Circuit Court for Baltimore City
Case No. 24-C-19-001196

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0934

September Term, 2020

CHRISTINE CRAIG

v.

COSTA MANAGEMENT, LLC, ET AL.

Graeff,
Arthur,
Zic,

JJ.

Opinion by Zic, J.

Filed: November 15, 2022

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Christine Craig, appellant, filed this negligence action against Costa Management, LLC and Matthew Costa (collectively "Costa"), appellees, after she was injured on the interior, common stairway leading to her upper-level apartment. Ms. Craig alleged that she slipped and fell on the treads covering the steps. The Circuit Court for Baltimore City granted summary judgment in favor of Costa and subsequently denied Ms. Craig's motion for reconsideration. This appeal followed.

Ms. Craig presents three questions for our review, which we rephrased and recast as follows[1]:

[1] Ms. Craig phrases the issues as follows:

> 1. Was the evidence produced during discovery sufficient to defeat Costa's Motion for Summary Judgment and submit the case to the jury, with a spoliation instruction, to determine whether the subject stair treads created a dangerous condition of which Costa was, or should have been, on notice to remedy, where such evidence included 1) Ms. Craig's testimony regarding her observation of the allegedly dangerous condition of the stair treads, 2) photographs of the subject stair treads that, when viewed in a light most favorable to the plaintiff, depicted worn and smooth areas on the treads, 3) Matthew Costa's testimony from which a reasonable inference can be drawn that the treads had been in place for over thirty years, and 4) Mat[t]hew Costa's testimony that he visited the property at least weekly, during which time he had opportunity to observe the subject stair treads.
>
> 2. Was the evidence produced during discovery along with the affidavit of Costa's third-party witness produced by Ms. Craig as an exhibit to her Motion for Reconsideration sufficient to defeat summary judgment and submit the case to the jury, with a spoliation instruction, to determine whether the subject stair treads created a dangerous condition of which Appellee's were, or should have been, on notice to remedy.

1. Did the circuit court err in granting Costa's motion for summary judgment?

2. Did the circuit court abuse its discretion in denying Ms. Craig's motion for reconsideration?

For the reasons that follow, we answer both questions in the negative and affirm the judgment of the circuit court.

BACKGROUND

Beginning on December 30, 2017, Ms. Craig leased and resided at a third-floor apartment in a multifamily rental property located in Baltimore, Maryland. The property was first deeded to Mr. Costa's parents[2] in November 1984 and then transferred to Costa Management, LLC ("Costa Management") on approximately December 31, 2006. Thereafter, Costa Management, of which Mr. Costa and his parents were members, owned and managed the rental property. Mr. Costa assisted in the management of the property and was involved in the repair and maintenance of the premises.

On September 21, 2018, Ms. Craig fell and sustained injuries, including a fractured right wrist, while ascending the stairway located within the common area of the apartment building, providing access from the front hallway to the upper-level units. Other than the fire escape, the common stairway was the only means of ingress and egress to Ms. Craig's third-floor apartment. As depicted in photographs produced by

3. Did the trial court err in granting summary judgment in favor of Costa, and in denying Ms. Craig's Motion for Reconsideration of that ruling?

[2] Mr. Costa's parents, Theresa and Paul Costa, were not named as defendants and are not party to this appeal.

Costa during discovery, the common stairway, viewed from the ascending perspective, had a handrail to the left and a wall with no handrail to the right. Black, rectangular-shaped slip-resistant treads were placed on top of the steps of the stairway.

Ms. Craig, during her deposition, explained that when she reached the fourth or fifth step of the common stairway, she felt her right foot slip on "[t]he tread on the step" and then she fell forward:

> [COUNSEL FOR COSTA]: Do you recall whether anything unusual occurred when you got to that fourth and fifth step such as your phone going off or someone calling out your name or anything like that?
>
> [MS. CRAIG]: No. I just remember feeling my foot slip. That's the only thing I remember about going up those steps.
>
> [COUNSEL FOR COSTA]: What did your foot slip on?
>
> [MS. CRAIG]: The tread on the step.
>
> [COUNSEL FOR COSTA]: Was the tread torn or broken or anything?
>
> [MS. CRAIG]: I didn't inspect the tread. But I didn't notice anything about it. I didn't inspect it or anything.

Ms. Craig testified that, after the fall, she observed that areas of the stair treads were worn. She further described the condition of the treads at the time of the incident:

> [COUNSEL FOR COSTA]: What did you see about the treads or what led you to conclude that they were worn?
>
> [MS. CRAIG]: Because I slipped on them, and I felt myself slip on them. And then that's what made me afterwards, like, really start paying attention to them and realized just how worn they were. . . .

* * *

> [COUNSEL FOR COSTA]: . . . . You said that the treads were worn because you slipped and fell on them?
>
> [MS. CRAIG]: Yes.
>
> [COUNSEL FOR COSTA]: . . . [C]an you describe for me visually what you would have seen on the treads that lead you to conclude that they were worn?
>
> [MS. CRAIG]: They were worn. They were smooth. They didn't have grooves in them, like, that you would feel, like, would grip your -- and the thing that really made me pay attention to it was the fact that I did have tennis shoes on. And it was like I can't believe I really slipped on these steps like that. And that's what made me just start paying attention. And I'm like, well, they are kind of worn. And that's what made me reach out to Mr. Costa.

Ms. Craig stated in her deposition that, at the time of the accident, she had resided at that apartment for nine months and she used the common stairway approximately two or three times per day. During the past nine months, she did not "fall," "slip," or "have any problems using" the steps and she never complained to anyone about the stairway or treads prior to her fall. Ms. Craig also testified that she was not aware of any other person who had fallen on the stairway or complained about the stair treads.

