Circuit Court for Baltimore City
Case No. 24C16000437

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1152

September Term, 2017

ROBYNE LYLES

v.

ALEXANDER KIDWELL

Woodward, C.J.,
Wright,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: November 15, 2018

This appeal arises out of a motor vehicle accident case after a judgment in favor of Alexander Kidwell, appellee. Robyne Lyles, appellant, appeals the Baltimore City Circuit Court's order granting appellee's Motion in *Limine* to exclude the testimony of appellant's causation expert. Additionally, appellant appeals the circuit court's order granting appellee's Motion for Summary Judgment, as well the court's order denying her Motion for Reconsideration, Motion for Judgment Notwithstanding the Verdict ("JNOV"), Motion for a New Trial, Motion to Alter or Amend a Judgment, and Motion for the Court to Use its Revisory Power. Appellant presents the following questions for our review, which we have reworded and consolidated for clarity:[1]

[1] Appellant presented her questions to the Court as follows:

1. Did the Trial Court abuse its discretion in granting Appellee's Motion in *Limine*?

2. Did the Trial Court abuse its discretion in excluding the testimony of Barbara Cochran, M.D.?

3. Did the Trial Court commit a legal error in granting Appellee's Motion for Summary Judgment?

4. Did the Trial Court abuse its discretion in failing to postpone the trial?

5. Did the Trial Court abuse its discretion in failing to consider sanctions other than case ending sanctions?

6. Did the Trial Court abuse its discretion in granting case-ending sanctions?

1. Did the circuit court properly exercise its discretion when it granted Kidwell's Motion in *Limine* to exclude the testimony of Dr. Barbara Cochran?

2. Did the circuit court properly exercise its discretion when it granted Kidwell's Motion for Summary Judgment, and when it denied Lyles's Motion for Reconsideration, Motion for Judgment Notwithstanding the Verdict, Motion for New Trial, Motion to Alter or Amend Judgment, or Motion to Revise?

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7. Did the Trial Court abuse its discretion when it considered and/or granted Appellee's Motion in *Limine*, which was filed beyond the Scheduling Order without leave of the Trial Court?

8. Did the Trial Court abuse its discretion or commit a legal error when it disregarded the holdings of Maryland case law affirming the procedure for resolving discovery disputes set forth in the Maryland Rules?

9. Did the Trial Court abuse its discretion in failing to appreciate Appellee's inaction, the procedural history of the case, the requirements of the Maryland Rules, the application of the Maryland case law, and the analysis of the allegations in Appellee's Motion in *Limine*?

10. Did the Trial Court abuse its discretion and/or commit a legal error when it failed to consider that Appellant (a) disclosed all medical records two and [a] half years before trial (even before litigation began), (b) timely designated her expert witnesses, (c) timely produced all relevant documents, (e) timely sat for a deposition, (f) timely supplemented her discovery responses, and Appellee never once followed-up with Appellant to indicate that her expert disclosure, discovery responses, documents production, or deposition testimony were deficient or that Appellee never designated any expert witnesses (even after Ms. Lyles's timely expert disclosure), never deposed Ms. Lyles's expert witness (despite several opportunities to do so), never requested a medical examination of Ms. Lyles, and never had an expert review Ms. Lyles's timely document production?

11. Did the Trial Court abuse its discretion and/or commit a legal error in declining to grant Appellant's first or second set of post-trial motions[?]

For the reasons to follow, we answer the first question in the affirmative and affirm the judgment of the circuit court. We decline to reach the second question, as appellant failed to brief any of the issues raised.

BACKGROUND

A. Motor Vehicle Accident and Appellant's Medical Treatment

On February 1, 2013, appellee's automobile struck appellant's automobile from the rear, causing appellant's head to hit her steering wheel. On February 7, 2013, after feeling dizzy and nauseous at an exercise class the night before, appellant went to the Johns Hopkins Hospital emergency room and was diagnosed with a concussion. The treating physician, Thomas D. Kirsch, M.D., noted that there were no changes in appellant's "speech, fine motor[,] or gait[,]" and a CT scan on the appellant produced a negative result.

As recommended by Dr. Kirsch, appellant visited her primary care physician, Karen E. Konkel, M.D., for a follow-up evaluation on February 19, 2013. In her evaluation, Dr. Konkel recorded that appellant described feeling lethargic and that she had experienced a loss of appetite. Dr. Konkel diagnosed appellant with a concussion, and noted that her symptoms were "gradually improving." Dr. Konke referred appellant to the Mild Brain Injury Program at Sinai Hospital.

