Circuit Court for Prince George's County
Case No. CAL 1917418

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1131

September Term, 2021

MIA CONWAY, ET AL.

v.

BLUE RIDGE RESTAURANT GROUP, LLC

Berger,
Friedman,
Albright,

JJ.

Opinion by Albright, J.

Filed: December 7, 2022

Following a restaurant's admission of liability for the slip-and-fall injury of one of its dinner customers, a jury in the Circuit Court for Prince George's County awarded the customer $50,000 in compensatory damages and her husband (also a customer) an additional $5,000 for loss of consortium. The injured customer is Appellant, Mia Conway. The restaurant is the Stanford Grill in Howard County, Maryland, owned by Appellee, Blue Ridge Restaurant Group, LLC ("the Restaurant"). Here, Mrs. Conway challenges two rulings excluding evidence, arguing, in essence, that if the evidence had been admitted, the verdict for her would have been higher. One ruling pertained to the admissibility of medical records from two of Mrs. Conway's treating medical providers. The other was about the collateral source rule as applied to one iteration of Mrs. Conway's explanation for why, some months after her injury, there was a gap in her follow-up medical treatment. We agree that these rulings were in error. Nonetheless, because Mrs. Conway was able to introduce these matters through other means, we are not persuaded that she was prejudiced by the erroneous rulings. Accordingly, we affirm the judgment of the circuit court.

Mrs. Conway presents two questions on appeal,[1] which we have rephrased as follows:

[1] Mrs. Conway's questions are the following:

1. Did the Circuit Court err and/or abuse its discretion in excluding statements made by the Plaintiff to her treatment providers, particularly when the Defendant misrepresented that (non-existent) contrary statements were made, resulting in prejudicial and harmful error, as the jury was misled, the

1. Did the circuit court err in excluding the medical records of Mrs. Conway's treating orthopedic surgeon and physical therapist?

2. Did the circuit court err in excluding Mrs. Conway's explanations for her gap in treatment from December 22, 2016 to April 4, 2017?

BACKGROUND

On June 4, 2016, Mrs. Conway went to the Stanford Grill with her husband and their friends. While walking from the bar lounge area toward the front entrance, Mrs. Conway slipped, fell backwards, and landed on her right side on the tile floor. Mrs. Conway experienced a range of symptoms from bruising and swelling to pain and tenderness. In an effort to alleviate those symptoms, Mrs. Conway sought medical treatment from, among others, her primary care physician, Dr. Poblete; an orthopedic surgeon, Dr. Tang; and a physical therapist, Ms. Seibert.

At the time of the accident, Mrs. Conway carried medical insurance, but she terminated that coverage toward the end of December 2016. Mrs. Conway then secured

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actual statements were withheld from the jury, and the Plaintiff was deprived of the ability to present substantive evidence, and to corroborate her testimony, on a critical issue?

2. Did the Circuit Court err and/or abuse its discretion in precluding Plaintiff from explaining that the "gap" in treatment was not due to resolution of her complaints, but was instead the result of changes in her health insurance circumstances, as the Court incorrectly upheld an unsupported objection and apparently believed there was some absolute prohibition on any reference, which prejudiced Plaintiff by withholding the evidence from the jury on this important issue?

medical insurance with a different carrier, Kaiser Permanente, and that coverage took effect in April 2017.

In May 2019, Mrs. Conway (and Mr. Conway) filed suit against the Restaurant in the Circuit Court for Prince George's County, Maryland. Because the Restaurant did not contest liability for Mrs. Conway's fall, the ensuing jury trial focused only on damages. Mrs. Conway's theory was that while she had suffered various back injuries before this accident, she had always "bounced back" from them, and that this accident, by contrast, had permanently injured her back. The Restaurant disputed the extent of Mrs. Conway's injury, theorizing that it was not as bad as Mrs. Conway claimed it was, and that her damages were not as extensive as she claimed they were. At trial, the Conways called as witnesses themselves, a friend that witnessed the accident, and, via *de bene esse* video deposition, Dr. Joshua Ammerman, a neurosurgeon that evaluated Mrs. Conway's injuries. The Restaurant called no witnesses. Both sides introduced (or attempted to introduce) exhibits.