Mr. Costa, in his answers to interrogatories, confirmed that he did not "receive any communication or otherwise obtain any knowledge that any tenant slipped, fell[,] or was injured" on the common stairway prior to Ms. Craig's incident and that he observed no

defect in the stairs.[3] He explained that he entered the property "at least once every week for various reasons such as to generally inspect and maintain the property, address the needs of tenants, and collect rent" and that he "performed visual inspection every time he entered the . . . [p]roperty and also asked all tenants . . . to let him know immediately if they noticed any areas . . . requiring maintenance." He stated that prior to the incident, "minor repairs were made to the stairwell as needed."

Ms. Craig, in her deposition, stated that she frequently contacted Mr. Costa by text message regarding repairs needed in the apartment and that he responded promptly to her messages and took care of the issues raised. According to Mr. Costa's interrogatory answers, Ms. Craig first informed him of the incident "approximately two weeks after the occurrence took place, however, [he] inspected the stairs and no harm or hazards existed." Although he observed no defect, he had the treads on the stairs replaced at Ms. Craig's request. Mr. Costa, in his deposition, reiterated his belief that the stair treads did not need to be replaced.

During his deposition, Mr. Costa confirmed that there was no documentation of work done on the premises "from 30 years ago" but there was "documentation for the

[3] During Mr. Costa's deposition, Ms. Craig's attorney read Costa Management's statement in its interrogatory answers, which Mr. Costa had signed, that "[n]o one had ever complained of the stairs or reported any problems or incidents with the stairs in over 30 years that Defendant has owned and/or managed the property." Her attorney then questioned whether Mr. Costa had personal knowledge of such reports over the entirety of that 30-year period given that he was not involved in the management of the property until sometime after it was first acquired by his parents. Mr. Costa confirmed that he asked his parents whether they recalled any reports and then reiterated that to the best of his and his parents' knowledge, there were no complaints about the stairwell.

past six years." He stated that during the past six years, "there were no things that were broken or needed repair to the stairwell." Mr. Costa was then questioned about his practice of documenting complaints:

> [COUNSEL FOR MS. CRAIG]: But am I correct if somebody had called or mentioned to you that, you know, these treads on these stairs are getting kind of old, if you didn't call someone to replace them, you wouldn't have any documentation of that statement, correct?
>
> [MR. COSTA]: That would be true except for the fact that [Ms.] Craig . . . actually texted me that as opposed to calling me that, which is interesting. She --
>
> [COUNSEL FOR COSTA]: Wait for a question.
>
> [MR. COSTA]: I'm sorry. Go ahead.
>
> * * *
>
> [COUNSEL FOR MS. CRAIG]: So what I'm asking you is, if prior to that anyone had called or mentioned to you that the treads -- you know, the treads are kind of old --
>
> [MR. COSTA]: Right.
>
> [COUNSEL FOR MS. CRAIG]: -- maybe they should be replaced, if you determined they didn't need to be replaced, you would not have documented that comment or complaint if you had received it, correct?
>
> [MR. COSTA]: Correct, yes.[4]

[4] Mr. Costa also acknowledged during his deposition that, generally speaking, "over the years [he] . . . received calls, complaints or requests for repairs for which there [was] no documentation." Ms. Craig's counsel then posed the following questions:

> [COUNSEL FOR MS. CRAIG]: So the norm would be not to document, and not that that's a criticism, but your normal practice would be take the call, call somebody to take care of the problem?

Mr. Costa also provided the following testimony when questioned about the age of the stair treads in place at the time of Ms. Craig's fall:

> [COUNSEL FOR MS. CRAIG]: And with the statement [in Costa Management's answers to interrogatories] that there hasn't been any problems or incidents with the stairs in over 30 years, . . . is that to indicate that the stairs were in the exact same condition with the exact same treads that were in place at the time Ms. Craig fell, w[]ere they the same treads that had been on for at least 30 years?
>
> [MR. COSTA]: I don't know. I don't know if those are the exact same treads for the full 30 years.
>
> [COUNSEL FOR MS. CRAIG]: Do we have any way of knowing when those treads then were put on the stairs?
>
> [MR. COSTA]: I could ask my parents if they know exactly when those treads were put on. But I don't know.
>
> [COUNSEL FOR MS. CRAIG]: Okay. And that question has not been asked yet of your parents?
>
> [MR. COSTA]: I haven't asked them. I don't know if they would know the exact -- I mean, an exact date or year. I don't know.
>
> [COUNSEL FOR MS. CRAIG]: What is the furthest back you can remember and say with confidence the treads have been on those stairs since at least 2006 when Costa

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> [MR. COSTA]: Correct.
>
> [COUNSEL FOR MS. CRAIG]: And not document the call?
>
> [MR. COSTA]: Take care of it, right. My goal is to take care of it and keep the tenant happy, make sure everything is okay, make sure everything is safe and do it as fast as humanly possible. That's it. I'm not into, you know -- well, big companies, I guess, have to. But I can do it very quickly.

Management was formed or earlier or when can you say you know that those treads were the same treads?

[MR. COSTA]: I think those treads were there in 2006, yes.

[COUNSEL FOR MS. CRAIG]: Do you believe those treads were there prior to 2006?

[MR. COSTA]: They may have been. I don't know.

[COUNSEL FOR MS. CRAIG]: You're not possible to pinpoint a day where you can say --

[MR. COSTA]: There is no way for me to pinpoint a day.

[COUNSEL FOR MS. CRAIG]: Let me ask it this way then. You said you started full-time management of the properties in 1992?

[MR. COSTA]: Yes.

[COUNSEL FOR MS. CRAIG]: Since 1992 to your memory, have those treads ever been replaced?

[MR. COSTA]: I would have to go back and ask my parents. I don't know. I really don't.

[COUNSEL FOR MS. CRAIG]: Well, you would have been aware if you were the property manager since 1992, correct?

[MR. COSTA]: Yes. But it is possible that I don't recall.

[COUNSEL FOR MS. CRAIG]: Yes. So --

[MR. COSTA]: So I may have had them replaced, and I don't recall.

[COUNSEL FOR MS. CRAIG]: And you don't recall?

[MR. COSTA]: Yes.

