcript of Dr. Laheru's testimony. Appellees argued that, based on that testimony, Ms. Wolff could not sustain either of her claims because there was no evidence that Appellees' alleged negligence caused Mr. Dean's death. Appellees further argued that Ms. Wolff's "loss of chance of survival" claims should be rejected because such claims are not recognized in Maryland. Finally, Appellees argued that Ms. Wolff had not put forth any evidence that Mr. Dean suffered any other injury as a result of Appellees' alleged negligence.

Ms. Wolff's Response to Appellees' Motion for Summary Judgment

In her response, Ms. Wolff conceded that she could not meet her burden of proving that Appellees' negligence was the proximate cause of Mr. Dean's death. Ms. Wolff also conceded that, "under the current state of Maryland law . . . [her] claims for loss of chance of survival may not be viable[.]" She argued, however, that the case law regarding "loss of chance" claims "appears not to have ruled out the invitation to revisit this issue in a case with facts wherein the doctrine would apply." Ms. Wolff argued that her case was a prime candidate in which to revisit the issue because she could prove that Appellees' negligence caused Mr. Dean's loss of chance of survival.

In support of her claim for damages related to Mr. Dean's "loss of chance of survival," Ms. Wolff highlighted portions of Dr. Laheru's deposition testimony. That testimony was:

- [T]hat if Mr. Dean had been properly diagnosed with pancreatic cancer in or about May 2015 (the time of Defendants' malpractice), that Mr. Dean would have started chemotherapy, he would have been seen by gastroenterology for the concern for the mass in the pancreas, he would have been presented at a multidisciplinary conference, etc. And, the treatment would have changed the quantity, potentially, and hopefully, the quality of his life in that time period between his initial presentations in May and ultimately what ended up happening. Dr. Laheru also indicated that Mr. Dean lost essentially five months or so when he could have used that time to get started on chemotherapy that could have tried to slow the pace of the cancer[;]

- [T]hat during the window of time, from approximately May to June or July 2015, Mr. Dean would have been physically strong enough to have received the appropriate chemotherapy, however, by November, December, 2015, Mr. Dean's performance status had decline[d] substantially[;]

- [T]hat in 2015, there were a lot of opportunities in the field of pancreas cancer, including clinical trials, some of which have led to FDA approval for medications, and that Mr. Dean never got the opportunity to look at these opportunities[;]

- [T]hat Mr. Dean never got the chance to fight[;]

- [T]hat due to the misdiagnosis, Mr. Dean was not afforded the opportunities for other treatments, including, psychological counseling, pain management (including nerve blocks) and nutrition management[]; and that Dr. Laheru had two metastatic pancreas cancer patients who were on a study in 2015 that were still alive as of the date of the deposition, December 21, 2020[;]

- [T]hat even though the five[-]year survival rate from Stage 4 pancreatic cancer patients was less than two percent, Dr. Laheru indicated that "there are patients who – who beat this all the time[.]"

Ms. Wolff argued further that, even if her "loss of chance" claims were not viable, summary judgment on the Survival Action was inappropriate because there was evidence establishing that Appellees' negligence caused other damages, namely, emotional pain and suffering. In support of those claims, Ms. Wolff attached two documents to her response. The first document was an affidavit from her, which set forth certain affirmative statements regarding Mr. Dean. Ms. Wolff stated that, from the time of Dr. Magal's evaluation in May 2015 to the time he was diagnosed with pancreatic cancer in November 2015, Mr. Dean was "in bad pain" yet was unaware that he had pancreatic cancer. Ms. Wolff stated that Mr. Dean "would have wanted to know the truth about his health and medical condition in a timely manner" and that Dr. Magal deprived him of knowing that truth. Ms. Wolff stated that, had Mr. Dean been told about the cancer in May, he would have undergone medical treatment "in an attempt to prolong the quantity (length) and quality of his life."

Ms. Wolff stated that Mr. Dean would also have had more time to spend with his children and get his affairs in order. Ms. Wolff stated that, when Mr. Dean discovered he had terminal cancer and likely had been suffering from it since May 2015, he was "devastated" and "felt that he was robbed of the opportunity to live the end of his life as he wanted."