On March 8, 2013, appellant first visited Melinda Ann Roth, M.D. at Sinai Hospital. At this evaluation, appellant explained that she had been suffering from headaches, vertigo, nausea, diminished appetite, difficulty viewing a computer, trouble concentrating on her work, and feelings of irritability. Consistent with previous

physicians, Dr. Roth diagnosed appellant with a concussion. Appellant saw Dr. Roth for follow-up visits six more times over the next fifteen months. In her records Dr. Roth repeatedly noted that appellant's symptoms were improving. Appellant was discharged from Dr. Roth's care on August 28, 2014. At that time, Dr. Roth noted that all of appellant's symptoms were resolved with the exception of "mild dizziness with fatigue or significant overstimulation," which would "continue to improve and eventually resolve."

Appellant also received psychiatric counseling at Shepard Pratt Hospital from August 2013, until October 2013, to treat the anxiety, irritability, and cognitive difficulties that she reported after the accident.

B. Procedural History of the Case

Appellant filed her lawsuit on January 29, 2016, bringing claims against three defendants. Specifically, appellant brought a negligence claim against appellee; a breach of contract claim against Allstate Indemnity Company ("Allstate");[2] and claims for respondeat superior and negligent entrustment against Alexander Kidwell's father, Michael Eades Kidwell.[3]

The circuit court issued a scheduling order on November 18, 2016, directing appellant to designate her expert witnesses by January 2, 2017, and appellee to do the same by February 16, 2017. The scheduling order also set the date of March 20, 2017, as

[2] AllState was dismissed as the Underinsured Motorist Carrier, as State Farm's applicable insurance limits exceed those of AllState's insurance limits.

[3] Michael Eades Kidwell owned the automobile being driven by appellee at the time of the accident.

the closing date for discovery. The final date for filing motions in *limine* was June 1, 2017. The trial was to take place on June 16, 2017.[4]

Appellant made her initial expert disclosures on December 23, 2016, and supplemented her designation on December 26, 2016. Appellant designated Barbara Cochran, M.D., as an expert stating:

> 8. *Barbara Cochran, M.D.*, of Multi-Specialty HealthCare, located 9601 Pulaski Park Drive, Suite 416, Baltimore, Maryland 21220. Dr. Cochran is a physician licensed to practice medicine in the State of Maryland.
>
> 9. The above-referenced medical providers evaluated Plaintiff's injuries as sustained in the occurrence that is the subject matter of this lawsuit and will testify as to: (1) the nature of Plaintiff's injuries as sustained in the occurrence; (2) the causal relationship between the occurrence and Plaintiff's injuries; (3) any permanent consequences of Plaintiff's injuries, including nature and extent; (4) the Plaintiff's current condition; (5) the Plaintiff's prognosis; (6) any future treatment required by Plaintiff; (7) the fairness, reasonableness, and necessity of any treatment rendered to Plaintiff in response to the occurrence; (8) the fairness, reasonableness, and necessity of the charges for Plaintiff's treatment; (9) that the charges for Plaintiff's treatments, services, and goods were in conformity with like charges for like services in this geographic area. The above-referenced medical providers will provide testimony based on the facts and opinions asserted in the medical reports (produced in response to Defendant's Request for Production of Documents), *a physical examination of Plaintiff*, and a review of Plaintiff's medical records, and a review of relevant discovery material.

(Emphasis added).

On May 23, 2017, over two months after the final discovery deadline, appellant's counsel informed appellee's counsel that appellant was scheduled to attend an Independent Medical Evaluation ("IME") with Dr. Cochran. The IME took place on

[4] State Farm conceded liability in this case, thus the only issue at trial was the amount of damages that appellant was to receive.

June 5, 2017, almost three years after appellant was discharged from Dr. Roth's care, at Sinai Hospital's Mild Brain Injury Program.

On June 14, 2017, appellant's counsel provided appellee's counsel with a copy of Dr. Cochran's report.[5] The next day appellee filed a Motion in *Limine* to exclude Dr.

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[5] In her report, Dr. Cochran made the following pertinent conclusions:

> Ms. Lyles sustained a traumatic brain injury in the form of a concussion when her car was rear-ended on 2/1/2013. The mechanism of injury is two-fold: She had acceleration followed by deceleration and rotational forces with the impact and the force of her vehicle moving forward and then backward as well as her brain moving forward and backward as well as rotation in the skull.
>
> [. . .]
>
> Ms. Lyles presented with the classic findings of a concussed individual with all the associated symptoms including systemic fatigue, difficulties with focus, headaches, difficulty with processing the information and photosensitivity.
>
> [. . .]
>
> She participated fully in a number of therapies which help restore all the domains of brain function to an almost normal level. She has some residual, but it is not significantly impairing her work or her life at the present time.
>
> [. . .]
>
> On examination today, she has some changes in her tandem gait both forward and backward consistent with some mild residual balance and vestibular ocular motor dysfunction (VOD). This . . . relates to the disruption of the communication pathway between the peripheral vestibular system and the visual system which are our two primary balance mechanisms. This has not hindered her . . . . She may not benefit by restoring [a home exercise program] in this domain.
>
> [. . .]