> [COUNSEL FOR MS. CRAIG]: Okay. Because there is no documentation of --
>
> [MR. COSTA]: Sure.
>
> [COUNSEL FOR MS. CRAIG]: -- these kinds of things, we have to rely on your memory, you may not remember?
>
> [MR. COSTA]: If in 1994 I replaced all the treads on all the steps, that's very possible.

Mr. Costa further testified that he "ha[d] no knowledge of who made [the stair treads]" in place at the time of Ms. Craig's injuries.

Following the incident, but before initiating this action, Ms. Craig's attorney sent Mr. Costa a letter dated October 17, 2018. Mr. Costa, at his deposition, acknowledged receipt of the letter and confirmed that, in the letter, her attorney "notif[ied] [him] of this claim and ask[ed] [him] to put [his] insurance company on notice" and requested that he retain the stair treads in the event they are replaced.[5] Mr. Costa testified that the treads on the stairs were subsequently replaced and discarded, explaining that he "didn't even think about it" and merely "wanted them fixed." The new treads were installed between December 7, 2018 and December 15, 2018 by Percy Brown, a tenant who occasionally worked as a repairman for Costa Management. Mr. Costa testified that he assumed Mr. Brown threw out the original treads and that he did not instruct Mr. Brown to save or discard them. Notably, before the installation of the new treads, Costa's insurance

[5] The October 17, 2018 letter was not included in the record provided to this Court. During oral arguments, Ms. Craig's counsel confirmed that the letter was also not included as an exhibit to her opposition, though Mr. Costa's concession at his deposition that the letter requested he retain the stair treads was in the summary judgment record.

adjuster took photographs of the original stair treads in place at the time of the accident, which were later produced by Costa during discovery.

On February 27, 2019, Ms. Craig filed a complaint, alleging one count of negligence, and election for jury trial in the Circuit Court for Baltimore City. She argued that Costa was negligent in failing to properly maintain, inspect, and repair the common stairway and, more specifically, that the treads covering the stairs were "were worn, smooth[,] and slippery in places[] providing little to no traction," which caused her to slip and fall. Ms. Craig also filed a Request for Entry Upon Land and Production of Tangible Items, requesting that Costa produce for inspection the stair treads in place when she fell. But at that point, the treads had been discarded and thus were not available for inspection.

After the close of discovery, on December 17, 2019, Costa moved for summary judgment, arguing that there was no evidence establishing that the common stairway constituted a dangerous or defective condition or that Costa had the requisite knowledge of that defect. In support, they noted that Mr. Costa, in his discovery responses, stated that he did not believe the stair treads needed to be replaced and that he observed no defect in the stairway during his weekly inspections of the premises, indicating that the danger, if any, posed by the treads was not apparent. They emphasized that Ms. Craig's deposition revealed that prior to the incident, she never complained or had problems with the stairs, despite using them two or three times per day for the past nine months, and was not aware of anyone else who had. In addition, Costa produced three, fairly blurry photographs of the common stairway with the original treads in place—one from a

distance, showing the base of the staircase up to approximately the twelfth step, and two close-up shots, capturing three or four steps.

In her opposition, Ms. Craig argued that there was a dispute of material fact as to whether the stair treads at issue "provided sufficient slip-resistance or had worn to the point that they created a dangerous condition" and whether Costa knew or should have known of that condition. She relied on her testimony that, after the fall, she observed worn, smooth areas on the treads and two photographs taken after the incident by Costa's insurance adjuster of the stairway with the original treads, allegedly "demonstrat[ing] treads that are worn smooth in places." Similar to Costa's exhibit, the photographs provided a somewhat blurry image of the stairway, with the first eleven or twelve steps visible, and of the first three steps from a closer angle. Ms. Craig also relied on portions of Mr. Costa's deposition testimony, asserting that "a jury may . . . reasonably infer that the Costas did not replace the stair treads during the entire 30-plus year period that they owned the property." She argued that evidence of the appearance and age of the stair treads was sufficient to show the slip hazard posed by the treads and to place Costa on notice that they should have been replaced. Ms. Craig further argued that she was entitled to a spoliation instruction based on Costa's failure to preserve the original treads.

Ms. Craig filed an amendment to her opposition, attaching the affidavit of her expert engineer, Douglas Hrobak. In his affidavit, Mr. Hrobak stated that he inspected the common stairway on July 5, 2019, and reviewed various case materials, including photographs of the common stairway. But because the original treads in place at the time

of the incident were discarded, he was unable to perform slip resistance testing.[6] As explained by Mr. Hrobak, "[o]ver time, flooring surfaces, including the tread coverings at issue in this case, can become smoother and lose their slip resistant quality" and the "[m]easurement of a flooring surface's slip resistance index is critical in determining whether the surface would present a hazardous condition." Consequently, without such testing, Mr. Hrobak could not draw any "conclusions . . . related to the appropriateness of the treads and whether they were fit to be in use [or presented a safety hazard] at the time of Ms. Craig's incident." He also stated that "no determination can be made of the slip resistant quality of the coverings by visual inspection only." Subsequently, Costa filed a reply to Ms. Craig's opposition and amendment, arguing, in pertinent part, that the spoliation doctrine was inapplicable to these particular facts and, even if it did apply, could not support an inference that Costa had the requisite knowledge.

A motions hearing was held on February 5, 2020. At the end of the hearing, the circuit court granted Costa's motion for summary judgment, concluding that Ms. Craig "has not advanced sufficient evidence to satisfy the . . . existence of a defective condition and notice to the Defendants of that condition." In announcing its ruling, the court first addressed the issue of the spoliation instruction:

> I think the . . . Defendants are correct, that under the *Burkhouse* case and others, the inference that would arise from spoliation and a spoliation instruction cannot satisfy the Plaintiff's burden to produce evidence of a defective condition and notice of it. So I assume that the Plaintiff

[6] Mr. Hrobak noted that the "English XL tribometer" is the testing device "used to quantify the slip resistance index of walking surfaces for pedestrian use."

