

Circuit Court for Baltimore City
Case No. 24-C-21-000222

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 1058

September Term, 2022

TERRY JAMES

v.

BALTIMORE GAS AND ELECTRIC
COMPANY, ET AL.

Wells, C.J.,
Friedman,
Zic,

JJ.

Opinion by Friedman, J.

Filed: July 5, 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.

** This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

In certain negligence claims against professionals, plaintiffs must offer expert testimony to establish the applicable standard of care. This is one such case. After a tragic natural gas explosion inside a Baltimore City residence, the appellant, Terry James, sued appellee Baltimore Gas and Electric Company (“BGE”) for gross negligence.¹ Because James lacked a standard of care expert, the Circuit Court for Baltimore City granted summary judgment for BGE. For the reasons that follow, we affirm the judgment of the circuit court.

BACKGROUND

In August 2020, Robin and Leroy Johnson hired Jimmy Gusky, LLC to install an air conditioning unit and furnace at their rental property: 4232 Labyrinth Road. BGE provided natural gas to that property.

James was a tenant at the property when Gusky, LLC began working there on August 9. That afternoon, the workers shut off the gas meter valve that controlled the flow of natural gas to the house. The gas usage data showed that the valve was shut off around 4:00 p.m. The workers did not finish the installation that day, so they planned to return the next day. When the workers left the property, they did not cap the gas line that they had disconnected.

After the workers left, James remained in the home. There, he smelled mercaptan, which is an odorant that BGE adds to natural gas so that it can be detected. Because of the

¹ James also sued BGE based on a theory of strict liability. After a hearing in March 2022, the court granted summary judgment for BGE on the strict liability count. On appeal, James does not challenge that ruling.

smell, James called Leroy Johnson. Johnson arrived at the house later that evening. According to James, Johnson checked the gas meter while James lit the burners on the gas stove.

Later that night, around 1:30 a.m., the gas meter valve was opened. The data transmitted from the gas meter showed that the gas usage changed from zero cubic feet per hour to 476 cubic feet per hour. James woke up that morning around 8:00 a.m., and he went to the gas stove to make breakfast. When James turned on the stove, an explosion leveled 4232 Labyrinth Road and two adjacent row homes. Firefighters rescued James from the rubble.

James sued BGE, alleging that BGE’s gross negligence caused the explosion. His complaint stated that BGE breached its “duty to monitor and detect natural gas leaks or excess gas flow, respond promptly to reports, data notification or complaints of gas leaks and/or excess gas flow[.]” James’s expert designation disclosed that Dale Cagwin would testify about BGE’s ability to monitor and respond to the excess gas flow at 4232 Labyrinth Road: “Mr. Cagwin will testify that BG[E]’s smart meter technology at all relevant times allowed it to receive real time data regarding gas pressure and usage throughout the system as well as its ability to remotely turn service on and off at a customer’s home.”

BGE moved to exclude Cagwin. The court denied that motion but ordered James to make Cagwin available for a deposition within fifteen days. Before that deposition, Cagwin drafted a letter with his opinion: “BGE had the ability to respond to a spike in gas usage at 4232 Labyrinth Road either by immediately sending a service technician or by shutting the gas off remotely.” At the deposition, however, Cagwin testified that he was not providing

an expert opinion on the applicable standard of care. Also, Cagwin admitted that he lacked fundamental knowledge about BGE’s Advanced Meter Infrastructure (“AMI”) and BGE’s data analysis capabilities. After the deposition, BGE again moved to exclude Cagwin. BGE also moved “for a decision on the legal question of standard of care” for the gross negligence claim.

After another hearing, the court granted BGE’s motion to exclude Cagwin. The court ruled that “Mr. Cagwin ... lacks the foundation in his experience and his knowledge to testify to the issues that are essential in this case.” Moreover, the court determined that the gross negligence claim required a standard of care expert. Because James lacked a standard of care expert, the court granted summary judgment for BGE.