The second document attached to Ms. Wolff's response was her answers to interrogatories, which echoed many of the damages that were spelled out in Ms. Wolff's affidavit. Ms. Wolff claimed that Mr. Dean's cancer caused him physical pain that could have been "aggressively treated" had it been diagnosed in May 2015. Ms. Wolff also claimed that the delay in Mr. Dean's diagnosis "robbed" him of time and the chance for treatment, and that Mr. Dean suffered from emotional pain and suffering upon learning that he "was robbed of the opportunity to live the end of his life as he wanted and needed[.]" Ms. Wolff alleged that Mr. Dean was "crushed" when he discovered he had cancer and that he lived the remainder of his days in uncontrollable pain.

Based on that evidence, Ms. Wolff claimed that Appellees' negligence caused harms and losses to Mr. Dean, including but not limited to:

- [D]epriving Mr. Dean of the right and opportunity to know the truth of his health and medical condition; this being that he had a terminal disease that was going to take his life;
- [D]epriving Mr. Dean of the opportunity and right to choose his medical treatment, and of the hope of survival;
- [D]epriving Mr. Dean the opportunity to get his affairs – financial, domestic, insurance, etc. – in order;
- [D]epriving Mr. Dean of the right, opportunity and choice to spend as much time as he could with his 14-year-old son and with his daughter;

- [D]epriving Mr. Dean of the right, opportunity and choice to live the last seven months of his life (or at least the five months between the date of the misdiagnosis and the date of the proper diagnosis) as he would have chosen.

Summary Judgment Hearing and the Circuit Court's Ruling

The circuit court ultimately held a hearing on Appellees' motion for summary judgment. At that hearing, the parties presented the same arguments and evidence contained in their respective filings, as outlined above. In the end, the court granted Appellees' motion. As to the Wrongful Death action, the court found that it was undisputed that Appellees' alleged negligence was not the proximate cause of Mr. Dean's death. As to the Survival Action, the court found that there was no evidence that the delay in treatment from May 2015 to November 2015 directly resulted in any recoverable injury.

This timely appeal followed. Additional facts will be added where necessary.

STANDARD OF REVIEW

"In Maryland, a court shall grant summary judgment only if 'there is no genuine dispute as to any material fact and . . . the party in whose favor judgment is entered is entitled to judgment as a matter of law.'" *George v. Baltimore Cnty.*, 463 Md. 263, 272 (2019) (quoting Md. Rule 2-501(f)). "In an appeal from the grant of a defendant's motion for summary judgment, we review the facts and all inferences drawn from those facts in the light most favorable to the plaintiff." *Gurbani v. Johns Hopkins Health Sys. Corp.*, 237 Md. App. 261, 267 (2018). "[I]f those facts are susceptible to inferences supporting the position of the [plaintiff], then a grant of summary judgment is improper." *RDC Melanie Drive, LLC v. Eppard*, 474 Md. 547, 564 (2021) (citation and quotations omitted). "The

inferences drawn in favor of the plaintiff, however, 'must be *reasonable* ones.'" *Gurbani*, 237 Md. App. at 267 (quoting *Clea v. Mayor & City Council of Baltimore*, 312 Md. 662, 678 (1988)). "Furthermore, a dispute of fact, in itself, will not prevent the entry of summary judgment; rather a court is precluded from entering summary judgment only when the record reveals a genuine dispute of a material fact." *Id.*

"To determine whether a genuine dispute of material fact exists, we must first decide which evidence in the record can be reviewed to make such a determination." *George*, 463 Md. at 272. As the Court of Appeals has explained:

> Under Maryland Rules, "[a]ny party may file a written motion for summary judgment of all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." Md. Rule 2-501(a). This motion must be supported by affidavit if it is: "(1) filed before the day on which the adverse party's initial pleading or motion is filed or (2) based on facts not contained in the record." *Id.*
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> If the opposing party chooses to reply, it must answer, in writing, "identify[ing] with particularity each material fact as to which it is contended that there is a genuine dispute . . . " Md. Rule 2-501(b). Additionally, as to these alleged material facts, the opposing party must "identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute." *Id.* "A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath." *Id.*
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> "[F]acts alleged in pleadings are not, by that means alone, before the court as facts for summary judgment purposes. Ordinarily, mere allegations neither establish facts, nor show a genuine dispute of fact." *Vanhook v. Merchants Mut. Ins. Co.*, 22 Md. App. 22, 27 (1974) (citation omitted).

Id. at 273-74.