Mrs. Conway's Pre-Injury Symptoms and Treatment

At trial, Mrs. Conway described her prior back injuries dating back to the early 2000's. At some point before 2005, Mrs. Conway slipped on the stairs, pulled her back, and with rest, heat, and ice, recovered. Over a few days in 2005, Mrs. Conway pulled her back twice more while picking up items. When rest, heat, and ice did not alleviate the

pain, Mrs. Conway saw Dr. Poblete who recommended an MRI.[2] The resulting images of her mid and lower back showed degenerative disc disease and spondylosis. The MRI of her lower back also showed a small left paracentral disc protrusion.[3] According to Mrs. Conway, she recovered from these incidents. In 2013, however, Mrs. Conway suffered a flare-up in her back, and saw Dr. Poblete again to manage her pain. Later, in December 2015, while picking up weights at the gym, Mrs. Conway again hurt her back and felt a shooting pain.[4] An MRI of her lower back showed degenerative disc disease and now a central disc protrusion.[5] On the prescription of a pain management specialist, Mrs. Conway had physical therapy through February 2016, and the pain disappeared.

[2] "MRI" stands for magnetic resonance imaging. It is a "non-invasive imaging technology that produces three dimensional detailed anatomical images." Magnetic Resonance Imaging (MRI), NIH, https://www.nibib.nih.gov/science-education/science-topics/magnetic-resonance-imaging-mri#pid-946 (last visited Dec. 1, 2022).

[3] A paracentral disc protrusion is a type of disc herniation where a disc fragment still attached to the disc protrudes outward, "crowd[ing] the space between the central canal and the foreman." Rosemary Black, *What is Disc Protrusion?*, SPINEUNIVERSE (rev. by Joseph M. Morreale, M.D.), https://www.spineuniverse.com/conditions/herniated-disc/disc-protrusion (last visited Dec. 2, 2022).

[4] As part of that injury, Mrs. Conway also pulled her knee.

[5] A central disc protrusion has the same features as a paracentral disc protrusion, except that, in a central disc protrusion, the disc fragment "encroach[es] into the spinal canal itself, with or without spinal cord nerve compression." Black, *What is a Disc Protrusion?*.

Mrs. Conway's Post-Injury Symptoms and Treatment

Mrs. Conway's Direct and Cross Examinations

As to her post-injury symptoms, Mrs. Conway's testimony focused on what she was feeling in the days and months after her fall at the Restaurant, what sort of treatment she received, and who provided it. Thus, in June 2016, when she saw Dr. Tang, she was still feeling pain, which she described as a "whiplash effect[.]" She also stated that she had pain in her neck, arm, and leg, and she described the sensation of that pain in detail:

> [MRS. CONWAY]: I was still feeling the pain. I felt almost like a whiplash effect from the fall. So my neck hurt really bad, my arm was hurting really bad, and I had radiating pain that was going down from my bottom, down to my leg. My foot was tingling and my hip and upper, sort of upper hip area and then my lower back. And mostly it felt like all on the right side.
>
> * * *
>
> [MRS. CONWAY]: Sometimes it [feels] like stabbing fire coming down the back of your leg. That's the easiest thing that I could -- as I could describe it. It sort of feels like fire coming down the back of your leg.

By December 2016, according to Mrs. Conway, she was still experiencing pain, including lower back pain, sacral pain, neck pain, and radiating pain down her leg. She stated that her symptoms started progressing, and that she reported her pain to Dr. Poblete at her December 20, 2016 annual exam. On cross examination, however, the Restaurant asked Mrs. Conway if she remembered telling Dr. Tang—the next day—that she had only "mild tenderness" in her cervical and lumbar [areas]. Mrs. Conway responded, "[n]o, I don't necessarily recall that."

