Circuit Court for Baltimore County
Case No. 03C16008761

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1074

September Term, 2018

ERWIN A. BURTNICK

v.

PAUL N. WEINBLATT, et al.

Wright,
Leahy,
Beachley,

JJ.

Opinion by Wright, J.

Filed: October 21, 2019

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INTRODUCTION

The instant appeal arises following an action initiated in the Circuit Court for Baltimore County by appellant, Erwin Burtnick ("Burtnick"), against appellees, Paul Weinblatt ("Weinblatt") and John Armacost ("Armacost"). Burtnick and Weinblatt are residents of the same community. Weinblatt took issue with the maintenance of a hedge on Burtnick's property and raised the issue with him directly. Unable to persuade

Burtnick to act, Weinblatt sought recourse through their homeowner's association and by complaining to county government.

Over the ensuing weeks there was extensive communication between the various parties involved, including county officials, members of the homeowner's association, Weinblatt, and Burtnick. Ultimately, the hedge issue met its final resolution for the purposes of Baltimore County when, on August 27, 2015, Armacost appeared at Burtnick's residence along with a small crew and trimmed the hedge.

Nearly a year later, on August 23, 2016, Burtnick filed suit against Weinblatt, Paul N. Weinblatt & Associates, P.A., and Armacost in his personal capacity. Against Weinblatt and Weinblatt & Associates, Burtnick levied charges of trespass and defamation; Armacost was likewise sued for trespass. On May 26, 2017, Burtnick filed an amended complaint adding four additional counts against Armacost and Weinblatt and Weinblatt & Associates collectively. Against all parties, Burtnick alleged violations of the Fourteenth Amendment under 42 U.S.C. § 1983, as well as Article 24 of the Maryland Declaration of Rights. Armacost, Weinblatt, and Weinblatt & Associates all filed motions for summary judgment. On January 26, 2018, the circuit court granted the motion for summary judgment on all of the Federal and State constitutional claims, along with the defamation claim against Weinblatt & Associates.

On June 11, 2019, the matter proceeded to trial. At the conclusion of Burtnick's case, both Armacost and Weinblatt moved for summary judgment. The court granted the motions, and on June 18, 2019 final judgment was entered in favor of Armacost and

Weinblatt on all remaining counts. Burtnick timely filed for this appeal on July 9, 2019, and now presents the following questions for our review:

1. Did the trial court err in dismissing the trespass claim against defendant Armacost at the conclusion of plaintiff's case?

2. Did the trial court err in dismissing the trespass claim against defendant Weinblatt at the conclusion of plaintiff's case?

3. Did the trial court err in dismissing the defamation claims against Weinblatt at the conclusion of plaintiff's case?

4. Did the motions judge err in granting summary judgment to the [F]ederal and [S]tate constitutional due process claims against defendant Armacost?

5. Did the motions judge err in granting summary judgment on the [F]ederal and [S]tate constitutional due process claims against defendant Weinblatt?

With respect to the second, fourth, and fifth questions, we hold that the circuit court appropriately granted the motions for summary judgment and motion for judgment, respectively, and we affirm. With respect to the first and third questions, we hold that there was sufficient evidence adduced in the circuit court proceedings to warrant sending the matter to a jury; consequently, we reverse its judgment on those counts and remand for further proceedings.

BACKGROUND

The Initial Complaint

The matter before us has grown out of a seemingly innocuous dispute between two neighbors over a hedge. Burtnick moved into his home in 1990. Shortly after, he planted the hedge at issue in this appeal, which lines the rear of his property. In May of 2015, the

dispute materialized after Weinblatt approached Burtnick about the hedge. During that initial encounter, Weinblatt expressed concern about the hedge, stating that it had overgrown so much that it invaded the sidewalk and obstructed the sightline from the street, causing problems for drivers. Burtnick made no efforts to address the hedge after that initial encounter. Weinblatt raised his concerns with Burtnick twice later, but had no success in persuading him to act.

Having been unsuccessful in his direct communications with Burtnick, Weinblatt sought other means of recourse. In early July, Weinblatt reached out to the board of his homeowner's association ("HOA").[1] The organization's President, Tina Sheller, responded by telling Weinblatt that they were already aware of the problem, had been making efforts to address it, and that a complaint had been filed with County Code Enforcement ("CCE"). CCE, however, ruled that Burtnick's property was not in violation of the Baltimore County Code. Nonetheless, Sheller instructed the HOA management agent to continue pursuing the matter, and a second complaint was filed.

Genesis of County Involvement

During this same period, there was substantial email communication taking place regarding the matter. Weinblatt, for his part, made overtures to county council member Vicki Almond, whose aide responded by sending an email copying officials from various

[1] Tina Sheller, the President of the HOA, acknowledged Weinblatt's concerns, stating in email correspondence: "I agree that Mr. Burtnick's hedge is a hazard to pedestrians and motorists alike. I have been working on this problem for quite some time. Mr. Burtnick, as you have learned, is not an easy person to work with."

departments "regarding a dangerous situation requiring immediate attention." These officials included: Greg Carski, Chief of the Bureau of Traffic Engineering and Transportation Planning; Jim Lathe, Chief of the Bureau of Highways; and Lionel Van Dommelen, Chief of County Code Enforcement. Sheller reached out to David Feldman, Chairman of the Traffic and Safety Committee at the Pikesville-Greenspring Community Coalition. In the ensuing weeks there was ongoing communication between the various departments, the County Executive's Office, and Sheller, much of it being openly circulated among them.

On July 14, 2015, John Armacost, a crew chief for the Department of Public Works, visited Burtnick's property upon assignment from his supervisor and at the direction of Lathe.[2] Armacost met with Burtnick and informed him that he could see no issues with sight line obstruction, but did acknowledge that the hedge had overgrown into the sidewalk and would need to be trimmed back. Before leaving, Armacost provided Burtnick with a tree/bush trimming notification and resolved to return several weeks later to see if any steps were taken to remedy the issue. On the same day, CCE issued a Correction Notice. The inspector, Latoshia Rumsey-Scott, noted several violations of the Baltimore County Code and left instructions to "[r]emove obstruction/overgrowth onto sidewalk as well as tree obstruction [sic] stop sign."

[2] Armacost was supervised by one Charlie Glacken, who in turn reported to Lathe.