> would be entitled to a spoliation instruction at trial and, therefore, at trial, could benefit from that inference without deciding that that is the case, but find that that does not help the Plaintiff on summary judgment to satisfy the basic requirements of what the Plaintiff has to show to make out a duty and a breach of that duty.

The court then turned to the evidence of a dangerous or defective condition:

> Because there's no testimony from Mr. Brown or Mr. Burrell concerning the condition or how it existed before the accident,[7] there's nothing there to be relied upon by the Plaintiff in terms of establishing duty and the existence of a dangerous condition and notice of it. So that focuses solely on Ms. Craig's testimony and on the photographs. The photographs don't satisfy anything other than the existence of the treads and the fact that they were worn or older. The photographs are quite blurry. Arguably, if it says -- some of them show that there are ridges on at least some of the treads and it shows that they're in place, it certainly helps in terms of showing the configuration of the staircase and the nature of the treads, but it certainly -- the photographs don't show anything about a dangerous condition of any of them and I would note that it's undisputed that the -- there were no tears, or loose flaps, or something of that sort in the treads. That's not the dangerous condition that the Plaintiff alleges.
>
> So I'm left with Ms. Craig's testimony alone on her description of them and she says that she did not pay a whole lot of attention to the treads before the accident occurred but then she inspected them after the fact. She acknowledges that they were not torn or damaged in any way, but describes them

[7] In her opposition, as further support for denying summary judgment, Ms. Craig stated that Mr. Costa, at his deposition, "indicated that at least one other witness identified by Defendants, Darrell Burrell, will also testify that the treads were old and worn smooth, and that they needed to be replaced." She also stated that "Defendants identified Percy Brown as a witness who removed and replaced the old stair treads" and "[alt]hough Mr. Brown has not been deposed, it is anticipated that he may also testify that the treads were worn and smooth, and that they needed to be replaced." However, as the circuit court recognized, there were no affidavits or other sworn statements by these two individuals in the summary judgment record.

> as worn and smooth without having ridges, and I'm referring particularly to pages 62 to 64 of her deposition testimony.
>
> And I think the closest she comes to that description is on page 64 where she says "they were worn, they were smooth, they didn't have grooves in them like that you would feel like would grip your -- and the thing that really made me pay attention to it was the fact that I did have tennis shoes on and it was like I can't believe I really slipped on these steps like that, and that's what made me just start paying attention."
>
> My conclusion, again, it is a close case but is that the Plaintiff has failed to introduce sufficient evidence that would support a conclusion in a reasonable juror's mind that there was a dangerous or defective condition with these treads. It strikes me that all of her testimony concerning slipping is after-the-fact testimony or an inference from the fact that she slipped, and I think it's clear that the fact of a slip, which can be due to the way she placed her foot or something of that sort, does not itself indicate a dangerous or a defective condition. So I think the best that she has established by her testimony is that the treads were old and worn, that the surface was smooth, but not that it was dangerously slippery and that that's what caused the accident.

And finally, the court considered the issue of actual or constructive notice:

> She would also have to prove at this point or provide sufficient evidence at this point that Mr. Costa and/or Costa Management had actual or constructive notice of that defect. There's no real dispute that he had no actual notice of it; that is, that no one had made a complaint to draw his attention to it or a report of some other accident or some instance of slipping. I certainly would find that, based on his testimony, that he was in the premises and inspecting the stairs regularly, that he had the basis to observe anything that was defective about them, but I don't think the evidence is sufficient to show that his observations would have led to the conclusion that these were defectively slippery as opposed to being worn over time.

The court issued an order memorializing its oral ruling on February 5, 2020, and on February 14, 2020, Ms. Craig filed a motion for reconsideration. She alleged that the court placed significance on the lack of corroborating witness testimony and "disregarded the photograph of the stair treads[] attached [to her filing] in the form of a poor-quality copy." To address these concerns, Ms. Craig produced, for the first time, an affidavit from Mr. Brown dated October 9, 2019, and a digital copy, in addition to higher quality printouts, of 57 photographs represented to be by Costa's insurance adjuster taken after the incident but before the original treads were removed. Mr. Brown's affidavit, Ms. Craig alleged, was obtained as work product, not the subject of Costa's written discovery requests, and intended for use at trial solely for impeachment purposes. According to Ms. Craig, the evidence presented was sufficient to allow a jury to decide whether the treads presented a hazardous condition and Costa had knowledge of that condition.

In his affidavit, Mr. Brown stated that Costa hired him to "replace the old stair treads." He explained that Mr. Costa "told [him] to throw the old treads away" and that "[i]f Mr. Costa told [him] to keep the treads, [he] would have." When asked to describe the condition of the stair treads he replaced, Mr. Brown stated that "[t]he old treads needed to be replaced," "[s]ome of the treads were loose," and "some of the treads were smooth and worn down in places."

Costa filed a response to the motion for reconsideration in which they argued that, with the exception of Mr. Brown's affidavit, Ms. Craig's motion was merely a restatement of her formal responses and arguments made at the hearing. Costa urged the

court not to consider Mr. Brown's affidavit as it was not produced by Ms. Craig during discovery. They further argued that Mr. Brown's vague statement that "some" of the treads were worn and smooth was insufficient to demonstrate the existence of a defective condition on the specific portion of the stairway where Ms. Craig allegedly slipped and fell. Ms. Craig later filed a reply brief.

The circuit court ultimately denied Ms. Craig's motion for reconsideration without a hearing, and an order was entered on October 14, 2020.[8] In its order, the court stated that it "decline[d] to consider the new affidavit advanced by Plaintiff because it was not provided in opposition to Plaintiff's original motion and was available to Plaintiff then" and that it "f[ound] [n]o basis in Plaintiff's arguments to reconsider its initial decision." This appeal followed.