With regard to her physical therapy regimen, Mrs. Conway testified that she was receiving it under the supervision of Dr. Tang and expected it to continue "into 2017." When the Restaurant asked how many physical therapy appointments she had between the accident and December 21, 2016, and asked whether it was four, Mrs. Conway could not remember the precise number.

Mrs. Conway's Redirect Examination

On redirect, the trial court did not permit Mrs. Conway to introduce the medical records her counsel identified in order to rehabilitate her testimony. Specifically, Mrs. Conway's Exhibit 3 was a record appearing to be from her December 6, 2016 visit with her physical therapist, Ms. Seibert. Exhibit 3 appeared to show how many physical therapy appointments Mrs. Conway had since the accident, Mrs. Conway's statements about her pain, and the physical therapist's clinical findings and assessment. Exhibit 4 was a record appearing to be from Mrs. Conway's December 21, 2016 visit with Dr. Tang. Exhibit 4 appeared to show (among other things) what complaints Mrs. Conway reported to Dr. Tang that day, the results of Dr. Tang's examination of Mrs. Conway, and Dr. Tang's diagnoses and treatment plan.

To the Restaurant's objection that Exhibits 3 and 4 were inadmissible as hearsay, Mrs. Conway offered multiple bases for the records' admissibility, including as containing statements made for medical diagnosis and as business records, but the trial

court sustained the objection:[6]

> [MRS. CONWAY'S COUNSEL]: Your honor, two things. First even if the documents were hearsay as a whole, her complaints belong to the hearsay exception of 5-803(b)(4), which is statements made to a treating provider for medical diagnoses. So that's what I'm primarily focused on.
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> Second, these records have been stipulated to as authentic business records, so I think they fall in general under the exception as business records.
>
> And third, there's one part I'm going to use to refresh her recollection, but --
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> THE COURT: Sustained.

After further discussion about how the records showed the correct number of physical therapy visits, the trial court sustained the objection again, after learning that Mrs. Conway herself did not write down how many physical therapy visits she had:

> [MRS. CONWAY'S COUNSEL]: Your Honor . . . . [i]f you look at the very bottom of Exhibit 3, that records that as of that December of '16 visit, she had seven PT visits. I think there's an implication raised in cross that there was only five visits total in that time period. So I think at a minimum, I should be allowed to ask that question. I also think I should be able to . . . use the documents as to her complaints, which are an exception to the hearsay rule.

[6] Mrs. Conway also argued that Exhibits 3 and 4 were admissible to refresh her recollection, presumably as to what she told Dr. Tang on December 21, 2016 and how many physical therapy appointments she had between the accident and December 21, 2016. As an aide to "trigger Mrs. Conway's memory," however, Exhibits 3 and 4 would not have been admissible at the behest of Mrs. Conway. *See Farewell v. State*, 150 Md. App. 540, 576 (2003), *cert. denied*, 376 Md. 544 (2003). If, after reading Exhibits 3 and 4 to herself, Mrs. Conway's memory was not "refreshed," Mrs. Conway could have sought to read her statements from Exhibits 3 and 4 into evidence as "past recollection recorded" provided that the other foundational requirements of Md. Rule 5-801.2(e) were met.

> THE COURT: Okay.
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> [THE RESTAURANT'S COUNSEL]: Your Honor, she initially said there were four PT visits in direct. And I asked her in cross about were there three or four PT visits, and she said about that. And then she said ten visits total sounded accurate, could be accurate in total.[7]
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> * * *
>
> THE COURT: She did not write it down? I'm asking.
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> [MRS. CONWAY'S COUNSEL]: I don't believe so, Your Honor.
>
> THE COURT: Okay. Sustained.

After this ruling, Mrs. Conway repeated that in December 2016 she told Dr. Poblete that her pain was ongoing:

> [MRS. CONWAY'S COUNSEL]: Just tell us what complaints you had at [your December 2016 visit with Dr. Poblete].
>
> [MRS. CONWAY]: The complaints I had were ongoing, from the back pain and the pain in my hip on the right side, in my shoulder, in my neck area and running down my leg. And then the sacral pain as well[.]