The next day Burtnick began placing calls himself. From his testimony we discern that, over the course of the next several weeks, Burtnick contacted Almond's office, CCE, Rumsey-Scott, and the County Executive Office. One of these phone interactions raised concerns, prompting Christina Shumaker, Lathe's office assistant, to send a July 17, 2015 email warning Armacost ahead of any future action. The email read:

> Please relay to [Mr. Armacost] that [Mr. Burtnick] is not at all pleased that we plan to trim the shrubbery if he does not do so in a timely manner. The Council Office called and suggested that because of his behavior on the phone – you may want to contact the local precinct before going out there and have someone meet you just to be sure it doesn't get out of hand.

In his deposition testimony, Armacost recounted his own direct correspondence with Shumaker seeking clarification on the matter, stating:

> ARMACOST: I called Christina Shumaker in Towson, she's the office — office assistant, and I asked her if she knew anything about it. And she had mentioned that someone had said something about this guy was — had guns and had made threats, so that's why we want you to take a police escort out there, and I said 'wow.'
>
> [ATTORNEY:] Now, apart from the email, did someone say that, someone specifically state that?
>
> ARMACOST: She said that.
>
> [ATTORNEY:] And that was verbally?
>
> ARMACOST: Yes.
>
> [ATTORNEY:] Can you give me her exact words, best you can?
>
> ARMACOST: No. I did. I just — she explained that there were guns involved and that the guy was extremely upset.
>
> [ATTORNEY:] Did she give you any details about —

> ARMACOST: Nothing.
>
> [ATTORNEY:] — the guns.
>
> ARMACOST: Told you what she — she just explained that she had gotten word that there were weapons and he was extremely upset. I had never — in all the time I've been in the county I have never had anything like that.

Around the same time, Weinblatt was continuing to actively engage in communications with various individuals in an effort to have the hedges cut back. He communicated information about Burtnick's alleged threatening behavior to Rumsey-Scott as well as the HOA. Rumsey-Scott testified that during a phone conversation with Weinblatt, he made "disparaging comments" about Burtnick, indicating that he was volatile, and that she would need a police escort to visit his property. Reading her deposition testimony, she further noted that her first time hearing anything about Burtnick having guns came during her conversation with Weinblatt. Weinblatt offered a somewhat contradictory account of the conversation in a July 21, 2015 email sent to Sheller, copying members of the HOA and Carski. The message read:

> I received a call from Ms. Scott, the inspector from the county that issued the notice to Mr. Burtnick. Her supervisor told her that she had to have an escort take her out on the next visit because Mr. Burtnick called her office and told her supervisor that he was being harassed. He had no interest in rectifying the situation. He was very belligerent with the supervisor.
>
> SOMEONE OR GROUP NEEDS TO SPEAK TO MR [sic] BURTNICK BEFORE HE DOES SOMETHING TO HURT SOMEONE.

(Capitalization in original).

On August 3, 2015, Rumsey-Scott revisited the property, and seeing that no remedial measures had been taken, issued a civil citation with a penalty of $1,000.00 for failure to address "[o]vergrowth onto [the] sidewalk." This initial response from CCE was short-lived. On August 11, 2015, inspector Rumsey-Scott emailed Weinblatt explaining that she had reviewed the matter with her supervisor (Van Dommelen), and had determined that "the citation was issued in error on [her] part, due to the fact that [the] overgrowth does not force pedestrians into the street . . . ." (Emphasis omitted). Likewise, on August 7, 2015, Carski visited the location personally to follow up on the assessment of his department's inspector and in an email to Weinblatt stated: "I agree with our inspector's findings. The hedge, as is, does not present a sight distance problem. If you pull up to the appropriate point you will have more than ample sight distance available." Carski did note, however, that sidewalk clearance could be an issue. He encouraged Sheller and HOA to again try to address the issue directly before his office would get involved.

The day after Rumsey-Scott emailed Weinblatt about CCE's decision to rescind the citation, Van Dommelen stated in an email to Sheller and Carski that his decision to dismiss the matter "was based on a departmental policy that will no longer apply," that they would be "updating [their] policy on sidewalks and overgrowth to require a clear path to accommodate safe passage," and that the department was "communicating . . . options to [Burtnick] now" in the hopes of bringing the matter to a swift resolution. In a subsequent August 13, 2015 conversation with Anne Marie Humphries of the County

Executive Office, Burtnick was informed that his initial violation had been dismissed, but there remained potential issues with sidewalk clearance. Burtnick was informed that the County was prepared to have a landscaper come out and take care of the hedge at the County's own expense. Burtnick ultimately consented to having the County trim the hedges to bring them into compliance. On August 17, 2015, CCE issued a Property Preservation Work Order to Evergreen Landscaping, and on August 26, 2015, the company came to Burtnick's residence and performed the work.

Appellee Armacost's Trimming

The next day, Armacost visited the property to inspect the hedge. He observed that the hedge still protruded onto the sidewalk, despite the trimming performed by the contracted landscaping company the previous day. It should be noted that Armacost had not seen the property since his initial visit several weeks beforehand, and that Armacost was unaware of the work that had just been performed. Having found that the hedge was still not in compliance, he resolved to address the issue. After contacting police, consistent with the warning he received from the Council Office, Armacost called his crew and proceeded to cut the hedge back substantially.

As Armacost cut back the hedge, Burtnick exited his home and began conversing with the officer who arrived on the scene, Officer Mark Canning. Officer Canning testified that Burtnick's demeanor at this time was not notably aggressive or agitated. While Burtnick and Officer Canning were standing there, Weinblatt drove up, exited his vehicle, and approached Burtnick. Officer Canning testified that, in his perspective,

Weinblatt approached "with an intent to gain a negative response from Mr. Burtnick." What followed was a brief exchange during which Weinblatt attempted to engage in conversation with Burtnick, and Burtnick conveyed his unwillingness to speak before stating that Weinblatt would hear from his attorney. Sensing that the matter could escalate, Officer Canning instructed Weinblatt to leave which he did without incident. In his incident report Officer Canning stated: "It should be noted that at no time during the interaction between [Burtnick and Weinblatt] did . . . Burtnick threaten . . . Weinblatt."