Cochran's testimony arguing that to "[permit] Dr. Cochran to testify would have severely prejudiced the Defendant's case, as the Defendant did not have an opportunity to contest the Plaintiff's expert testimony two days before trial."

On June 16, 2017, the court granted appellee's Motion in *Limine* and excluded Dr. Cochran's testimony. The court explained, "pursuant to *Taliaferro* [*v. State*, 295 Md. 376 (1983)], . . . this is not an appropriate case to grant a postponement[.]" Appellee then immediately moved for summary judgment arguing that without Dr. Cochran's testimony appellant did not have any evidence of causation. The court granted appellee's motion and dismissed the case without prejudice, with costs assessed against appellant. [6]

> Ms. Lyles'[s] concussion and associated symptoms are wholly consistent with the mechanism of injury that occurred with the motor vehicle accident on 2/1/2013.
>
> The therapy she received was appropriate and necessary to recover from the concussion, and the billing charges are appropriate and consistent with the billing charges in this geographic area.
>
> To a reasonable degree of medical certainty the concussion and concussion related symptoms are whole related to the injury sustained on 2/1/2013 including the psychiatric component.

[6] In *Pittway Corp. v. Collins*, 409 Md. 218, 243-44 (2009), the Court of Appeals explained that a plaintiff must prove proximate cause to establish a successful negligence claim:

> It is a basic principle that negligence is not actionable unless it is a proximate cause of the harm alleged. Proximate cause involves a conclusion that someone will be held legally responsible for the consequences of an act or omission. To be a proximate cause for an injury, the negligence must be 1) a cause in fact, and 2) a legally cognizable cause. In other words, before liability may be imposed upon an actor, we require a certain relationship between the defendant's conduct and the plaintiff's

On June 26, 2017, appellant filed a Motion for Reconsideration, Motion for Judgment Notwithstanding the Verdict, Motion for a New Trial, Motion to Alter or Amend a Judgment, and Motion for the Court to use its Revisory Power. On July 5, 2017, the circuit court denied all the appellant's motions. Appellant renewed all the above-listed motions on July 7, 2017, and the court denied all the appellant's requests.

Additional facts will be included as they become relevant to our discussion below.

STANDARD OF REVIEW

The Court Appeals has explained the standard of review for a circuit court's imposition of sanctions for the violation of a scheduling order:

> Just as there are sanctions for the violation of the discovery rules, sanctions are available for the violation of directives in scheduling orders, although they are not specified in any rule. As to the type or severity of sanctions applicable to a scheduling order violation, this Court has pointed to the governing principle that the appropriate sanction for a discovery or scheduling order violation is largely discretionary with the trial court, and that the more draconian sanctions, of dismissing a claim or precluding the evidence necessary to support a claim, are normally reserved for persistent and deliberate violations that actually cause some prejudice, either to a party or to the court. We therefore review the trial court's exclusion of [evidence in response to a party's failure to meet the requirements of the scheduling order] under an abuse of discretion standard.

> injuries. The first step in the analysis to define that relationship is an examination of cause-in-fact to determine who or what caused an action. The second step is a legal analysis to determine who should pay for the harmful consequences of such an action.

(Internal citations omitted) (internal quotations omitted).

Without opinion testimony from her causation expert, appellant was unable to establish proximate causation between the automobile accident and her injury. Therefore, appellant's claim failed.

Butler v. S &S Partnership, 435 Md. 635, 649-50 (2013) (internal citations omitted) (internal quotations omitted).

Though this standard is "highly deferential, a trial judge's discretion is not boundless." *Id*. at 650 (citations omitted). The Court of Appeals has directed circuit courts to utilize the "*Taliaferro* factors" when determining whether to exclude evidence. *Id*.

> Principal among the relevant factors which recur in the opinions are whether the disclosure violation was technical or substantial, the timing of the ultimate disclosure, the reason, if any, for the violation, the degree of prejudice to the parties respectively offering and opposing the evidence, whether and resulting prejudice might be cured by a postponement, and, if so, the overall desirability of a continuance. Frequently, these factors overlap. They do not lend themselves to a compartmental analysis.

Taliaferro, 295 Md. at 390-91. Additionally, we have "explained that a court must consider the parties' good faith compliance with the scheduling order." *Butler*, 435 Md. at 650 (citing *Naughton v. Bankier*, 114 Md. App. 641, 653 (1997)).

DISCUSSION

I. Motion in *Limine*

Appellant avers that the circuit court erred in granting appellee's Motion in *Limine* and in excluding Dr. Cochran's testimony because the motion was not properly raised, the motion should not have been granted, and because less severe sanctions should have been considered.

(a) Appellee's Motion in *Limine* was Timely and Properly Raised.