Mrs. Conway also testified that she went to her physical therapist and Dr. Tang that same month with those ongoing complaints.

[7] The Restaurant also argued:

> The problem, [Mrs. Conway] wants to bring these records in, but she wants to disavow what she told Dr. Poblete. So I think it's unfair to [the Restaurant] now that they can bring these records in to support her testimony when she's trying to disavow her own primary care doctor.

The trial court did not appear to agree with this argument.

Dr. Ammerman's Testimony

Later in the trial, Dr. Ammerman opined that the accident injured Mrs. Conway by aggravating an underlying degenerative lumbar condition that she had before the accident. According to Dr. Ammerman, the resulting injury was permanent. He also opined that the injury was causally related to Mrs. Conway's accident at the Restaurant and would not have occurred but for that accident.

On cross examination, when asked whether Mrs. Conway was feeling "mild tenderness" or "pain" when she saw Dr. Tang on December 21, 2016, Dr. Ammerman said that it "probably [fell] in the pain category":

> [THE RESTAURANT'S COUNSEL]: And Dr. Tang also notes on December 21, 2016, that [Mrs. Conway] was having some mild tenderness in the right wrist, cervical and lumbar and hip, correct?
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> [DR. AMMERMAN]: Yes.
>
> [RESTAURANT'S COUNSEL]: And mild tenderness. Doctor, is there a difference between tenderness versus pain?
>
> [DR. AMMERMAN]: Beauty is in the eye of the beholder. It probably falls in the pain category.
>
> [RESTAURANT'S COUNSEL]: But the term that Dr. Tang used on December 21, 2016, was mild, correct?
>
> [DR. AMMERMAN]: He was describing the tenderness as mild, yes, sir.

Mrs. Conway's Health Insurance

The trial court prevented Mrs. Conway from explaining why she had no follow-up medical treatment from December 22, 2016 to April 4, 2017. When Mrs. Conway attempted to explain that the gap in treatment was because she changed medical

insurance providers, the Restaurant objected on the grounds that health insurance cannot be "injected into the case[,]" and the trial court agreed.

> [MRS. CONWAY'S COUNSEL]: Can you explain to the jury why [there was no treatment from January through the beginning of April 2017]?
>
> [MRS. CONWAY]: Yeah. So, my husband and I are self-employed, as we mentioned, and we had to change our health plan. . . .
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> [THE RESTAURANT'S COUNSEL]: Your Honor, it's injecting health insurance into the case, which is not allowed.
>
> [MRS. CONWAY'S COUNSEL]: Your Honor, I'm not injecting health insurance. They raised an issue of a gap in treatment and we have the right to explain it. We're not making a claim for medical expenses. If health insurance was to be mentioned, it would be a collateral source, and there's a collateral source instruction that would cure that.
>
> But their main point that they tried to hammer in opening statement, their doctor says, Oh, look at this gap in treatment. They're going to explain that at that point, they had to switch health plans and had to find new treatment procedures.
>
> * * *
>
> THE COURT: Sustained. Let's move on.

Nonetheless, Mrs. Conway was later allowed to explain to the jury the process for receiving medical treatment from her new insurance provider, Kaiser Permanente. And as part of that explanation, Mrs. Conway told the jury that she was seeing new doctors starting in April of 2017 because she was assigned a primary care doctor through Kaiser Permanente, "[a]nd then from there . . . it's all only within [Kaiser Permanente's] plan. So you can't really go outside and find any other providers." She also told the jury that she saw "upwards of 20" different providers—all within the Kaiser Permanente network.

Similarly—and despite its prior objection—the Restaurant itself offered Mrs. Conway another chance to explain her gap in treatment. Specifically, Mrs. Conway was able to show the jury the gap in her treatment matched the timing of her change in health plans:

> [THE RESTAURANT'S COUNSEL]: Well, I thought you testified earlier . . . between the last time you saw Dr. Tang in 2016, which was December 21, 2016, that you didn't have any treatment until early April 2017?
>
> [MRS. CONWAY]: So what I recall is that I didn't have any treatment from the beginning of January of '17, when my health plan changed, to April 4th or end of March when had my first appointment with the first new doctor[.]