"Whether summary judgment was granted properly is a question of law." *Id.* at 272 (citation and quotations omitted). In addition, our review "of the grant of a motion for summary judgment is ordinarily limited to the grounds assigned by the trial court." *Sutton-Witherspoon v. S.A.F.E. Mgmt., Inc.*, 240 Md. App. 214, 232 (2019) (citation and quotations omitted).

DISCUSSION

Ms. Wolff argues that the circuit court erred in granting Appellees' motion for summary judgment on the grounds that she failed to produce any evidence showing recoverable damages.[2] Ms. Wolff claims that she produced sufficient evidence showing two types of recoverable damages: 1) damages resulting from Mr. Dean's "loss of chance of survival," and 2) damages "other than loss of chance of survival[,]" such as mental pain and suffering.

As discussed in greater detail below, we hold that Ms. Wolff's "loss of chance" claims were properly rejected by the circuit court. We also hold that the court did not err in finding that there was no evidence that Mr. Dean suffered any legally recognized injuries or damages as a result of Appellees' alleged negligence.

[2] Ms. Wolff recognizes, as she did below, that there was no evidence that Appellees' negligence caused Mr. Dean's death. She concedes, therefore, that she could not meet her burden of proving her wrongful death claim.

Analysis

A medical malpractice action is governed by the general principles of a traditional negligence claim. *Am. Radiology Servs., LLC v. Reiss*, 470 Md. 555, 579 (2020). "According to these well-known principles, the plaintiff must establish at trial (1) the defendant's duty based on the applicable standard of care, (2) a breach of that duty, (3) that the breach caused the injury claimed, and (4) damages." *Id.* "The absence of any one of those elements will defeat a cause of action in tort." *Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A.*, 152 Md. App. 698, 717 (2003). In a medical malpractice action, "a patient sustains an injury when he or she first sustains compensable damages that can be proven with reasonable certainty." *Id.* at 719 (citations and quotations omitted). "[T]he mere possibility of an injury in a negligence action does not give rise to a cause of action." *Id.*

Where, as here, the negligence claim is brought by a decedent's personal representative in a survival action, our focus is on the injuries and damages sustained during the decedent's lifetime, *i.e.*, from the time of the negligent act until death. *Wadsworth v. Sharma*, 251 Md. App. 159, 183-85, *cert. granted*, 476 Md. 264 (2021). Such an action does not require proof that the negligent act caused the decedent's death; rather, the decedent's personal representative "must only show that the decedent, if he or she had lived, would have had a cause of action." *Id.* at 185. "Those damages 'currently include conscious pain and suffering as well as medical expenses, but exclude future loss of earnings, solatium damages, and damages which result to other persons from the death.'" *Id.* (quoting *Fennell v. S. Maryland Hosp. Ctr., Inc.*, 320 Md. 776, 792 (1990)). Thus, if a personal representative "can prove that due to [a defendant's] negligence, the decedent

incurred medical expenses or endured pain or suffering that she would not have endured if there had been no negligence, [the personal representative] can make a recovery for such damages." *Id.* at 192.

In a medical malpractice case, expert testimony is generally required to establish negligence and causation. *Reiss*, 470 Md. at 580. "Juries are not permitted to simply infer medical negligence in the absence of expert testimony because determinations of issues relating to breaches of standards of care and medical causation are considered to be beyond the ken of the average layperson." *Id.*

A.

As noted, Ms. Wolff asserts that her "loss of chance" claims should be recognized as recoverable harms. While acknowledging that such claims are generally not recognized in Maryland, Ms. Wolff argues that the relevant case law "appears not to have ruled out the invitation to revisit this issue in a case with facts wherein the doctrine could apply." She contends that hers is such a case, given that Appellees' negligence "can be proven to have caused Mr. Dean's loss of chance of survival." She further asserts that, even if her loss of chance of survival claim is not viable, "it is clear that Appellees[] caused Mr. Dean to lose the chance of hope, the chance of not giving up, the chance of having a choice, the chance of having a chance." She maintains that those "are all real damages" and that Appellees are "legally responsible for the damages that they caused to Mr. Dean."

Appellees argue that Ms. Wolff's claims should be rejected. They contend that, even if Maryland recognized "loss of chance" as a viable claim, Ms. Wolff's claim would

still fail because the evidence was undisputed that Mr. Dean had no chance of surviving the cancer.