Appellant first alleges that the appellee "waived its right to exclude Dr. Cochran" because it did not follow the procedure for resolving a discovery dispute, as set forth in

Title 2 of the Maryland Rules. Specifically, appellant argues that in order to challenge appellant's disclosure of Dr. Cochran's report, appellee was required to file a "certificate describing the good faith attempts to discuss with the opposing attorney the resolution of the dispute . . . ," a "Motion to Compel pursuant to Maryland Rule 2-432(b)," and to do so "with reasonable promptness." Appellant contends that because appellee did not complete these steps, appellee waived its right to exclude Dr. Cochran's testimony.

We disagree with appellant. This is not a discovery dispute, but an alleged violation of the circuit court's scheduling order.

In *Attorney Grievance Com'n of Maryland v. Mixter*, the Court of Appeals explained the usual types of discovery disputes:

> Two general sorts of discovery disputes arise in the pretrial discovery process. The first is when discovery has been requested and the opponent responds but refuses to provide discovery at all or the extent requested. Often, such a dispute stems from a good faith difference of opinion as to whether the requested discovery is appropriate. The second situation, lamentably, is when the party from whom discovery has been sought has simply ignored the discovery request or intentionally refused even to respond to it.

441 Md. 416, 435 (2016) (citations omitted).

Here, the dispute between the parties did not arise out of a "good faith difference of opinion" as to what material should be disclosed during discovery, nor was it caused by one party's failure to respond to a discovery request. Rather, this dispute arose because appellant disclosed Dr. Cochran's report two days before trial was to commence, and almost two months after the final discovery deadline passed, in violation of the scheduling order. We are tasked with addressing that specific set of circumstances.

Separate from the discovery rules, scheduling orders are established by circuit courts "to move [cases] efficiently through the litigation process by setting specific dates or time limits for anticipated litigation events to occur." *Dorsey v. Nold*, 362 Md. 241, 255 (2001). Circuit courts are required, by Md. Rule 2-504(a)(1), to "enter a scheduling order in [every] civil action." "[A]lthough scheduling orders should not be applied in a manner that is 'unyieldingly rigid,' litigants must make good faith and reasonable efforts to substantially comply with the court's deadlines." *Maddox v. Stone*, 174 Md. App. 489, 49 (quoting *Naughton*, 114 Md. App. at 653). The Court of Appeals has explained the difference between a "discovery rule violation" and a "scheduling order violation" as follows:

> While discovery rule and scheduling order violations are inherently linked, the method to properly bringing such issues before the court are very different. As Respondents pointed out, a trial court has inherent authority to issue sanctions for a violation of a scheduling order by a party. This is true; a trial court has the discretion to control its docket and enforce its own orders. Because a scheduling order is a court order, a trial judge has the authority to issue sanctions when the scheduling order is not followed.
>
> On the other hand, discovery is a process between the parties, a process under which disputes may be waived or raised by the parties without court intervention. Thus, a trial judge does not have the inherent authority to order discovery sanctions . . . without a party moving for such an action, either by a motion to compel or a motion for discovery sanctions.

Butler, 435 Md. at 660-61 (internal citations omitted).

In this case, the circuit court's scheduling order required the parties to complete discovery by March 20, 2017. Appellant violated that requirement by failing to disclose her expert's report to appellee until two days before trial was to begin on June 16, 2017. In response, appellee immediately filed a motion in *limine* arguing that Dr. Cochran's

testimony should be excluded because appellant violated the scheduling order. As such, there is no discovery rule violation at issue here and contrary to appellant's contention, the procedural requirements for alleging a discovery rule violation do not apply.

Appellant also argues that appellee waived his right to file a motion in *limine*. Appellant cites two cases, *Food Lion v. McNeill*, 393 Md. 715 (2006), and *Butler*, 435 Md. at 635,[7] in support of her contention that appellee waived his right to exclude Dr. Cochran's testimony. We disagree.

Food Lion addressed "whether the testimony of an expert may be excluded at trial on the basis of a disclosure, made during discovery in response to interrogatories, that has neither been claimed nor determined to be a discovery violation, but that is challenged at trial as deficient for failing to provide information as required by Maryland Rule 2-402(f)(1)(A)." *Food Lion*, 393 Md. at 717. The Court of Appeals ultimately held that such testimony "cannot be excluded on this basis." *Id*.

In response to the Food Lion interrogatories, Ms. Neill timely provided the requested information about its causation expert. *Id*. at 724. Shortly thereafter, Ms. Neill supplemented its response by forwarding Food Lion a one-sentence letter from the expert stating his opinion that McNeill's injuries were a result of his work at Food Lion. *Id*. Food Lion did not at any time leading up to trial "challenge the adequacy or sufficiency of the appellee's response to [its] interrogatory[,]" nor did it file a motion to compel or a motion for summary judgment. *Id*. at 725. However, on the day of trial, Food Lion

[7] Although both cases arise out of discovery disputes, rather than a violation of a scheduling order, the cases are instructive.