ANALYSIS

James argues that the court erred in determining that expert testimony was required to establish the standard of care for the gross negligence claim.² According to James, expert testimony about the standard of care was unnecessary because “the alleged negligence, if

² James did not sue BGE for ordinary negligence, perhaps because James’s counsel anticipated that an exculpatory clause in BGE’s gas tariff would immunize the company against liability for ordinary negligence. *Cf. Re Liability of Elec. Power Cos. for Inj. or Damages Resulting from Probs. in the Delivery of Elec. Power*, 82 Md. P.S.C. 92 (Md. P.S.C. Apr. 5, 1991) (upholding electric utility companies’ use of reasonable exculpatory clauses in tariffs to shield their liability for ordinary negligence). BGE’s gas tariff exculpatory clause provides as follows:

Loss or Damage From Use of Gas: The Company is not liable for any loss, cost, damage or expense to any party resulting from the use or presence of gas in the Customer’s piping or appliances.

BALTIMORE GAS AND ELECTRIC COMPANY, GAS SERVICE TARIFF, Part 2 § 3.4, <https://perma.cc/75YS-S8AG> (last visited June 26, 2023). At any rate, ordinary negligence is not at issue in this appeal.

proven, would be so obviously shown that the trier of fact could recognize it without expert testimony.” We review decisions to grant summary judgment *de novo*, that is, without deference to the circuit court. *Frankel v. Deane*, 480 Md. 682, 700 (2022).

“Gross negligence is not just big negligence.” *Stracke v. Estate of Butler*, 465 Md. 407, 421 (2019) (cleaned up). “Gross negligence is an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them.” *Howard v. Crumlin*, 239 Md. App. 515, 529 (2018) (cleaned up). A party “is guilty of gross negligence or acts wantonly and willfully only when [they inflict] injury intentionally or [are] so utterly indifferent to the rights of others that [they act] as if such rights did not exist.” *Id.* (cleaned up). The consequences must be foreseeable. Indeed, “[o]ne cannot act in reckless disregard of consequences of which [they are] unaware.” *Id.*

When a plaintiff alleges that a professional was negligent, “expert testimony is generally necessary to establish the requisite standard of care owed by the professional.” *Schultz v. Bank of Am.*, 413 Md. 15, 28 (2010). The bottom line is that expert testimony is required when the alleged negligence involves specialized procedures that an average juror cannot be expected to understand without expert testimony. *See id.* at 27. Under those circumstances, expert testimony is also required for gross negligence claims because such claims allege a gross deviation from the standard of care. *See Torbit v. Baltimore City Police Dep’t*, 231 Md. App. 573, 589 (2017) (reviewing a trial court’s grant of a motion for judgment on a gross negligence count and noting that “[t]he question ... [was] whether

a reasonable juror could conclude that [a defendant’s] conduct strayed so grossly from the ordinary standard of care as to support a finding of utter indifference to the rights of others.”). By extension, when the standard of care is unestablished, the jury cannot determine whether a gross deviation from the standard of care occurred. *See Coit v. Nappi*, 248 Md. App. 44, 63 (2020) (holding that “[e]xpert medical testimony [was] necessary to establish gross negligence by” a paramedic and an EMT). By contrast, “sometimes the alleged negligence, if proven, would be so obviously shown that the [jury] could recognize it without expert testimony.” *Schultz*, 413 Md. at 29. For example, expert testimony is unnecessary when “a doctor amputates the wrong arm” or when “an attorney fails to inform” a client that the attorney’s representation has ended. *Id.*

Here, James’s complaint alleged that BGE — “the largest natural gas supplier and electric utility service provider in Maryland” — had a duty to “implement and maintain a system of inspection that ensures reasonable promptness in the detection of all leaks or excess gas flow, from any cause, within the circumspection of men [or women] of ordinary skill in the business.” Moreover, the complaint stated that “BGE owned and maintains ‘smart meters,’ that allow BGE to remotely monitor natural gas readings on its units as well as receive real time notifications of elevated gas levels on customer properties.” The gross negligence claim thus depended on BGE’s ability to analyze and respond to data that showed elevated gas levels. An assessment of that capability requires an understanding of how BGE receives and analyzes—or does not analyze—such data. The average juror cannot be expected to understand those procedures without expert testimony.