"'Loss of chance,' sometimes . . . called 'loss of *a* chance,' is a tort theory that permits recovery for avoiding some adverse result or of achieving a more favorable result." *Barton v. Advanced Radiology P.A.*, 248 Md. App. 512, 525 (2020) (footnote omitted). A subset of that theory is "loss of chance of survival," which refers to "decreasing the chance of survival as a result of negligent treatment where the likelihood of recovery from the pre-existing disease or injury, prior to any alleged negligent treatment, was improbable, *i.e.*, 50% or less." *Fennell*, 320 Md. at 781. Proponents of the theory note that, under the traditional negligence concept of proximate cause, where a decedent who had been suffering from a preexisting disease or injury had a less-than-even chance of survival regardless of any medical negligence, a survival action brought on behalf of that decedent would necessarily fail because it could not be shown by a preponderance of evidence that the negligence deprived the decedent of a cure. *Barton*, 248 Md. App. at 527. But, under the loss of chance of survival theory, a plaintiff in a similar situation could still recover on behalf of the decedent if he could show that the decedent was deprived of some chance of a cure. *Id.* at 527-28.

Nevertheless, as the Court of Appeals made clear in *Weimer v. Hetrick*, 309 Md. 536 (1987), and *Fennell, supra*, "Maryland falls squarely among the jurisdictions that do not recognize loss of chance as a theory of tort recovery in medical malpractice cases." *Barton*, 248 Md. App. at 528-30. Thus, "unless and until the Court of Appeals announces a significant revision of its holdings in *Weimer* or *Fennell*, loss of chance remains

unavailable as a cause of action in medical malpractice wrongful death and survival claims." *Id.* at 531.

From that, it is clear that none of Ms. Wolff's "loss of chance" claims, whether couched as "loss of chance of survival," "loss of chance of hope," or any derivation thereof, is viable under Maryland law. To the extent that Ms. Wolff is suggesting that the Court of Appeals' holdings in *Weimer* and *Fennell* need to be revisited and that her loss of chance claims should be recognized, that is not for this Court to decide. *See Wadsworth*, 251 Md. App. at 181-82 (expressly rejecting the appellants' request to recognize the loss of chance doctrine, stating that "this Court has no authority to overturn a Court of Appeals decision").

B.

As to the damages other than those related to her loss of chance claim, Ms. Wolff contends that the circuit court did not correctly apply the law in finding that Mr. Dean suffered no legally cognizable damages. She asserts that the "uncontroverted devastating emotional distress caused by [Appellees'] negligence is clearly a recoverable damage under Maryland law." Highlighting her affidavit and answers to interrogatories, which were attached to her response to Appellees' motion for summary judgment, Ms. Wolff argues that there was sufficient evidence of Mr. Dean's emotional distress to overcome a motion for summary judgment.

Appellees assert that the circuit court properly granted summary judgment on the grounds that Mr. Dean suffered no recoverable injuries or damages. They argue that damages for emotional distress are recoverable only if there is evidence that the emotional distress resulted in physical injury. They assert that all of the damages cited by Ms. Wolff

in her affidavit and her answers to interrogatories were simply "bald allegations" and did not establish any actual injury to Mr. Dean. Appellees also assert that there was no evidence that Mr. Dean suffered a shortened life expectancy as a result of their alleged negligence.

"In Maryland, a right to recovery exists for emotional distress if it results in physical injury." *Wheeling v. Selene Fin. LP*, 473 Md. 356, 393 (2021) (citation and quotations omitted). "A compensable 'physical injury' may be demonstrated simply by evidence of a distressed mental state." *Hunt v. Mercy Med. Ctr.*, 121 Md. App. 516, 524 (1998). In addition, a plaintiff may recover for "mental suffering resulting from knowledge of [a] shortened … life expectancy." *Monias v. Endal*, 330 Md. 274, 283 (1993) (citing *Rhone v. Fisher*, 224 Md. 223, 230-31 (1961)).

That said, any "physical injury" claimed by a plaintiff to be the result of emotional distress or mental suffering must be "capable of objective determination." *Benyon v. Montgomery Cablevision Ltd. P'ship*, 351 Md. 460, 502 (1998) (citation, quotations and emphasis omitted). That is, in order for a plaintiff to recover damages for emotional injury, the emotional injury "must be accompanied by a physical injury, which the plaintiff will be required to prove by some objective physical manifestation." *Wheeling*, 473 Md. at 399. Such physical injury has "been held to include such things as depression, inability to work or perform household chores, loss of appetite, insomnia, nightmares, loss of weight, extreme nervousness and irritability, withdrawal from socialization, fainting, chest pains, headaches, and upset stomachs." *Id.* at 395 (citations and quotations omitted).