DISCUSSION

Ms. Craig challenges the circuit court's decision to grant summary judgment in favor of Costa and to deny her motion for reconsideration. She argued that she proffered evidence from which a reasonable jury could find that the stair treads on the portion of the common stairway where she was injured presented a dangerous condition and Costa knew or should have known that the treads were worn to the point that they created a slip hazard. Thus, there were disputes of material fact and summary judgment was improper. Costa counters that Ms. Craig did not adduce sufficient evidence to establish the

[8] The circuit court noted at the beginning of its order that "the [c]lerk did not send the motion to the [c]ourt until the end of September 2020."

existence of a dangerous condition or Costa's knowledge of that condition. As explained further below, we conclude that the record supported the circuit court's decision to enter summary judgment in favor of Costa and deny Ms. Craig's motion for reconsideration.

I. STANDARD OF REVIEW

Summary judgment is appropriate "if the motion and response show that there is no genuine dispute as to any material fact and that the [moving] party . . . is entitled to judgment as a matter of law." Md. Rule 2-501(f). We review the circuit court's grant of summary judgment without deference. *Williams v. Mayor of Baltimore City*, 245 Md. App. 428, 442 (2020). In doing so, "we must first ascertain, independently, whether a dispute of material fact exists in the record on appeal." *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 313, 315 (2019) (explaining that "[a] material fact is one that, 'depending on how it is decided by the trier of fact, will affect the outcome of the case'" and that "[t]he burden is on the party opposing . . . summary judgment to 'show disputed material facts with precision'" (quoting *Warsham v. James Muscatello, Inc.*, 189 Md. App. 620, 634 (2009))). "'[O]nly where such dispute is absent will we proceed to review determinations of law[,]' and then we will 'construe the facts properly before the court, and any reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party.'" *Macias*, 243 Md. App. at 313 (alterations in original) (quoting *Remsburg v. Montgomery*, 376 Md. 568, 579-80 (2003)). Notably, Maryland courts have stressed that to preclude the grant of summary judgment, "a plaintiff's claim must be supported by more than a 'scintilla of evidence[,]' i.e., 'there must be evidence

upon which [a] jury could reasonably find for the plaintiff.'" *Hansberger v. Smith*, 229 Md. App. 1, 13 (2016) (alterations in original) (quoting *Blackburn Ltd. P'ship v. Paul*, 438 Md. 100, 108 (2014)).

Generally, "the denial of a motion to alter or amend a judgment or for reconsideration is reviewed by appellate courts for abuse of discretion." *Miller v. Mathias*, 428 Md. 419, 438 (2012) (quoting *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 673 (2010)). An abuse of discretion occurs "when no reasonable person would take the view adopted by the court, 'or when the court acts without reference to any guiding rules or principles.'" *Sydnor v. Hathaway*, 228 Md. App. 691, 708 (2016) (quoting *Kona Props., LLC v. W.D.B. Corp., Inc.*, 224 Md. App. 517, 547 (2015)). "A decision that is legally incorrect is an abuse of discretion." *U.S. Life Ins. Co. v. Wilson*, 198 Md. App. 452, 464 (2011).

II. ANALYSIS

We begin by outlining the relevant legal principles that will guide our analysis. In a negligence action, the plaintiff must establish four elements: "(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty." *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 314 (2007) (quoting *Valentine v. On Target, Inc.*, 353 Md. 544, 549 (1999)); *see also Pratt v. Md. Farms Condo. Phase 1, Inc.*, 42 Md. App. 632, 640 (1979) (explaining that if a plaintiff fails to "introduce evidence on each element which is

sufficient to warrant a finding in his [or her] favor, [the plaintiff] will lose [the] case at the hands of the court (by nonsuit, directed verdict, or the like)"). For premises liability cases, "the duty owed by the possessor or owner of property to a person injured on the property is determined by the entrant's legal status at the time of the incident." *Macias*, 243 Md. App. at 316. A "landlord owes to those invited on the common areas, such as . . . tenants of residential properties, . . . the duty owed to an invitee: to use 'reasonable and ordinary care to keep the premises safe.'" *Ford v. Edmondson Vill. Shopping Ctr. Holdings, LLC*, 251 Md. App. 335, 348 (2021) (quoting *Macke Laundry Serv. Co. v. Weber*, 267 Md. 426, 429 (1972)). Here, regarding the first element of duty, there appears to be no dispute that Ms. Craig held the status of tenant at the time of her fall and that the stairway was located in the common area of the apartment building.

To establish a breach of duty, which is the critical element in this appeal, the plaintiff "must prove not only that a dangerous condition existed but also that the [defendant] 'had actual or constructive knowledge of the dangerous condition'" prior to the plaintiff's injury. *Joseph*, 173 Md. App. at 315 (quoting *Rehn v. Westfield Am.*, 153 Md. App. 586, 593 (2003)). In the absence of actual notice, a plaintiff must show that the defendant, "by the exercise of reasonable care, . . . could have discovered the condition in time." *Macias*, 243 Md. App. at 306, 322; *see Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 389-90 (1997) ("The mere existence of a defect or danger is generally insufficient to establish liability, unless it is shown to be of such a character or of such duration that the jury may reasonably conclude that due care would have

discovered it."). This Court has explained that "[t]o show constructive knowledge, [an] invitee must demonstrate that [the] defective condition existed long enough to permit one under a duty to inspect to discover the defect and remedy it prior to the injury." *Macias*, 243 Md. App. at 337 (second and third alterations in original) (quoting *Joseph*, 173 Md. App. at 316-17); *see Ross v. Belzer*, 199 Md. 187, 192-93 (1952) (concluding, in reversing judgment for tenant in negligence action against landlord, that there was no evidence that the rubber matting covering the common steps on which tenant tripped was in a defective or unsafe condition prior to the accident).