The jury returned a verdict of $50,000 for Mrs. Conway and $5,000 for Mr. Conway. No new trial or other post-judgment motions were made. This timely appealed followed.

DISCUSSION

Mrs. Conway's Contentions

Mrs. Conway argues that she was prejudiced by the trial court's exclusion of Exhibits 3 and 4 because this ruling kept the jury from seeing in documentary form what she actually said to her medical providers in December 2016 about her complaints. Mrs. Conway argues that these exhibits, particularly her statements in them, were admissible as statements made for the purposes of getting medical diagnosis or treatment under Md.

Rule 5-803(b)(4)[8] and as part of a business record under Md. Rule 5-803(b)(6).[9] According to Mrs. Conway, these exhibits corroborated her testimony about her complaints and refuted the Restaurant's cross examination question, which improperly suggested that Mrs. Conway only reported mild tenderness in her neck and back to Dr. Tang during her December 21, 2016 visit.

[8] This Rule provides that such statements are not excluded as hearsay even if the declarant is available:

> 4) *Statements for Purposes of Medical Diagnosis or Treatment.* Statements made for purposes of medical treatment or medical diagnosis in contemplation of treatment and describing medical history, or past or present symptoms, pain, or sensation, or the inception or general character of the cause or external sources thereof insofar as reasonably pertinent to treatment or diagnosis in contemplation of treatment.

Md. Rule 5-803(b)(4).

[9] This Rule provides that records of a regularly conducted business are not excluded as hearsay even if the declarant is available:

> *Records of Regularly Conducted Business Activity.* A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation. A record of this kind may be excluded if the source of information or the method or circumstances of the preparation of the record indicate that the information in the record lacks trustworthiness. In this paragraph, "business" includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Md. Rule 5-803(b)(6).

Mrs. Conway also argues that the trial court improperly excluded her explanation for why there was a gap in her follow-up treatment from December 22, 2016 to April 4, 2017. Mrs. Conway argues the trial court misapplied the collateral source rule to prevent her from testifying about her switch in medical insurance providers. Mrs. Conway concludes that she was also prejudiced by this error.

Standard of Review

Errors in a trial court's evidentiary rulings do not lead, invariably, to reversal. Thus, even if the trial court excluded evidence that it should have admitted, its erroneous ruling will not lead to reversal "[u]nless the party is prejudiced by the ruling." Md. R. 5-103(a).[10] "It is the policy of [the Court of Appeals] not to reverse for harmless error and the burden is on the appellant in all cases to show prejudice as well as error." *Crane v. Dunn*, 382 Md. 83, 91 (2004) (citing cases). "The focus of our inquiry is on the probability, not the possibility, of prejudice." *Flores v. Bell*, 398 Md. 27, 33 (2007)

[10] Maryland Rule 5-103(a) provides

> Errors may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling, and
>
> (1) *Objection*. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was requested by the court or required by rule; or
>
> (2) *Offer of Proof*. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered. The court may direct the making of an offer in question and answer form.

(citing cases). If other evidence having the "same effect" as the excluded evidence is later admitted without objection, the trial court's evidentiary ruling error is harmless. *See Robeson v. State*, 285 Md. 498, 507 (1979). To justify reversal in a civil case, an error below must have been "both manifestly wrong and substantially injurious." *Rotwein v. Bogart*, 227 Md. 434, 437 (1962). An inadequate verdict alone is not enough to mandate reversal of a judgment. *See Abrishamian v. Barbely*, 188 Md. App. 334, 347 (2009).

With regard to the admission (or not) of hearsay evidence, we ordinarily review a trial court's decision *de novo. Hall v. UMMS*, 398 Md. 67, 83 (2007). Decisions regarding the applicability of the collateral source rule, however, are reviewed under the abuse of discretion standard. *Titan Custom Cabinet, Inc. v. Advance Contracting, Inc.*, 178 Md. App. 209, 218 (2008).