James points to *Dudley v. Baltimore Gas & Elec. Co.* and contends that no expert testimony on the standard of care was required because BGE’s data showed that an abnormally large amount of natural gas flowed into 4232 Labyrinth Road within a short amount of time. 98 Md. App. 182 (1993). In essence, James suggests that a mathematical formula measuring a customer’s hourly gas consumption divided by their average hourly gas consumption could determine whether a utility company is liable for a natural gas explosion. That argument misses the mark because, under *Dudley*, a plaintiff must show “that the gas company knew or should have known that there was a problem with its equipment.” *Id.* at 193. And without expert testimony on the standard of care, the average juror cannot be expected to understand how BGE’s data analysis works, let alone whether BGE “knew or should have known that there was a problem with its equipment.” *Id.*

Despite the need for expert testimony on the standard of care, James’s designated expert, Cagwin, offered no expert opinion on the relevant standard of care:

BGE’s Counsel: Are you offering any expert opinion on the standard of care for a Maryland regulated utility?

Cagwin: No.

To meet the burden of production for his gross negligence claim, James had to provide expert testimony on the standard of care.³ James offered no such testimony. As a result, summary judgment was proper.⁴

James also contends that the court erroneously excluded Cagwin as unqualified.⁵ “The admissibility of expert testimony is a matter largely within the discretion of the trial court, and its action in admitting or excluding such testimony will seldom constitute ground for reversal.” *Rochkind v. Stevenson*, 471 Md. 1, 10 (2020) (cleaned up). Maryland Rule 5-702(1) guides our analysis:

Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine

- (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education[.]

³ For example, we can imagine a standard of care expert might have testified about whether utility companies in other cities have implemented an alarm system that can detect in real time when customers’ natural gas usage reaches an unsafe level. Or, we can imagine that a standard of care expert might have testified about the computer hardware and software necessary to conduct real-time detection of unsafe natural gas levels at customers’ properties. Here, however, no standard of care expert was produced.

⁴ On appeal, James contends that the court erred in granting summary judgment because another circuit court judge had denied summary judgment. That previous denial, however, was not binding. “[S]ummary judgment may be granted at a later point in a case, even though denied at an earlier one.” *Azarian v. Witte*, 140 Md. App. 70, 85 (2001) (cleaned up). And “while the trial judges may choose to respect a prior ruling in a case, they are not required to do so.” *Id.*

⁵ Even if the court erroneously excluded Cagwin, we would affirm nonetheless because James offered no expert testimony on the standard of care, and thus summary judgment was proper.

The affidavit of BGE’s Senior Manager of Smart Grid and Innovation, Christopher Janczuk,⁶ revealed the complexity and scope of BGE’s AMI: “BGE’s AMI system includes almost 700,000 smart gas meters, and each meter has 24 readings in a day, for a total of 16.8 million data points transmitted each day.”

Cagwin’s deposition testimony showed that he lacked knowledge about three key topics. *First*, he did not know what an AMI was. *Second*, he did not know what components are necessary for smart meters. *Third*, he did not know how smart meters transfer data. Knowledge on these topics was necessary to provide expert testimony on the central issue of the case: BGE’s ability to analyze and respond to data that showed elevated gas levels. The court properly excluded Cagwin as unqualified.⁷

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

⁶ James argues on appeal that Janczuk’s affidavit was improper because it was “not sworn to his ‘personal knowledge’ as required under Md. Rules 2-501(c) and 1-304[.]” We disagree. The affidavit states: “I solemnly affirm under the penalties of perjury that the contents of this document are true to the best of **my knowledge**, information, and belief.” (Emphasis added.) That declaration complies with Rules 2-501(c) and 1-304.

⁷ We are unpersuaded by James’s contention that the court erred in relying on the affidavits of Janczuk and Frank Leonhartt, BGE’s Director of Gas Operations. According to James, the court erred in denying two of his motions to exclude these defense experts. As to James’s first motion to exclude, no defense experts were designated at that time. Thus, there was no relief to grant. As for James’s second motion to exclude, the court properly determined that motion became moot when the court excluded Cagwin. Indeed, BGE named its defense experts as rebuttal, hybrid fact/expert witnesses after James had designated Cagwin as an expert witness. Lastly, James argues that the court erroneously relied on expert testimony in the defense experts’ affidavits. The court, however, did not attach significance to any expert testimony in the affidavits. Instead, the court relied on the fact-based testimony in those affidavits to resolve BGE’s motion to exclude Cagwin.

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1058s22cn.pdf>