As the work was being completed, inspector Rumsey-Scott also made an appearance, presumably to inspect the property following the previous day's work. Rumsey-Scott spoke with Officer Canning about the matter, indicating that a crew had been sent just one day before. Rumsey-Scott was unaware that any additional work would be performed, having been under the impression that the property had been brought "into compliance" following the contractors' work on the previous day.[3]

[3] Rumsey-Scott was careful to note that being "in compliance" was more a statement of administrative completeness than a commentary as to whether a property actually met Code requirements. She testified:

> And speaking of compliance, I am given a work tablet. I can only check two to three things, and checking compliance just meant that we weren't going to bring that homeowner in front of a judge to enforce the penalty against the property because it was being handled through our chief . . . . So it doesn't mean that it is free and clear. It just means that my enforcement, what I'm doing as inspector, I'm no longer doing anything with that property.

Weinblatt, for his part, contacted the police shortly after the morning's exchange with Burtnick in an attempt to speak with Officer Canning. During the resulting conversation, the following colloquy ensued:

> WEINBLATT: Well, there's a cop at [Burtnick's address] now.
>
> [911:] Uh huh.
>
> WEINBLATT: And he took my information and [Burtnick's] information and I'd like to get a hold to find out who the officer was because the homeowner threatened me.
>
> [911:] Okay. And when did he threaten you?
>
> WEINBLATT: Oh um, he blamed me for harassment and that I was being sued and he approached me and he was very unstable and he's got guns in his house.

After an unsuccessful attempt by the operator to get through to the precinct, the conversation continued:

> [911:] Okay. Sir? Sorry about that. Their line is busy right now. I'm going to put a message on the call to see that they can come back to you and I'm sorry, what was your name again? Mister—
>
> WEINBLATT: Paul.
>
> [911:] Paul?
>
> WEINBLATT: Weinblatt. W-E-I-N-B-L-A-T-T.
>
> [911:] Okay. And who threatened you?
>
> WEINBLATT: The homeowner at [Burtnick's address].
>
> [911:] Okay.
>
> WEINBLATT: And the officer was there when it happened.

> [911:] Okay.
>
> WEINBLATT: And my concerns are that, I mean, you know, for him to tell me that his attorney is suing me today for harassment, that's fine. I can deal with that part of it, but he is unstable and he has guns in his house.
>
> [911:] Gotcha. Okay. Unstable with guns. All right, I'm going to add that information as well.

The same morning Weinblatt sent an email to Sheller, Van Dommelen, and Carski, along with several others, reading:

> I wanted to make the homeowners association and Baltimore County aware that Mr. Burtnick called the cops this morning while the county was out trimming his bushes. I stopped at the corner, got out of my car, and Mr. Burtnick came after me in front of the cop and told me that his attorney was suing me today for harassment. The officer took my contact information and then I left. I am not sure where this is going, but you should all be aware of the situation.

Sheller responded with an email expressing her appreciation for all of the work that Weinblatt had performed in assisting with getting hedges cut and apologizing for his having been "subjected to such ugly behavior."

Procedural Posture

Several months later, on August 23, 2016, Burtnick filed a complaint in the Baltimore County Circuit Court naming Weinblatt, Weinblatt & Associates, P.A. and Armacost as defendants alleging claims of defamation and trespass. In late May 2017 Burtnick amended his complaint, supplying additional claims for denial of due process pursuant to the Maryland Declaration of Rights, the Fourteenth Amendment and 42 U.S.C. § 1983. On January 26, 2018, the circuit court ruled on motions for summary

judgment filed by both defending parties. The court granted the motion for Weinblatt & Associates, P.A. on all counts, and for Armacost and Weinblatt as to the civil rights claims.

The remaining counts moved to trial by jury in the circuit court on June 11, 2018. At the conclusion of Burtnick's case, Armacost moved for judgment on the trespass claim against him. Finding that there was insufficient evidence produced to indicate that Armacost intruded upon Burtnick's property, the circuit court granted the motion. Likewise, upon the conclusion of Burtnick's case against Weinblatt, his counsel also moved for judgment. Again, finding insufficient evidence was produced to substantiate either trespass or defamation, the circuit court granted the motion, thus disposing of the remaining claims. Judgment was entered in favor of Weinblatt and Armacost on June 18, 2018. On July 9, 2018, Burtnick timely filed his Notice of Appeal, and these proceedings followed.

DISCUSSION

Standards of Review

A trial court's grant of a motion for summary judgment is reviewed *de novo*. *Dashiell v. Meeks*, 396 Md. 149, 163 (2006). The appellate court's role is to determine whether the trial court's decision was legally correct. *Rockwood Cas. Ins. Co. v. Uninsured Employers' Fund*, 385 Md. 99, 106 (2005). Per Md. Rule 2-501(f), summary judgment may be granted "if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is

entitled to judgment as a matter of law." Thus, when reviewing a trial court's decision, an appellate court must first determine whether any genuine dispute of material fact exists. *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 476 (2004); *Todd v. Mass Transit Admin.*, 737 Md. 149, 154-55 (2003). Material facts are those facts whose resolution will somehow affect the outcome of the case. *Goodwich v. Sinai Hosp. of Baltimore, Inc.*, 343 Md. 185, 206 (1996).

A reviewing court "must consider the facts reflected in the pleadings, depositions, answers to interrogatories and affidavits in the light most favorable to the non-moving part[y]." *Ashton v. Brown*, 339 Md. 70, 79-80 (1995). All inferences drawn therefrom must be resolved against the moving party. *Hartford Ins. Co. v. Manor Inn of Bethesda, Inc.*, 335 Md. 135, 145 (1994). Though "[t]he existence of a dispute as to some non-material fact will not defeat an otherwise properly supported motion for summary judgment . . . if there is evidence upon which the jury could reasonably find for the non-moving party or material facts in dispute, the grant of summary judgment is improper." *Okwa v. Harper*, 360 Md. 161, 178 (2000). Only after an appellate court has determined that there is no genuine dispute of material fact will it turn to whether the trial court was correct as a matter of law. *Dashiell*, 396 Md. at 163.

Alternatively, when assessing a court's grant of motion for judgment during a jury trial, Md. Rule 2-519 controls. It provides, in relevant part:

> (a) **Generally.** A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence. The moving party shall state

> with particularity all reasons why the motion should be granted. No objection to the motion for judgment shall be necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of an opposing party's case.
>
> (b) **Disposition.** When a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all the evidence. When a motion for judgment is made under any other circumstances, the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made.