"made an oral motion to prohibit [the expert] from testifying," arguing that Ms. Neill's disclosures insufficiently explained the basis of the expert's opinions. *Id*. at 725-26. The circuit court granted Ms. Neill's motion and excluded Respondent's expert from testifying. *Id*. at 727. On appeal, the Court of Appeals held:

> [a] party who answers a discovery request timely and does not receive any indication from the other party that the answers are inadequate or otherwise deficient should be able to rely, for discovery purposes, on the absence of a challenge as an indication that those answers are in compliance, and, thus not later subject to challenge as inadequate and deficient when offered at trial.

Id. at 736.

Here, appellant avers that because appellee did not contest her disclosures during the time for discovery, appellee should be precluded from excluding Dr. Cochran's testimony. However, the facts of the instant case are distinguishable from those in *Food Lion*, and *Food Lion* is not controlling.

Unlike in *Food Lion*, appellant made a substantive, substantial, and additional disclosure well after the scheduling order deadline passed. Namely, appellant provided appellee with a copy of the recently created causation expert's report a mere two days before trial. As a result, appellee moved to exclude Dr. Cochran's testimony as soon as reasonably possible upon receiving Dr. Cochran's report; appellee did not, as Petitioner did in *Food Lion*, delay his challenge to appellant's disclosures and therefore signal to appellant that such disclosures were satisfactory. Based on these differences, appellant's argument that *Food Lion* requires a ruling in his favor is not convincing.

Appellant also argues that applying *Butler* to this case would make it clear that appellee waived his right to exclude Dr. Cochran's testimony. In *Butler*, the circuit court's original scheduling order required that discovery was to be completed by September 9, 2009. *Butler*, 435 Md. at 641. On April 28, 2009, in his answer to Respondents' interrogatories, Petitioner disclosed the name of their expert, Dr. Klein, along with a generic description of the opinion he would provide. *Id*. at 654. About two months later "Petitioner sent a letter to Respondents supplementing his Answers to Interrogatories, and, specifically, reiterating and expounding upon Dr. Klein's expected opinion[.]" *Id*. at 654. On October 9, 2009, Respondents filed a "Motion to Exclude Testimony of Dr. Klein on the grounds that . . . Dr. Klein *lacked an adequate basis for his opinion* and should be precluded from testifying." *Id*. at 655 (emphasis added). Petitioner subsequently filed his response to Respondents' motion and attached Dr. Klein's affidavit.[8] *Id*. at 655-56. Notably, this was Respondents' first time seeing Dr. Klein's affidavit. *Id*.

"At the motions hearing . . . , the trial judge excluded Dr. Klein's report based on Petitioner's failure to adhere to Md. Rule 2-402, [as required by the scheduling order], because Dr. Klein's affidavit, which supplemented the 'boilerplate' answers to interrogatories, was untimely." *Id*. at 656. The trial judge explained that the Petitioner's initial disclosures related to Dr. Klein were "generic," and that the "belated opinions from experts … have absolutely and decisively changed the legal landscape of this case." *Id*.

[8] "The affidavit . . . elaborated on the causation of Petitioner's condition." *Butler*, 435 Md. at 656.

The Court of Appeals overturned the circuit court and held that the court erred in excluding Dr. Klein's report on discovery violation grounds. *Id*. at 662. The Court explained that the issue of Petitioner's discovery violation was not properly before the circuit court, as the Respondents' motion alleged only "substantive and evidentiary violations, but did not contain any reference to a [Md.] Rule 2-402 discovery violation." *Id*. at 659. The Court stated that, "[a] trial court may not, *sua sponte*, exclude an expert's report based on discovery violations … *without a party first moving* for an order to compel or filing a motion for discovery sanctions." *Id*. at 658 (emphasis added). Also, the Court held that the circuit court abused its discretion by excluding the testimony of Petitioner's causation expert, as such a sanction was too severe under the circumstances. *Id*. at 661-62. Finally, the Court reaffirmed its holding in *Food Lion* when it explained that a party which does not receive any indication from the other party that its discovery responses are insufficient should not be subject to a later challenge to the sufficiency of those responses. *Id*. at 660 (citing *Food Lion*, 393 Md. at 736).

Appellant argues that the circumstances of its expert disclosures were similar to those in *Butler*, and that appellee should therefore be precluded from excluding Dr. Cochran's testimony. Appellant contends that its original disclosure of the general opinions that Dr. Cochran would give at trial were similar to the "generic description" of Dr. Klein's opinions that the Petitioner gave to Respondents in *Butler*. Further, appellant asserts that the disclosure of Dr. Cochran's report, based on the IME that she conducted, was akin to the *Butler* Respondent's disclosure of Dr. Klein's affidavit in its response to Petitioner's motion to exclude Dr. Klein's testimony. Therefore, appellant avers, since

the circuit court's decision to exclude Dr. Klein's testimony was overturned in *Butler*, appellee should not be permitted to exclude the testimony of Dr. Cochran.