Moreover, "in order for an injury to be capable of objective determination, the evidence must contain more than mere conclusory statements, such as, 'He was afraid,' or, 'I could see that he was afraid.'" *Hunt*, 121 Md. App. at 531. In other words, "[t]he evidence must be detailed enough to give the jury a basis upon which to quantify the injury." *Id.*; *see also Exxon Mobil Corp. v. Albright*, 433 Md. 303, 357-60 (2013).

Finally, "notwithstanding the physical injury rule, the emotional distress complained of by a plaintiff must be proximately caused by the defendant's wrongful, negligent act." *Beynon*, 351 Md. at 504. "The causation element requires the plaintiff to prove that there is a reasonable connection between the defendant's negligence and the plaintiff's damages." *Stickley v. Chisholm*, 136 Md. App. 305, 314 (2001).

Against that backdrop, we hold that the circuit court correctly found that there was no evidence that Mr. Dean suffered any recoverable harm as a result of Appellees' alleged negligence. To be sure, the above case law makes clear that, in theory, Ms. Wolff could have recovered damages if she was able show that Appellees' alleged negligence caused Mr. Dean "emotional distress" or "mental suffering from knowledge of a shortened life expectancy." The problem with Ms. Wolff's claims, and the reason that those claims were legally insufficient to overcome a motion for summary judgment, is that she presented no evidence establishing that Mr. Dean's emotional distress resulted in an injury capable of objective determination.

The only evidence presented by Ms. Wolff that provided any insight into Mr. Dean's emotional distress came from the affidavit and answers to interrogatories attached to her response to Appellees' motion for summary judgment. The extent of that evidence was:

that Mr. Dean was "in bad pain" in the months prior to his cancer diagnosis; that Mr. Dean was "devastated" and "crushed" when he discovered he had terminal cancer; that he "felt that he was robbed of the opportunity to live the end of his life as he wanted[;]" and that he lived the remainder of his days in uncontrollable pain.

None of those statements is evidence of emotional distress resulting in an injury capable of objective determination. First, the "pain" attributed by Ms. Wolff to Mr. Dean was clearly physical pain caused by his illness and had nothing to do with any emotional distress.[3] Second, while Ms. Wolff did describe Mr. Dean as "devastated" and "crushed," those descriptions were mere conclusory statements and lacked sufficient detail to give the factfinder a basis upon which to quantify the injury. *See Hunt*, 121 Md. App. at 531-32 (concluding that witness's description of decedent as "very upset" was insufficient to demonstrate a mental injury capable of objective determination). Finally, while Ms. Wolff asserts that she could recover for Mr. Dean's mental suffering from knowledge of a shortened life expectancy, she presented no evidence that Appellees' alleged negligence actually shortened Mr. Dean's life or, even if it had, that Mr. Dean knew his life had been shortened and that he had suffered mentally as result. *See Wadsworth*, 251 Md. App. at 189.

[3] As Appellees correctly argue, Decedent was diagnosed with pancreatitis, another painful condition, in May 2015. To show the sources of any pain from May 2015 through November 2015, delineate between any pain caused by these conditions, explain what, if any, pain was caused by an alleged delay in diagnosis as opposed to the inevitable pain from those conditions, and how, if at all, this would have been different with earlier diagnosis, expert testimony would have been needed. *Am. Radiology Servs., LLC v. Reiss*, 470 Md. 555, 580 (2020); *Tucker v. Univ. Specialty*, 166 Md. App. 50, 58 (2005). No testimony of this sort was provided.

Ms. Wolff also argues that Mr. Dean endured conscious pain and suffering from the knowledge that Appellees' alleged negligence deprived him of various opportunities, such as the opportunity to know the truth of his health, to get his affairs in order, and to spend more time with his children. We remain unpersuaded. Those "deprivation" claims suffer from the same deficiency as her other claims for emotional distress, in that there is no evidence that the "deprivation" caused emotional distress and resulted in an injury capable of objective determination. Furthermore, even if we accepted Ms. Wolff's deprivation claims at face value, those claims would still fail because they are essentially "loss of chance" claims, which, as noted, are not recognized in Maryland.

In sum, we hold that Ms. Wolff failed to present any material facts showing that Appellees' alleged negligence caused a compensable injury. Consequently, the circuit court did not err in granting Appellees' motion for summary judgment on those grounds.

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