Id. This Court has articulated the standard of appellate review for decisions rendered under this provision as follows:

> We review the grant of a motion for judgment under the same standard as we review grants of motions for judgment notwithstanding the verdict. We assume the truth of all credible evidence on the issue, and all fairly deducible inferences therefrom, in the light most favorable to the party against whom the motion is made. Consequently, if there is any evidence, no matter how slight, that is legally sufficient to generate a jury question, the case must be submitted to the jury for its consideration.

Orwick v. Moldawer, 150 Md. App. 528, 531-32 (2003) (citations omitted). However, that does not mean that *any* evidence offered will be adequate to defeat a motion for judgment. Rather, the requirement for 'legally sufficient' evidence means that a party who has the burden of proof cannot meet that burden by offering "a mere scintilla of evidence, amounting to no more than surmise, possibility, or conjecture . . . ." *Fowler v. Smith*, 240 Md. 240, 247 (1965). The court's review is conducted *de novo*. *Steamfitters Local Union No. 602 v. Erie Insurance Exchange*, 241 Md. App. 94, 114 (2019) (quoting

Wallace & Gale Asbestos Settlement Trust v. Busch, 238 Md. App. 695, 505, *aff'd*, 464 Md. 474 (2019)).

I. Federal and State Constitutional Claims

We first consider Burtnick's State and Federal constitutional claims against Armacost. Burtnick contends that there are genuine disputes of material fact with respect to whether Armacost violated Burtnick's due process rights under 42 U.S.C. § 1983, the Fourteenth Amendment, and Article 24 of the Maryland Declaration of Rights. Burtnick alleges that he was not afforded protections provided for property owners in the Baltimore County Code. He further asserts that he was deprived of his right to a hearing. Armacost counters, first, by arguing that Burtnick had no legitimate property interest in those portions of the hedge protruding over the public sidewalk. As such, Burtnick would hold no due process rights with respect to those portions of the hedge which were cut. In the alternative, Armacost argues that due process may be flexibly applied to suit the particular property interest at stake, and that the interest identified here — in those portions of the hedge that were trimmed though they did not protrude into the sidewalk — is relatively insubstantial as compared to the broader governmental interest in keeping public rights-of-way clear. He further avers that the procedures utilized do not present anything more than a *de minimis* risk of erroneous deprivation of property. Finally, he argues that he was entitled to qualified immunity with respect to the counts alleged.

As a preliminary matter we note that 42 U.S.C. § 1983 "creates a remedy for violations of federal right committed by persons acting under color of state law."[4] *Howlett By and Through Howlett v. Rose*, 496 U.S. 356, 358 (1990). Consequently, State officials may be sued in their individual or personal capacity for actions taken when acting under governmental authority. *See Okwa*, 360 Md. at 193. In order to make out a claim under § 1983, and to establish the personal liability of a state official, "a plaintiff must show that the official, while acting under the color of state law, caused the deprivation of a federally recognized right." *Id.* (citing *Kentucky v. Graham*, 473 U.S. 159, 166 (1985)).

In Maryland, procedural due process protections find their roots in the Fourteenth Amendment of the United States Constitution and Article 24 of the Maryland Declaration of Rights. *Pitsenberger v. Pitsenberger*, 287 Md. 20, 27 (1980). Their function is to "protect interests in life, liberty, and property from deprivation or infringement by government without appropriate procedural safeguards." *Roberts v. Total Health Care, Inc.*, 349 Md. 499, 508-09 (1998). Both provisions are construed to have the same meaning, and Supreme Court interpretations of the Fourteenth Amendment provide

[4] Title 42 U.S.C. § 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

guiding authority for the interpretation of Article 24. *Pitsenberger*, 287 Md. at 27. The Court of Appeals has acknowledged that due process "is not a rigid concept." *Roberts v. Total Health Care, Inc.*, 349 Md. 499, 509 (1998). Indeed, "[d]ue process does not require adherence to any particular procedure." *Dep't of Transp., Motor Vehicle Admin. v. Armacost*, 299 Md. 392, 416 (1984). Rather, it "calls only for such procedural protections as the particular situation demands." *Id.*

There are two stages to a procedural due process inquiry dealing with the deprivation of property. First, a series of conjunctive threshold inquiries are made. If those inquiries are satisfied, then a court will turn to an assessment of the adequacy of the procedures employed in the matter under review. With respect to the threshold analysis, courts must make three findings:

> [First, there] must be sufficient governmental involvement in the action complained of to constitute "state" action[.] In addition, the governmental action must result in a 'deprivation' of the complainant's interest[.] Moreover, the private interest involved must rise to a 'property' interest within the meaning of the Due Process Clause.

Riger v. L and B Ltd. P'ship., 278 Md. 281, 288 (1976) (internal citations omitted). The Supreme Court offered some guidance as to what would be considered a qualifying property interest in *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972), stating:

> Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

As for Maryland specifically, the Court of Appeals has stated that property includes "every interest or estate which the law regards of sufficient value for judicial recognition." *Dodds v. Shamer*, 339 Md. 540, 548 (1995) (quoting *Diffendall v. Diffendall*, 239 Md. 32, 36 (1964)).

Following its preliminary assessment, if all requisite findings are made, courts will turn their focus to whether the administrative procedures provided in a matter were "constitutionally sufficient." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). *Mathews* provides:

> [O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of any additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

Id. at 334-35.

Having outlined the applicable legal framework, we return to our summary judgment inquiry, explained *supra*. We must assess Burtnick's challenges to the court's judgment in favor of Armacost and Weinblatt, respectively.

In reviewing the circuit court's grant of summary judgment, we must determine initially whether a genuine dispute of material fact existed. With respect to Armacost, the circuit court's Decisions and Order offered no elaboration on its reasoning, finding it sufficient to state that "that there are no genuine disputes of material facts with respect to

Counts IV [pursuant to 42 U.S.C. § 1983] and V [pursuant to Article 24 of the Maryland Declaration of Rights] against Mr. Armacost, and that Mr. Armacost is entitled to judgment as a matter of law." Burtnick argues specifically that there was a material dispute of fact because "Armacost's factual position that he was maintaining the sidewalks in safe condition is contradicted by the fact that he said that he was there for code enforcement matter." It follows that Armacost's work was directed toward the correction of a county code violation, and the procedure for challenge, review, and appeal of a violation provided in §§ 3-6-201 *et seq.* of the Baltimore County Code should have applied. The denial of the opportunity to utilize this process, Burtnick contends substantiates his denial of due process.