We are unpersuaded by appellant's argument which fails to recognize several critical distinctions in *Butler*. In *Butler*, the issue of Petitioner's alleged discovery violation was not properly before the circuit court, and the circuit court raised the discovery violations *sua sponte*. *See Butler*, 435 Md. at 659 (explaining that Respondents' motion alleged only "substantive and evidentiary violations, but did not contain any reference to a [Md.] Rule 2-402 discovery violation."); *see id*. at 658. Here, appellee explicitly raised the issue of appellant's untimely disclosure of Dr. Cochran's report in violation of the scheduling order in its Motion in *Limine*, and the issue was properly raised.

Additionally, in *Butler*, the disclosures that Petitioner made before the discovery deadline were sufficient to give Respondents notice of the specific conclusions that Dr. Klein would make to establish proximate causation.[9] At least partially in light of

[9] In Petitioner's Answers to Respondents' Interrogatories, Petitioner first disclosed their intention to call Dr. Klein, and stated that Dr. Klein "was an 'expert in pediatric lead poisoning' and was expected to testify to the extent and permanency of Petitioner's injuries due to exposure to lead paint." *Butler*, 435 Md. at 654. About two months later, but before the discovery deadline passed, Petitioner supplemented "his Answers to Interrogatories, and, specifically, reiterating and expounding upon Dr. Klein's expected opinion as follows:"

> Specifically, Dr. Klein will opine that the [Petitioner] was exposed to lead at all of the relevant addresses in this case, including the property owned and/or managed by [Respondents]. He is also expected to opine that the exposure took place during relevant time period(s) as alleged in the Complaint. He also is expected to opine that the [Petitioner's] lead poisoning and resulting learning disabilities, cognitive deficits, and other

Petitioner's disclosures, the Court concluded that completely excluding Dr. Klein's testimony would not have been an appropriate sanction for the circuit court to impose. *Id*. at 661-62. Here, unlike in *Butler*, the only disclosure that appellant made before the discovery deadline merely stated that Dr. Cochran would opine as to the "causal relationship" between appellee's negligence and appellant's injuries. There was no mention of a concussion as the nature of the injury, where in *Butler*, the expert was expected to opine that [Petitioner's] lead poisoning . . . was caused by exposure of [Petitioner] to lead at [Respondent's] property. *Butler*, 435 Md. at 654-55. This generic, boilerplate language falls far short of the disclosures made in *Butler* of specific conclusions.[10] As such, *Butler* does not apply in this case.

> issues set forth in the psychologist's report, as well as other injuries (including but not limited to permanent brain damage, neurobehavioral deficits, math and reading disabilities, mental anguish, failure to achieve academically, emotional overlay and frustration) were caused by [Petitioner's] exposure to lead at the [Respondents'] properties. He is also expected to opine that [Petitioner] suffered a loss of IQ points as a result of exposure to lead. He is also expected to opine that all of [Petitioner's] injuries are permanent and irreversible. He is also expected to testify that [Petitioner's] exposure to lead at the subject addresses, as alleged in the complaint was a substantial contributing factor to [Petitioner's] injuries. He will also testify as to the [Petitioner's] educational and vocational abilities, or lack thereof.
>
> [. . .]
>
> All of Dr. Klein's opinions will be made to a reasonable degree of medical probability.

Id. at 654-55.

[10] *See supra* n.6.

Finally, as explained above, this is not a case where appellee failed to challenge the sufficiency of appellant's expert disclosures, and then waited until an opportune time to raise such a challenge. *See id*. at 660 (citing *Food Lion*, 393 Md. at 736). Rather, appellee filed its Motion in *Limine* only *one day* after receiving Dr. Cochran's report from appellant. With these crucial differences in mind, we are not persuaded by appellant's argument that *Butler* precludes appellee from excluding Dr. Cochran's testimony.

As a final point, appellant contends that appellee's Motion in *Limine* was untimely because it was filed on June 15, 2017, two weeks after the scheduling order's deadline for such motions to be filed. This argument is without merit. Appellant did not send appellee a copy of Dr. Cochran's report until June 14, 2017, thirteen days after the deadline for motions in *limine* had passed, and eighty-six days after the discovery deadline set out by the scheduling order. The appellee then filed its Motion in *Limine* to exclude Dr. Cochran's testimony on June 15, 2017, the very next day. Given the date that appellee received Dr. Cochran's report, it would have been impossible for appellee to file its Motion in *Limine* before the deadline set forth in the scheduling order, and therefore the motion cannot be deemed untimely on this basis.

(b) The Circuit Court did not Abuse its Discretion by Granting Appellee's Motion in *Limine* and Excluding Dr. Cochran's Testimony.

Since we have determined that appellee's motion was properly raised, we next analyze the circuit court's decision to grant appellee's Motion in *Limine*. As explained above, courts apply the *Taliaferro* factors to determine whether to exclude evidence.