A. Motion for Summary Judgment

The circuit court's decision to grant summary judgment rested on its determination that there was inadequate proof of a defective condition and Costa's knowledge of that condition. Viewing the record in the light most favorable to the nonmoving party, we agree that Ms. Craig did not present sufficient evidence to create a genuine dispute of material fact as to whether Costa had actual or constructive notice of any defect in the stair treads and that Costa was therefore entitled to judgment as a matter of law. In explaining our holding, we assume, without deciding, that there was adequate proof establishing that the treads on the portion of the stairway where Ms. Craig fell constituted a dangerous or defective condition.

Turning first to the issue of actual notice, there is no evidence indicating that Costa was aware of a defect in the stairway.[9] According to his discovery responses, Mr. Costa, who was on the premises at least once a week, did not observe any defect in the stairs or know of any tenant who was injured on the stairway prior to the incident. Costa Management similarly asserted in its answers to interrogatories that no one had complained of or reported any incidents with the stairs. Based on her testimony, Ms. Craig, while residing at the apartment for the past nine months and using the stairway two or three times per day, had no problems with the steps and only noticed the worn, smooth condition of the stair treads after the fall. Prior to that point, she never complained about the stairway or treads and admitted that she was not aware of any other individual who had fallen on the stairway or complained about the stair treads. *See Joseph*, 173 Md. App. at 318-19 (affirming summary judgment when plaintiff, who fell on "oily substance" on apartment stairs, offered no proof of notice and defendants presented affirmative evidence that, prior to the accident, they had no knowledge of such substance on the stairwell and received no reports concerning accidents occurring on the stairs).

Without proof of actual notice, to defeat summary judgment, Ms. Craig must have presented evidence sufficient to show that Costa had constructive notice of the dangerous condition—that Costa, through the exercise of reasonable care, should have known that the treads covering the stairs on which Ms. Craig was injured had become worn and

[9] During oral arguments, Ms. Craig's counsel essentially conceded that the record contains no evidence of actual notice on the part of Costa.

smooth to the point that they lacked adequate grip creating a slip hazard. *See Macias*, 243 Md. App. at 322. Indeed, as this Court has explained, "[t]he mere existence of a defect or danger is generally insufficient to establish liability, unless it is shown to be of such a character or of such duration that the jury may reasonably conclude that due care would have discovered it." *Tennant*, 115 Md. App. at 389-90. Ms. Craig relies primarily on four pieces of evidence to establish that Costa had constructive notice: (1) her deposition testimony that, after the fall, she saw that the treads were worn smooth in places; (2) "photographs of the . . . stair treads [taken by Costa's insurance adjuster after the incident] that, when viewed in a light most favorable to the plaintiff, depicted worn and smooth areas on the treads"; (3) "[Mr.] Costa's testimony from which a reasonable inference can be drawn that the treads had been in place for over [30] years"; and (4) "[Mr.] Costa's testimony that he visited the property at least weekly, during which time he had [an] opportunity to observe the . . . treads." She contends that, in the exercise of reasonable care, the appearance of the treads, which Mr. Costa had the opportunity to observe during his weekly visits, and the age of the treads, which were "so old, existing on the stairs for over thirty years," were sufficient to place Costa on notice of the defective condition.[10]

[10] Ms. Craig, in her brief, seems to rely on the spoliation instruction to demonstrate the existence of a defect, not actual or constructive notice. It is questionable whether a spoliation instruction could be used to establish notice considering that, in *Burkowske v. Church Hospital Corp.*, 50 Md. App. 515 (1982), a premises liability case, we explained that any inference arising from the defendant's subsequent destruction of the bench on which the plaintiff was injured would, "[a]t best, . . . be that the bench was

We disagree that this evidence was sufficient to generate a jury question on the issue of constructive notice. Ms. Craig asserts that Mr. Costa's deposition testimony supports an inference that the stair treads were on the stairway for over 30 years. But when making this assertion throughout her brief, Ms. Craig fails to provide any record citation to the relevant portion of his testimony or identify the particular statements he made from which this inference could be drawn. Instead, she states that Mr. Costa's testimony is susceptible to such an inference without any further explanation.

Based on our review of his deposition testimony in the summary judgment record, we do not believe that Mr. Costa's statements reasonably permit an inference that the treads had been on the stairway for 30 years. Mr. Costa explicitly testified, when asked by Ms. Craig's counsel, that he did not know whether the treads on which Ms. Craig was injured had been in place for the past 30 years.[11] He did, however, testify that he

defective," but "no inference would necessarily arise that the hospital knew of the defect." *Id.* at 524.

[11] Additionally, at his deposition, Mr. Costa testified that he was not sure when the stair treads were installed. He confirmed that there was no documentation of work done to the premises from when Costa originally acquired the property up until approximately six years prior to the accident and that, during those six years, the stairwell did not require any repairs. He stated that he could not recall whether the treads were ever replaced. Mr. Costa also testified that, generally speaking, he had received complaints or requests for repairs to the premises of which there was no documentation. He stated that, to the best of his knowledge, no one had ever complained about or reported any problems with the stairs and that, because there were no complaints about the stairwell, there was no documentation of any such complaints. In responding to a hypothetical question by Ms. Craig's attorney, Mr. Costa confirmed that if a tenant had verbally notified him that the stair treads needed to be replaced and he determined they did not, the complaint would not have been documented. In our view, Mr. Costa's testimony would not allow a jury to reasonably infer that the treads were in place for at least 30 years prior to Ms. Craig's injury.

believed the treads were on the stairs in 2006, though no evidence was presented that the treads appeared worn or smooth at that time or at any point before Ms. Craig's fall.

We agree with Ms. Craig that, consistent with her testimony, the post-incident photographs, when viewed in the light most favorable to her, showed areas of the treads that appeared worn and smooth, though other areas are depicted with visible lines or ridges. But we cannot conclude that evidence that the treads appeared worn and smooth in places and were on the stairway in 2006 was sufficient to generate a dispute of material fact on the issue of notice. The record, viewed in Ms. Craig's favor and drawing all reasonable inferences therefrom, does not show that the defective treads were of "such a character or of such duration" that a fair-minded jury may conclude that Costa, by the exercise of reasonable care, could have discovered and remedied the condition prior to Ms. Craig's injury.[12] *Tennant*, 115 Md. App. at 389-90; *see also Herbert v. Klisenbauer*, 12 Md. App. 135, 138 (1971) ("[A] mere scintilla of evidence of negligence, amounting to no more than surmise, possibility, or conjecture, is not 'legally sufficient' evidence of negligence justifying submission of the case to the jury.").