However, as Burtnick's counsel conceded in his brief and at argument, Armacost was an employee of the Department of Public Works and operated pursuant to their authority. Consequently, any dispute as to Armacost's purported reasons for cutting the hedge are immaterial; in the end, the Department of Works retains the power and authority to ensure that public rights-of-way remain clear of obstructions, even those that originate on private property. In support of that proposition, we note that:

> **The county may** open, close, plan, construct, **maintain, repair, improve, protect, preserve,** alter, relocate, straighten, widen, rebuild, **and in general control all** bridges, highways, roads, **sidewalks**, alleys, stormwater drains, and other facilities, appurtenances, or adjuncts **that the county considers necessary or advisable in conjunction with the establishment and continuance of an efficient county road, bridge, sidewalk, and stormwater drainage system.**

BALT. COUNTY, MD., CODE § 18-3-101(e) (2019) (emphasis added).[5] To that we add, as Armacost properly notes, that with respect to encroaching vegetation from adjoining property, "[c]ourts uniformly hold that a landowner has a self-help remedy. Thus, the landowner has a right to cut encroaching branches, vines, and roots back to the property line." *Melnick v. C.S.X. Corp.*, 312 Md. 511, 514 (1988). We acknowledge Burtnick's argument that *Melnick* is inapplicable because it did not involve a government taking or enforcement action. We, however, cannot afford the argument much merit. First, a governmental taking gives rise to a separate cause of action, which Burtnick has dedicated almost no time to raising or developing, and the facts do not appear on their face to support such an allegation. Burtnick never alleges that the hedge died as a result of the government's work or that the hedge was totally removed from the property against his will. To the extent that the County exceeded its authority by crossing the property line, the law affords other avenues for redress, of which Burtnick has availed

[5] Further still, an affidavit from Steven Walsh, Director of the Baltimore County Department of Public Works, attested to the Department of Works' independent mandate to maintain "all county roads, streets, alleys, highways, bridges and sidewalks . . . including the side walk at issue . . . ."

As an ancillary note, as a matter of policy, the Department *must* retain its authority to maintain public rights of way free of the need to go through a lengthy procedural process. One could easily imagine a scenario where a contrary holding would be problematic, as where a public roadway was blocked by an overgrown or uprooted tree planted on some private property. That the Department would potentially have to abide by an extended citation and appeals process in order to address the issue would be both unwieldy and potentially threatening to the public welfare.

himself in this very litigation. Second, as we explain below, this was not an enforcement action.

Despite Armacost's personal assertions,[6] a review of the record indicates that CCE's efforts to address the situation at Burtnick's property were entirely independent of

[6] Burtnick's position is not entirely unfounded but ultimately unavailing; Armacost himself referenced code enforcement. His testimony included the following colloquy:

> [ATTORNEY:] All right. Let's go back to the first week in July. You were asked to follow up on a constituent concern; is that correct?
>
> ARMACOST: Not a constituent complaint. It was from code enforcement.
>
> [ATTORNEY:] And code enforcements asked you to go out and look at the property; is that correct?
>
> ARMACOST: He didn't ask me personally. It was sent through interoffice mail that highways investigate a code enforcement problem.
>
> * * *
>
> Likewise, in discussing his initial interaction with Burtnick, Armacost continued:
>
> [H]e asked me questions that somebody had told him they need to be cut six inches back behind the sidewalk, and **I said no, they need to be to the edge of the sidewalk. Anything beyond that is unnecessary for code enforcement.**
>
> And then he was agitated again and said, I can take you anywhere up and down the street and I can show you a dozen other spots that have the same problem. **And I said, I understand that, sir. Unfortunately, your neighbor turned you in to code enforcement. This is your problem. You were cited, not anybody else. That's why I'm here.**

(Emphasis added).

Armacost and the Department of Public Works. Armacost is not employed by County Code Enforcement, an arm of the Department of Permits, Approvals & Inspections. He was made aware of the hedge by his supervisor Glacken only after a direction by Lathe, the Chief of the Bureau of Highways.[7] Lathe himself, in a July 16, 2015 email to the County Executive's Office stated that his office had "investigated Mr. Weinblatt's concerns and found that the shrubbery near [Burtnick's address was] encroaching on the sidewalk and [was] in need of trimming." At trial, Lathe testified that collaboration between CCE and the Bureau of Highways occurred "very rarely," and that he had never personally worked with them. Indeed, several local government agencies were directing their attention to the situation with Burtnick's hedge; Armacost offered deposition testimony indicating that he first became aware of the issue after receiving a copy of an interoffice email rather than a direct request from CCE.

A review of CCE's responsive measures also supports the point. CCE took independent action to address the hedge by hiring a contract landscaper and did so without any notice to or consultation with Armacost. When inspector Rumsey-Scott returned to Burtnick's residence on the day that Armacost performed his trimming, she expressed surprise at his presence having been under the impression that the hedge issued had been addressed by the county's hired contractor. Van Dommelen himself, in agreeing that the work performed by the contractor on August 26, 2015 was inadequate,

[7] The Bureau is itself a subsidiary office of the Department of Public Works. BALT. COUNTY, MD., CODE § 3-2-1405 (2019).

resolved to have the contractor return and cut back the hedge further—this as opposed to contacting the Department of Public Works or Armacost to address the problem. Indeed, Armacost states in his brief that he was unaware of the remedial efforts undertaken by CCE. Van Dommelen offered the following testimony at trial, highlighting the distinction between CCE's response and that of the Bureau of Highways:

> [ATTORNEY]: You were asked about the County hiring a contractor at its own expense to remedy the violation that you perceived at [Burtnick's residence]?
>
> VAN DOMMELEN: Yes.
>
> [ATTORNEY]: Have you seen those pictures?
>
> VAN DOMMELEN: Yes.
>
> [ATTORNEY]: Were you satisfied with their work?
>
> VAN DOMMELEN: It was not cut back far enough in my estimation and **I had directed our inspector and our coordinator to have Evergreen go back and cut them back further.** The question to me posed at that time was how much further? **And it was at that point that we developed the policy that it would be cut back to expose the entire surface of the sidewalk.**
>
> [ATTORNEY]: So, if the contractor didn't satisfy the violation of the property on August 27th, there still was a code enforcement issue at the property; is that correct?
>
> VAN DOMMELEN: Yes, sir.
>
> [ATTORNEY]: And I just want to share quickly the difference between [the Bureau of Highways] and [CCE] directives. Does [CCE] issue citations for public property violations?
>
> VAN DOMMELEN: No, sir.