The Exclusion of Mrs. Conway's Medical Records (Exhibits 3 and 4)

Here, the record does not support the Restaurant's objection that Mrs. Conway's Exhibits 3 and 4 were inadmissible hearsay. To be sure, these exhibits each contained at least three sets of hearsay statements. One set was Mrs. Conway's statements to her treatment provider; a second was her treatment provider's medical assessment and diagnosis or evaluation on seeing Mrs. Conway; and a third was the routine administrative information recorded in the ordinary course of documenting Mrs. Conway's appointment such as when the appointment occurred, who saw her, and when the record was created.

But the presence of multiple sets of hearsay statements in one exhibit (hearsay within hearsay) does not necessarily mean that the exhibit is inadmissible. Instead, if each hearsay statement in the exhibit meets a hearsay exception, the exhibit is not inadmissible hearsay. *See* Md. Rule 8-505 ("If one or more hearsay statements are contained within another hearsay statement, each must fall within an exception to the hearsay rule in order not to be excluded by that rule.").

Although Mrs. Conway cites two hearsay exceptions that could have applied to Exhibits 3 and 4, we need only look at one: Maryland Rule 5-803(b)(6), the hearsay exception that applies to medical (and other) records as business records.[11] In order to meet this exception, hearsay statements in medical records that otherwise meet the Rule's requirements must be "'pathologically germane' to the physical condition which caused the patient to [seek medical treatment] in the first place.'" *Hall v. UMMS*, 398 Md. at 92 (2007) (*quoting Yellow Cab Co. v. Hicks*, 224 Md. 563, 570 (1961)). To be "pathologically germane," the statements "'must fall within the broad range of facts which under hospital practice are considered relevant to the diagnosis or treatment of the patient's condition[.]'" *Hall v. UMMS*, 398 Md. at 92 (*quoting Yellow Cab Co. v. Hicks*, 224 Md. 563, 570 (1961)). An opinion in a medical record is admissible if, by looking at the records alone, the court can conclude that the person who provided the opinion is qualified to do so, and the opinion was rendered on an "adequate factual basis." *Reynolds*

[11] The other exception Mrs. Conway cites, Md. Rule 5-803(b)(4) regarding Statements for Purposes of Medical Diagnosis or Treatment, would also support the admission of Mrs. Conway's statements in Exhibits 3 and 4.

v. State, 98 Md. App. 348, 358 (1993). In a civil case, it is not necessary for the proponent of the evidence to call the doctor to testify about his or her opinion. *Paige v. Manuzak*, 57 Md App. 621, 635 (1984).

Here, we see no reason why Mrs. Conway's Exhibits 3 and 4, and the hearsay statements within, would not have met Rule 5-803(b)(6)'s requirements, including the requirement that the statements be "pathologically germane" to Mrs. Conway's diagnosis or treatment. These exhibits included statements from Mrs. Conway about her complaints and history, together with medical assessments, diagnoses, evaluations, and treatment plans, all apparently recorded by those that examined and treated Mrs. Conway. Nor are there any findings by the trial court to suggest that Dr. Tang and Ms. Seibert were unqualified to diagnose, treat, or in the case of Ms. Seibert, evaluate, Mrs. Conway. And there are no findings to suggest that the entries in these records were not made in the ordinary course of these medical providers' business. In fact, the parties stipulated that Exhibits 3 and 4 were authentic business records.

In any event, Mrs. Conway fails to show how she was prejudiced by the exclusion of Exhibits 3 and 4. To the extent that Mrs. Conway's claim of prejudice is based on what she contends was an improper cross examination question by the Restaurant, we note that Mrs. Conway lodged no objection to this question at the time it was asked. Thus, we

decline to address to what extent, if any, Mrs. Conway was prejudiced by the Restaurant's question. *See* Md. Rule 8-131.[12]

Moreover, even after the Restaurant's cross examination question, Mrs. Conway was permitted, on redirect, to testify about the symptoms she was experiencing when she saw Dr. Poblete, Ms. Seibert, and Dr. Tang. Thus, she testified that when she saw Dr. Poblete in December 2016, she had pain in her back, right hip, shoulder, neck area, down her leg, and in her sacral area. She continued to have these complaints when she saw Ms. Seibert and Dr. Tang in December 2016. This testimony was in addition to the description of her symptoms that she gave during her direct examination.