The appearance of the treads with areas that were worn and smooth does not, on its own, reveal or provide a reasonable basis for inferring information about the extent or

[12] As proof of a dangerous condition, Ms. Craig relies primarily on the photographs and her testimony about slipping and subsequently observing worn, smooth places on the treads, as she does for the notice element, as well as a spoliation instruction at trial, permitting the jury to infer that the treads, had they been tested, would not have met the accepted safety standards for slip resistance. At best, this evidence would not provide this type of information about the treads.

severity of the slip hazard.[13] And that the stair treads were in place in 2006, without more, does not permit an inference about the state of the defective condition at the time of Ms. Craig's fall. C*f. Ross*, 199 Md. at 191-93 (determining that the record was insufficient to hold landlord liable for injuries sustained by tenant who tripped on rubber matting on apartment's common steps that was fifteen years old and reversing judgment for tenant). While we recognize that the type of defect at issue here is unlikely to come into existence coincident with a plaintiff's injury, the record does not indicate whether the defective condition in the stair treads existed for a sufficient period of time prior to Ms. Craig's injury, such that Costa could be found to be on constructive notice of the condition.[14] *See Macias*, 243 Md. App. at 339 ("[A]n entity charged with failing to maintain premises in a reasonably safe condition is entitled to summary judgment in its favor if it neither created nor actually knew of the hazard, and if there is no evidence showing that the hazardous condition existed for long enough for that party to remedy the hazard." (quoting *Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 187 (2015))). As noted above, there was no evidence of prior complaints or reported incidents involving the stairway or treads and Ms. Craig testified that she did not see the worn, smooth areas

[13] Indeed, Mr. Hrobak, Ms. Craig's expert engineer, noted in his affidavit that "no determination can be made of the slip resistant quality of the coverings by visual inspection only."

[14] While Mr. Hrobak stated in his affidavit that "[o]ver time" stair tread coverings "can become smoother and lose their slip resistant quality," this statement was too generalized and vague to provide competent evidence about the defect in the treads at issue here. *See Educ. Testing Serv. v. Hildebrant*, 399 Md. 128, 139 (2007) ("[M]ere general allegations or conclusory assertions which do not show facts in detail and with precision will not suffice to overcome a motion for summary judgment.").

of the treads until after her fall. *See Stein v. Overlook Joint Venture*, 246 Md. 75, 79, 81-82 (1967) (reversing directed verdict in favor of defendant where there was evidence that it knew of dangerous characteristics of clear glass panels in apartment building, which plaintiff walked into mistaking it to be open space, including testimony that six or seven similar accidents were previously reported). Even considering the evidence that Mr. Costa was on the premises weekly and thus, as Ms. Craig asserts, had an opportunity to observe the treads, the summary judgment result is the same.[15] Ms. Craig did not present evidence from which a reasonable jury could find that Costa had actual or constructive knowledge that the treads on which she was injured had become a slip hazard.

While Ms. Craig correctly recognizes that there are many premises liability cases where Maryland courts have denied summary judgment, she misstates the law in asserting that courts have done so "where the evidence permits *any* inference that would resolve these questions in the plaintiff's favor." (emphasis added). Rather, the inference must be reasonable. *Williams v. Mayor of Baltimore City*, 245 Md. App. 428, 444 (2020). Ms. Craig also cites to *Langley Park Apartments, Sec. H., Inc. v. Lund*, 234 Md. 402 (1964), and *Hemmings v. Pelham Wood Ltd. Liability Ltd. Partnership*, 375 Md. 522 (2003), asserting that these cases "held that the questions at issue in a premises liability

[15] To the extent Ms. Craig argues in her brief that there is a factual dispute regarding whether Mr. Costa did observe the worn, smooth areas of the stair treads, this is not a material dispute because, as we explained, the appearance of the treads, along with the other evidence in the summary judgment record, was not sufficient to establish that Costa had actual or constructive notice. *See Jones v. Mid-Atl. Funding Co.*, 362 Md. 661, 675 (2001) ("A material fact is a fact the resolution of which will somehow affect the outcome of the case." (quoting *King v. Bankerd*, 303 Md. 98, 111 (1985))).

case are properly reserved for the finder of fact." But Maryland courts have made clear that to generate a jury question and defeat a summary judgment motion, there must be evidence, presenting detailed and precise facts, upon which a jury could reasonably find in favor of the nonmoving party. *See Williams*, 245 Md. App. at 447-48. In the context of premises liability cases, if the plaintiff fails to proffer adequate proof of the defendant's knowledge, summary judgment is proper. *See Carter v. Shoppers Food Warehouse MD Corp*., 126 Md. App. 147, 164-65 (1999). Here, we conclude that Ms. Craig has not presented sufficient evidence to create a dispute of material fact as to whether Costa was on notice of the defective condition and thus the circuit court did not err in granting summary judgment in favor of Costa.

B. Motion for Reconsideration

Ms. Craig moved for reconsideration of the summary judgment order, citing both Rule 2-534 and Rule 2-535. She attached the affidavit of Mr. Brown as well as higher-quality printouts and digital copies of the 57 photographs taken by Costa's insurance adjuster after the incident, including the pictures submitted with her response in opposition to summary judgment. In her motion, she stated that the "additional witness testimony and clearer photographic evidence . . . corroborates [her] observations that the treads were worn and smooth." On appeal, Ms. Craig argues that this additional evidence "[s]hould [h]ave [b]een [c]onsidered" and should have resulted in a reversal of the summary judgment order. She further states that Mr. Brown's "[a]ffidavit and the full set of photographs in digital format to enhance the clarity seemed to be exactly what the trial

court was searching for to bolster [her] argument that she had produced sufficient evidence to proceed to trial."