* * *

> [ATTORNEY]: Was the sidewalk . . . public or private property in your estimation?
>
> VAN DOMMELEN: That was public property.
>
> [ATTORNEY]: Was Mr. Burtnick's property public or private?
>
> VAN DOMMELEN: It was private.
>
> [ATTORNEY]: So, if I understand you, a citation could never issue for the sidewalk but it could issue for the Burtnicks' property?
>
> VAN DOMMELEN: Yes, sir.
>
> [ATTORNEY]: So there could be a resolution of Mr. Burtnick's property and there still be a problem with the sidewalk?
>
> VAN DOMMELEN: Could you repeat that?
>
> [ATTORNEY]: Sure. So, there could be a resolution for [CCE] because they are dealing with a [CCE] citation on Burtnick's property but then the sidewalk still might be a problem for the public property but [CCE] wouldn't have anything to do with the public property?
>
> VAN DOMMELEN: That is true.

(Emphasis added). Lastly, the foregoing testimony sheds light on a final, notable point—though Armacost cited code enforcement as the reason for his appearance in his initial conversation with Burtnick, he went on to express the need to cut the hedge back to the edge of the sidewalk to bring it into compliance, *which was not even CCE's policy at the time*.[8]

[8] Armacost's first visit to Burtnick's property, where he expressed the need to cut back the hedge to the edge of the sidewalk, was on July 14, 2015. Conversely, Rumsey-

What all of the foregoing serves to illustrate is that, the imprecision of his remarks notwithstanding, Armacost acted as an employee of, and in compliance with, the authority properly accorded to the Department of Public Works. Though the Department of Public Works and CCE, both organs of local government, may be directed toward the same issue, the nature and extent of their respective powers to address that issue remain distinct. The Department, through Armacost, properly exercised its power to maintain the public right of way. Likewise, the appellate processes provided for in the case of a code violation were not triggered by Armacost's actions. Though Armacost's statements gave rise to some confusion, they did not also give rise to a genuine dispute of material fact. As such, the circuit court was correct in its grant of summary judgment, and we affirm.

Having resolved that issue, we turn next to the grant of summary judgment for the same civil rights claims against Weinblatt. Burtnick contends that, due to his role in prompting and supporting the municipality's efforts to address the hedge, Weinblatt may be considered a state actor. Consequently, Burtnick avers that Weinblatt may be subject to liability for the actions of the County.

We note preliminarily that neither party raises a factual dispute in this instance. As such, we shift directly to an analysis of legal correctness and the substance of the parties' contentions.

Scott's email indicating that there was no code violation because the hedge "does not force people into the street" was sent on August 11, 2015.

To support his position, Burtnick relies primarily on *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982). In *Lugar*, the Supreme Court considered a case involving a Virginia statute allowing for prejudgment attachment of assets. *Id.* at 924. The debtor and appellant in the action, Giles Lugar, operated a truck stop. *Id.* Lugar was in debt to his supplier, appellee Edmondson Oil Co. *Id.* The Virginia Code included a provision allowing for prejudgment attachment of a party's property upon *ex parte* petition alleging only a belief that a party was disposing or would dispose of assets to defeat creditors. *Id.* The effect of prejudgment attachment was to "sequester" a party's property, even though it remained in their possession. *Id.* at 924-25.

Lugar subsequently filed an action under 42 U.S.C. § 1983 against Edmondson and its president, alleging that they had acted jointly with the State to deprive him of his property without due process of law. *Id.* at 925. After some discussion and refinement of the legal issues, the Court turned its focus specifically to what constitutes a 'state actor.' *Id.* at 941. The Court stated:

> [W]e have consistently held that a private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a "state actor" for purposes of the Fourteenth Amendment. The rule in these cases is the same as that articulated in *Adickes v. S. H. Kress & Co.*[, 398 US 144, 152 (1970),] in the context of an equal protection deprivation:
>
> > Private persons, jointly engaged with state officials in the prohibited action, are acting "under color" of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents.

> The Court of Appeals erred in holding that in this context "joint participation" required something more than invoking the aid of state officials to take advantage of state-created attachment procedures. That holding is contrary to the conclusions we have reached as to the applicability of due process standards to such procedures. Whatever may be true in other contexts, this is sufficient when the State has created a system whereby state officials will attach property on the *ex parte* application of one party to a private dispute.

Id. at 941-42 (internal quotes and citations omitted). Burtnick argues that Weinblatt, through his extensive interaction and collaboration with the County, became such a "willful participant" and consequently could be said to have acted as an officer of the State.

Burtnick's reliance on *Lugar* is misplaced. To the contrary, in *Lugar* the Court emphasized the need to constrain the characterization of parties as state actors, for otherwise "without [limits,] . . . private parties could face constitutional litigation whenever they seek to rely on some state rule governing their interactions with the community surrounding them." *Id.* at 937. Further, commenting on its decision in *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149 (1978), the Court explained:

> *Flagg Brothers* focused on [whether a party charged may be fairly said to be a state actor] . . . . The response of the Court, however, focused not on the terms of the statute but on the character of the defendant to the § 1983 suit: Action by a private party pursuant to this statue, without something more, was not sufficient to justify a characterization of that party as a "state actor." The Court suggested that that "something more" which would convert the private party into a state actor might vary with the circumstances of the case. This was simply a recognition that the Court has articulated a number of different factors or tests in different contexts: *e.g.*, the "public function" test[;] the "state compulsion" test[;] the "nexus" test[;] and in the case of prejudgment attachments, a "joint action test[.]" Whether these tests are actually different in operation or simply different

> ways of characterizing the necessarily fact-bound inquiry that confronts the Court in such a situation need not be resolved here.

Id. at 938-39 (citations omitted).