To the extent that Mrs. Conway wanted corroboration of her symptoms, she found it in Dr. Ammerman's opinions. Dr. Ammerman testified that the accident aggravated Mrs. Conway's underlying degenerative lumbar condition. He added that the injury was permanent. As to whether Mrs. Conway was experiencing pain or merely mild tenderness in her "right wrist, cervical lumbar and hip" in December 2016, Dr. Ammerman testified that what she felt was "probably in the pain category."

Against this background, we cannot conclude that Mrs. Conway was prejudiced by the trial court's erroneous exclusion of Exhibits 3 and 4. Mrs. Conway provided other

[12] Rule 8-131(a) provides in pertinent part:

"Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal."

evidence of her symptoms, evidence that had the same effect as Mrs. Conway's statements in the excluded exhibits. Accordingly, we are unpersuaded that the trial court's ruling vis-à-vis Exhibits 3 and 4 was "manifestly wrong" or "substantially injurious" to Mrs. Conway.

The Change in Mrs. Conway's Health Insurance

The collateral source rule did not apply when Mrs. Conway attempted to answer her counsel's initial questions about why she received no medical treatment between December 22, 2016 and April 4, 2017. Under the collateral source rule, an "injured person [may] recover the full amount of his or her provable damages, 'regardless of the amount of compensation which the person has received for his injuries from sources unrelated to the tortfeasor.'" *Haischer v. CSX Transp., Inc.*, 381 Md. 119, 132 (2004) (quoting *Motor Vehicle Admin. v. Seidel*, 326 Md. 237, 253 (1992)). The public policy behind this rule is two-fold: (1) "the wrongdoer should not receive a windfall because the plaintiff received a benefit from an independent source," and (2) "to the extent the collateral benefit arises from insurance maintained by the plaintiff, the rule encourages the maintenance of insurance." *Haischer*, 381 Md. at 132.

In this case, Mrs. Conway is not the liable party. She willingly attempted to testify about her own medical insurance coverage. The collateral source rule should not have prohibited Mrs. Conway from offering evidence about her own medical insurance.

Moreover, even under the collateral source rule, Mrs. Conway's purpose for explaining the gap in her medical insurance was permissible. Evidence about another

source of payment for the injured party's expenses – "a collateral source" – may nonetheless be admissible if offered for a purpose other than to reduce the culpable party's payment of damages. *See, e.g., Keltch v. Mass Transit Admin.*, 42 Md. App. 291, 296 (1979) (noting that insurance payments may be admitted to show that the plaintiff is malingering and exaggerating injuries over a collateral source objection); *Abrishamian*, 188 Md. App. at 346 (recognizing rebutting an assertion of poverty as a valid purpose for admission of insurance). Here, Mrs. Conway introduced evidence about the gap in her medical insurance to explain why she did not receive any medical treatment for a period of about four months. This evidence helped support Mrs. Conway's claim for damages as it tended to show that the change in medical insurance, not the dissipation of symptoms, was the cause of the gap in her follow-up treatment.

Notwithstanding the trial court's initial refusal to allow Mrs. Conway to explain the gap in her follow-up medical treatment, Mrs. Conway was later able to explain that gap to the jury. Specifically, when asked about Kaiser Permanente, Mrs. Conway discussed the process of receiving medical care from "upwards of 20" doctors and other health care providers "in Kaiser's network." Then, in answer to the Restaurant's question, she said that she did not have any treatment "from the beginning of January of '17, when my health plan changed, to April 4th or the end of March when I had my first appointment with the first new doctor." Accordingly, we are not persuaded that the verdict was affected by an erroneous application of the collateral source rule.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.