As a preliminary matter, we recognize that the circuit court did not expressly analyze each *Taliaferro* factor in making its determination that Dr. Cochran's testimony should be excluded. When ruling on the appellee's motion, the court summarily stated that "pursuant to *Taliaferro*, . . . this is not an appropriate case to grant a postponement[.]" Given the "well-established principle that 'trial judges are presumed to know the law and to apply it properly,'" we presume that the court conducted the proper *Taliaferro* analysis, and conclude that the court's statement did not constitute reversible error. *State v. Chaney*, 375 Md. 168, 179 (2003) (quoting *Ball v. State*, 347 Md. 156, 206 (1997); *cert denied*, 522 U.S. 1082 (1998)).

In *Lowery v. Smithsburg Emergency Med. Serv.*, a dispute over future lost wages, we applied the *Taliaferro* factors to analyze the exclusion of expert testimony. 173 Md. App. 662, 674 (2012). In that case, appellant responded to appellees' interrogatories by stating that it "[had] not yet retained any experts" and by giving an estimated amount of damages to be claimed at trial. *Id*. at 668. About four months later, and only one day before the deadline to name expert witnesses, appellant identified its expert witness. *Id*. at 668. Appellant also stated that its expert would give his opinion based on the deposition of a third party, which appellant was ultimately unsuccessful in carrying out. *Id*. at 668-69. Four months after the deadline for discovery had passed and only twelve days before trial was set to begin, appellant sent appellees its expert report. *Id*. at 669. Based on the late disclosure, appellees immediately filed a motion in *limine* to exclude the expert's testimony, which the circuit court granted. *Id*. We analyzed the *Taliaferro*

factors and upheld the circuit court's decision to exclude the expert's testimony. *Id*. at 670-678. *Lowery* is instructive and informs our decision here.

1. Technical or Substantial Violation

Appellee asserts that appellant's late disclosure was a substantial violation for two reasons. First, appellee notes that the scheduling order states, in Section 3(d): "Expert designations shall include all information specified in [Md.] Rule 2-402(g)(1)(A) and (B)." Appellee states that by incorporating Md. Rule 2-402(g)(1)(A) and (B) into the scheduling order, the court "explicitly [required] that expert designations be accompanied by statements of the substance of the expert's opinion(s), a summary of the grounds for that opinion, as well as any reports that support the expert's testimony." Appellee avers that by failing to include Dr. Cochran's report in her initial disclosure, appellant violated the requirements set forth by the scheduling order. Second, appellee argues that appellant's disclosure of Dr. Cochran's report only two days before trial constituted a substantial violation.

Though appellant does not explicitly address the issue of whether her disclosure was a technical or substantial violation of the discovery rules, she seems to argue that no violation occurred because appellee already had access to all of the information provided in Dr. Cochran's report.

We agree with appellee that the timing of appellant's disclosure constitutes a substantial violation. In *Lowery*, we stated that a substantial violation occurred where the appellant provided the appellees with notice of the expert's testimony during the discovery period and where the opinions in the expert's report were similar to the

information that the appellant previously provided to the appellees, but where the appellant did not disclose its expert's report until twelve days before trial, long after the deadline for discovery passed. *Lowery*, 173 Md. App. at 675. Similarly, here, appellant timely provided appellee with a general explanation of the type of opinions that Dr. Cochran would provide and the opinions in Dr. Cochran's report were similar to those that appellant originally provided to appellee, but Dr. Cochran's report was not provided to appellee until two days before trial and eighty-six days after the discovery deadline passed.

As in *Lowery*, appellant's untimely disclosure of Dr. Cochran's report constitutes a substantial violation. This factor weighs in appellee's favor.

2. Timing of the Disclosure

Appellant did not provide Dr. Cochran's report to appellee until June 14, 2017, two days before trial was set to commence. As in *Lowery*, we conclude that "[t]he delay in obtaining the expert report did not allow appellees sufficient time to prepare their defense and was therefore prejudicial." 173 Md. App. at 676.

Appellant asserts that the information regarding her injuries "was in [a]ppellee's hands for years," and that there was not any new information provided in Dr. Cochran's report. However, as we stated in *Lowery* in response to the same contention, "[appellant's] argument that [appellee] should have known what would be in their expert's report falls short of the mark of the report itself which, although not required, contained the bases upon which [Dr. Cochran] would render [her] opinion as to" the cause of appellant's injuries. *Id*. at 676. This factor weighs heavily in appellee's favor.

3. Reason for the Violation

Appellant asserts that Dr. Cochran conducted an IME close to the date of trial so that she could obtain "the most recent and accurate evaluation on [her] claim for permanency." Therefore, appellant argues that her disclosure of Dr. Cochran's report only two days before trial was to begin should be permitted.