Two salient conclusions may be drawn from the foregoing commentary: first, the decision as to who constitutes a state actor is a fact-driven inquiry turning on the context and circumstances of each case; and second, that Burtnick's application of the joint action test is inappropriate here, as the test applies specifically to the seizure of disputed property.

Drawing on the Court's guidance, we conduct our analysis in light of the need to prevent the overexposure of private individuals to constitutional litigation; with sensitivity to "the character of the defendant to the § 1983 suit," *id.*; and with special attention paid to specific factual context. Applying these guiding principles, we hold that Weinblatt cannot be considered a state actor. It is true that Weinblatt had significant affirmative engagement with County officials and authorities in efforts to address Burtnick's hedge. However, in the end, Weinblatt was merely a complainant. He retained no power or authority to determine what happened to Burtnick's hedge. He was not the person who actually trimmed the hedge. He was not consulted by County officials in making their ultimate determination. To hold that a party could be a state actor merely for successfully availing himself of the powers of government, even given vigorous affirmative action, would expose private individuals to liability under § 1983 in a prohibitively broad range of circumstances. *See, e.g.*, *Woods v. Valentino*, 511 F. Supp.

2d 1274 n.19 (M.D. Fla. 2001) ("If the Plaintiff's argument were taken as true, then any time any person ever filed a police report, made a criminal complaint against another person, or attempted to protect his or her rights in court, that person would become a state actor."). That is precisely the outcome that the Supreme Court in *Lugar* warned against and cannot be countenanced as matter of law, administration, or policy.

Because the conclusion that Weinblatt was a state actor was requisite to establishing Burtnick's Federal and State constitutional claims, Burtnick cannot prevail as to § 1983 and the Fourteenth Amendment or Article 24. Therefore, the circuit court was legally correct in granting summary judgment on these counts, and we affirm its judgment.

II. Trespass

We now consider Burtnick's claims regarding trespass. Burtnick first argues that, in trimming his hedge, Armacost extended himself across the property line, thereby establishing a trespass. Burtnick further argues that Armacost lacked a work order and consequently was not present at Burtnick's property pursuant to his authority as an employee of the County. Armacost counters by arguing that no evidence was introduced indicating that he actually trespassed onto Burtnick's property, that Burtnick relied upon stricken evidence to substantiate his argument, and that ultimately, Burtnick's position is supported only by conjecture.

A trespass occurs when "a defendant interferes with a plaintiff's interest in the exclusive possession of the land by entering or causing something to enter the land . . . ."

Rosenblatt v. Exxon Co., U.S.A., 335 Md. 58, 78 (1994). In order to establish an action for trespass, a plaintiff must show: "(1) an interference with a possessory interest in his property; (2) through the defendant's physical act or force against that property; (3) which was executed without his consent." *Mitchell v. Baltimore Sun Co.*, 164 Md. App. 497, 508 (2005). Further, "recovery for trespass requires that the defendant must have entered or caused something harmful or noxious to enter onto the plaintiff's land." *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 408 (2013).

In reviewing the evidence produced at trial, we note that Burtnick conceded in his testimony that Armacost's feet never left the sidewalk but nonetheless contended that Armacost extended his arms and the chainsaw used to perform the trimming beyond the property line. Indeed, Burtnick testified that he observed Armacost making cuts inside his property line. Significant photographic evidence was produced, showing Armacost on the sidewalk along with at least two other workers. None of those photos show Armacost extending his arms in the manner Burtnick described. However, it is clear that Armacost cut the hedge back substantially. There is also photographic evidence showing a shovel leaned against the hedge and protruding beyond the sidewalk and across the property line. Further, there are photos showing the various branches that have been cut, and which are susceptible to the inference of lateral or horizontal cuts requiring a chainsaw blade to be held in a manner that would break the plane of the property line and cut across that line. Remaining mindful that all inferences drawn from the evidence must be made in the light most favorable to the nonmoving party and that the existence of any

legally sufficient evidence, "no matter how slight," warrants sending the matter to the jury, we hold that the circuit court erred in granting Armacost's motion for judgment, and we reverse.[9]

Turning to Weinblatt, Burtnick's theory here parallels the argument forwarded in support of his constitutional claims: due to the extent of Weinblatt's affirmative efforts to convince the County to act on Burtnick's hedge, Burtnick avers that Weinblatt may be held liable for the allegedly resulting trespass. To establish his position, Weinblatt cites two cases, *Alleco Inc. v. Harry & Jeanette Weinberg Foundation, Inc.*, 340 Md. 176, 199 (1995), and *Hoffman v. Stamper*, 385 Md. 1, 25 (2005). In citing these cases, Burtnick directs our attention to passages dealing with aiding, abetting, and tortious conspiracy, respectively. In so doing, Burtnick conflates these causes of action with the trespassing cause forwarded at trial. By embedding these theories in an action for trespass, Burtnick effectively seeks to make an end-run around the Maryland Rules prohibiting parties from raising an issue for the first time on appeal. *See* Md. Rule 8-131 ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to

[9] In their briefs, the parties direct some attention to a dispute as to whether Armacost had a proper work order to trim the hedges. We, however, regard this issue as irrelevant to our analysis. Arguments on what could appropriately be construed as a work order aside, it is clear that all of Armacost's visits to Burtnick's property were conducted as part of his employment. It is also clear that his work came at the direction of his supervisor and Lathe, the Chief of the Bureau of Highways, above him. Further, even though Armacost proceeded pursuant to his authority as an employee of the County, that authority would not afford him the latitude to trespass on Burtnick's property. As such, the issue is largely inconsequential in this context.

have been raised in or decided by the trial court . . . ."). While Burtnick's amended complaint included some cursory language that may hint at the assertion of these theories, the fact remains that neither count was directly raised before the trial court. As such, neither theory will be considered here. Because Burtnick offered no other plausible theory or authority by which Weinblatt may be linked to the alleged trespass,[10] we hold that there was no error by the circuit court in granting Weinblatt's motion for judgment, and we affirm.

III. Defamation

Finally, we shift our focus to Burtnick's charges of defamation. Burtnick argues that Weinblatt, through his various communications with HOA and County officials, consistently engaged in behavior of defamatory character. Weinblatt, conversely, argues that Burtnick has failed to adequately make out a claim for defamation, as the statements complained of never rose to the requisite legal standard.