Under Rule 2-534, a court may alter or amend a judgment upon a motion of any party filed within ten days after entry of that judgment. More specifically, a court may "open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment." Md. Rule 2-534. Rule 2-535(a) provides that, "[o]n motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534." This Court has explained that "a motion to revise a court's judgment, 'however labeled, filed within ten days after the entry of judgment will be treated as a Rule 2-534 motion.'" *White v. Prince George's Cnty.*, 163 Md. App. 129, 140 (2005) (quoting *Sieck v. Sieck*, 66 Md. App. 37, 44-45 (1986)).[16]

As stated above, we review the circuit court's denial of the motion for reconsideration of the grant of summary judgment for abuse of discretion. *See Miller v. Mathias*, 428 Md. 419, 438 (2012). Construing the record and any reasonable inferences in the light most favorable to Ms. Craig, we conclude that this additional evidence was

[16] In this case, the summary judgment order was entered on February 10, 2020, and Ms. Craig filed her motion for reconsideration on February 14, 2020. Ms. Craig's motion will thus "be treated as a Rule 2-534 motion.'" *White*, 163 Md. App. at 140 (quoting *Sieck*, 66 Md. App. at 44-45).

insufficient to generate a dispute of material fact as to actual or constructive notice. Thus, we find no abuse of discretion in the court's decision to deny Ms. Craig's motion for reconsideration.

There is no indication in the record that the circuit court did not consider the photographs presented with Ms. Craig's motion for reconsideration. The court did, however, decline to consider Mr. Brown's affidavit as it explained in its order.[17] But when asserting that the affidavit "[s]hould [h]ave [b]een [c]onsidered," Ms. Craig fails to cite to any legal authority in support of her claim.[18] *See HNS Dev., LLC v. People's Couns. for Baltimore Cnty.*, 425 Md. 436, 458-60 (2012) (declining to consider an argument where party failed to cite any controlling law to support its "sweeping accusations and conclusory statements" and thus did not comply with Rule 8-504,

[17] In its order denying the motion for reconsideration, the circuit court stated that it did not consider Mr. Brown's affidavit because it was not submitted in support of Ms. Craig's response in opposition to Costa's summary judgment motion but was available to her at that time. The affidavit was dated October 9, 2019, and Ms. Craig's opposition was filed on December 31, 2019.

[18] In apparent support of her claim that the court should have considered Mr. Brown's affidavit, Ms. Craig asserts that the affidavit was not discoverable during the discovery period "for all the reasons stated within her Motion for Reconsideration and Reply." She further argues that even if the affidavit was deemed a violation of the discovery deadline, "Mr. Brown was nonetheless a witness identified by Costa who would be called to testify" and "[t]he [c]ourt could not, under any Maryland Rule or law, prevent Mr. Brown from giving his full testimony, or from preventing the use of the affidavit to impeach should his testimony be inconsistent at trial." In light of our holding, we do not address these contentions except to emphasize, regarding Ms. Craig's reference to her circuit court filings, that Rule 8-504(a)(6) requires an appellate brief to contain "[a]rgument in support of the party's position on each issue." *See Monumental Life Ins. Co. v. U.S. Fid. & Guar. Co.*, 94 Md. App. 505, 544 (1993) (declining, pursuant to Rule 8-504, to consider the merits of an issue where appellant's brief did not contain an argument on that point and instead merely referred to an argument contained elsewhere).

requiring that a brief contain "argument in support of the party's position on each issue," and explaining that "[a] necessary part of any argument [is] case, statutory, and/or constitutional authorities to support it"). Nonetheless, the evidence does not warrant a reversal of the summary judgment ruling.

Consistent with the photographic evidence in the summary judgment record, the enhanced photographs presented with Ms. Craig's motion depicted the stair treads with worn, smooth areas. But the photographs did not provide new evidence sufficient to raise a genuine dispute of material fact on the issue of notice. Even when considered in the light most favorable to Ms. Craig, the enhanced photographs would not allow a reasonable jury to find that the alleged defect in the treads was "of such a character or of such duration" that Costa, through the exercise of reasonable care, could have discovered and remedied it prior to Ms. Craig's injury. *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 315 (2007) (quoting *Tennant*, 115 Md. App. at 389-90). As for Mr. Brown's affidavit, Mr. Costa testified that he instructed Mr. Brown to replace the stair treads on all four floors of the apartment building's stairs. Mr. Brown, in stating that "[t]he old treads needed to be replaced" and that "[s]ome of the treads were loose" and "some of the treads were smooth and worn down in places," did not indicate whether he was referring to the treads on the portion of the stairway where Ms. Craig fell as opposed to the stair treads on any of the other floors of the apartment building. Such evidence was insufficient to generate an issue of fact, which would defeat a motion for summary judgment. *See Maans v. Giant of Md., L.L.C.*, 161 Md. App. 620, 636 (2005) (explaining that "evidence

is legally sufficient to warrant submission of a case to the jury if it rises above speculation or conjecture" (quoting *Moulden v. Greenbelt Consumer Servs., Inc.*, 239 Md. 229, 232 (1965)); *Appiah v. Hall*, 416 Md. 533, 546 (2010) ("To avoid summary judgment, . . . the non-moving party must present more than general allegations; the non-moving party must provide detailed and precise facts that are admissible in evidence."); *see also Burkowske v. Church Hosp. Corp*., 50 Md. App. 515, 518, 523 (1982) (stating, in affirming summary judgment in lawsuit by hospital visitor injured when a bench collapsed, that visitor's mother's observation that another bench was "splintered and cracked" was "not evidence that another is in danger of collapse, much less that [the hospital] was or should have been aware of such a danger"). Accordingly, we affirm the circuit court's denial of the motion for reconsideration.

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