In Maryland, to establish a *prima facie* case of defamation, four elements must be established: "(1) that the defendant made a defamatory statement to a third person, (2) that the statement was false, (3) that the defendant was legally at fault in making the

[10] We note that at trial and on appeal, Burtnick's theory for establishing trespass by Weinblatt was predicated on relating his conduct to Armacost's; no independent theory based on Weinblatt's own personal intrusion onto Burtnick's property was advanced. Indeed, Burtnick's counsel conceded upon Weinblatt's motion for judgment as to the trespass claim that "if the court concluded there is no trespass as to Armacost, then there would not be one for Mr. Weinblatt." As such, in the absence of some viable authority connecting Weinblatt's conduct to Armacost's, the trespass action against Weinblatt must fail.

statement, and (4) that the plaintiff thereby suffered harm." *Offen v. Brenner*, 402 Md. 191, 198 (2007). Defamatory statements are those "which tend[] to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or associating with, that person." *Batson v. Shiflett*, 325 Md. 684, 722-23 (1992). False statements are those which are not substantially correct. *Piscatelli v. Van Smith*, 424 Md. 294, 306 (2012). Legal fault, when considering defamatory comments directed toward a private individual by someone not engaged in "media expression," is evaluated according to a negligence standard. *Hearst Corp. v. Hughes*, 297 Md. 112, 122-23 (1983). Under that standard, "the burden of proving falsity rests upon the plaintiff. Further, fault, in cases of purely private defamation, must be established by the preponderance of the evidence." *Gen'l Motors Corp. v. Piskor*, 277 Md. 165, 171 (1976). The significance of context is not lost on courts when analyzing defamation claims. The Court of Appeals provided: "To determine whether a publication is defamatory, a question of law for the court, the publication must be read as a whole: words have different meanings depending on the context in which they are used and a meaning not warranted by the whole publication should not be imputed." *Piscatelli*, 424 Md. at 306 (internal quotations omitted) (quoting *Chesapeake Publ'g Corp. v. Williams*, 339 Md. 285, 295 (1995)).

Additionally, Maryland maintains a distinction between defamation *per se* and defamation *per quod*. The Court of Appeals has explained the distinction thus:

> [A]ctions or conduct as well as spoken or printed words could be actionable *per se* or *per quod*. The distinction is based on a rule of evidence and the difference between them lies in the proof of the resulting injury. In the case of words or conduct actionable *per se*, their injurious character is a self-evident fact of common knowledge of which the court takes judicial notice and need not be pleaded or proved. In the case of words or conduct actionable only *per quod*, the injurious effect must be established by allegations and proof of special damage and in such cases it is not only necessary to plead and show that the words or actions were defamatory, but it must also appear that such words or conduct caused actual damages.

M & S Furniture Sales Co. v. Edward J. Bartolo Corp., 249 Md. 540, 544 (1968). The root of the distinction lies in the need for extrinsic evidence: in the case of libel or slander *per se*, no extrinsic evidence is needed to demonstrate the harmful nature of the challenged statements; in the case of libel or slander *per quod*, such evidence will be needed to establish the claim. The determination as to whether some alleged defamatory conduct is actionable *per se* or *per quod* is a question of law to be determined by the court. *Id.*

Conducting our *de novo* review, we have identified multiple salient facts in the record, all of which have been referenced *supra*. As Burtnick has emphasized and the record demonstrates, Weinblatt engaged in significant communication with various County officials and the HOA. In so doing, he repeatedly remarked not just on Burtnick's hedge but on Burtnick himself. These remarks ranged from verbal comments to a 911 operator indicating that Burtnick was "unstable with guns;" to various emails indicating, among other things, that "SOMEONE OR GROUP NEEDS TO SPEAK TO MR [sic] BURTNICK BEFORE HE DOES SOMETHING TO HURT SOMEONE."

(Capitalization in original). Inspector Rumsey-Scott, in recalling her interactions with Weinblatt, stated that he made "disparaging comments" about Burtnick, insinuating that she would need a police escort to visit his property, and that the first indication she received of Burtnick having weapons came from Weinblatt. That call gave rise to a contradictory account in the above-referenced email to Sheller, Carski, and several others where Weinblatt implied that it was Rumsey-Scott who had conveyed to *him* that she would need a police escort. Likewise, on the day that Armacost cut Burtnick's hedges, Weinblatt sent an email to Sheller, Van Dommelen, Carski, and several others indicating that "Mr. Burtnick called the cops this morning while the county was out trimming the bushes," and that "Mr. Burtnick came after me today in front of the cop." These comments must be considered together with the fact that it was not Burtnick but Armacost who had called the police, and that the attending officer explicitly noted in his report that "at no time during the interaction between [Burtnick and Weinblatt] did . . . Burtnick threaten . . . Weinblatt." Notably, to the contrary, Officer Canning testified that it was instead Weinblatt who approached Burtnick "with an intent to gain a negative response."

What all of the foregoing demonstrates is that Weinblatt made several statements which could prove to be demonstrably false and be read as harmful to Burtnick's reputation. This Court's role on appeal is to construe all facts and inferences in a light most favorable to the non-movant and to determine if there is sufficient evidentiary basis to warrant sending the matter to a jury. We hold that a review of the facts as they were

adduced in the circuit court, taken in a light most favorable to Mr. Burtnick, indicates the existence of more than a mere scintilla of evidence; rather, it is sufficient to raise robust questions of fact which should be submitted for a jury's consideration. Consequently, we hold that the circuit court erred in granting Weinblatt's motion for judgment on the defamation count, and we reverse.

CONCLUSION

Burtnick challenges the judgments of the Circuit Court for Baltimore County, first for granting the defendants' motions for summary judgment as to his various State and Federal civil rights claims; and secondly, for granting the defendants' motions for judgment as to Burtnick's allegations of trespass and defamation. We hold that, with respect to the civil rights claims, the circuit court committed no error in granting the parties' motions for summary judgment, and we affirm. As to the counts of trespass, we hold that the circuit court erred in its granting Armacost's motion for summary judgment for Armacost but not for Weinblatt. As such, the judgment of circuit court as to matters of trespass is reversed in part and affirmed in part. Finally, we hold that the circuit court erred in granting Weinblatt's motion for judgment as to defamation and on that final count, we reverse.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID TWO-FIFTHS BY APPELLEE AND THREE-FIFTHS BY APPELLANT.