We are not convinced by appellant's argument. While she attempts to justify the timing of their disclosure by alluding to her need for the most recent information, appellant also argues that the timing of the disclosure could not have been prejudicial to appellee because the information provided in Dr. Cochran's report merely "confirmed" what appellee already knew, and that such information "had not changed since [appellant's] deposition three months before trial, Dr. Cochran's designation six months before trial, or the demand letter Ms. Lyles's [sic] sent on October 20, 2015, prior to litigation."

If nothing had changed in the months leading up to trial, we do not see any reason why appellant could not have completed the IME before the deadline for discovery passed. As appellee stated in his brief, "[appellant] could have gotten the [IME] any time during discovery." Therefore, appellant's desire for the most "recent and accurate" information does not excuse the fact that the IME with Dr. Cochran took place a mere eleven days before trial, nor the fact that appellee received Dr. Cochran's report until only two days before trial.

This factor weighs heavily in appellee's favor.

4. Degree of Prejudice to the Parties

Appellant contends that appellee could not have been prejudiced by the disclosure of Dr. Cochran's report because the information contained in the report had been "in [a]ppellee's hands for years." In response, appellee argues that he was "prejudiced by the late disclosure because even if [appellee] was able to depose Dr. Cochran within the two days prior to trial, it would have been impossible to acquire an expert witness to counter Dr. Cochran, and generate an expert report within the limited timeframe." The circuit court seemingly agreed with appellee, as it asked appellant's counsel "[b]ut would he have been able to, after he deposed her, had the opportunity to get an expert witness?" and "how about his ability to have an expert rebut your expert's opinion or report?"

Given that it would have been nearly impossible for appellee to depose Dr. Cochran and obtain a new expert to rebut Dr. Cochran's opinions in the two days before trial, we agree with the circuit court and find that this factor weighs in appellee's favor. Furthermore, Dr. Cochran's report contains conclusions that were not previously in the medical records that were disclosed to appellee, most specifically those related to the "residual" impacts on appellant's brain function, and to the "changes in [appellant's] tandem gait" that indicate "mild residual balance and vestibular ocular motor dysfunction."

The four physicians that treated appellant in the fifteen months following her accident did not find physical or objective evidence that led them to diagnose appellant with a concussion; rather, their diagnoses were based predominantly on appellant's descriptions of her symptoms. Four years later, however, Dr. Cochran's conclusions rested, at least partially, on his physical observations of appellant. Thus, contrary to

appellant's contention at argument, Dr. Cochran's report was the first objective evidence of the injuries that appellant sustained in the automobile accident. That such a report was produced only two days before trial was extremely prejudicial to appellee.

Even if Dr. Cochran's report had contained the same information that was previously disclosed, given that the report was disclosed only two days before the start of trial, the degree of prejudice to the parties would be neutral. *See Lowery*, 173 Md. App. at 677 (explaining that since the conclusions reached in the untimely expert's report were similar to those that had been disclosed earlier, the degree of prejudice to the parties was neutral).

5. Whether Prejudice may be Cured by a Postponement

Appellant argues that the circuit court's decision to exclude Dr. Cochran's testimony was too severe given the circumstances. Appellant points out that in *Butler*, the Court of Appeals stated that "the more draconian sanctions, of dismissing a claim or precluding the evidence necessary to support a claim, are normally reserved for persistent and deliberate violations that actually cause some prejudice, either to a party or to the court." *Butler*, 435 Md. at 650 (citing *Admiral Mortgage, Inc. v. Cooper*, 357 Md. 533, 545 (2000)). Appellant contends that instead of excluding Dr. Cochran's testimony, the circuit court should have fashioned a less severe remedy, such as granting a postponement to allow appellee to prepare a response to Dr. Cochran's report.

In response, appellee asserts that in *Lowery*, this Court stated that "[w]e must weigh all of the factors to determine whether the [circuit] court abused its discretion." *Lowery*, 173 Md. App. at 677 (citations omitted). In weighing the five *Taliaferro* factors,

appellee states that we should find that the circuit court made the proper decision to exclude Dr. Cochran's testimony. We agree with appellee. Here, three factors weigh heavily in appellee's favor: the substantial nature of the violation, the timing of the disclosure, and the reason for the violation. The degree of prejudice weighs in favor of appellee, or in the alternative, is a neutral factor. Finally, given the fact that appellant could have scheduled the IME at any time during the discovery period, yet waited until two days before trial to disclose the contents of Dr. Cochran's report, we cannot say that appellant made a substantial effort at "good faith compliance with the scheduling order." *See Butler*, 435 Md. at 645.

As stated *supra*, we review the circuit court's grant of appellee's motion in *limine* for an abuse of discretion. *See Lowery*, 173 Md. App. at 674. We conclude that the circuit court did not abuse its discretion when it ultimately concluded that "pursuant to *Taliaferro*, . . . this is not an appropriate case to grant a postponement," nor when it granted appellee's motion in *limine* to exclude Dr. Cochran's testimony.

II. Appellant's Other Motions

In its brief, appellant raises questions related to the circuit court's grant of appellee's Motion for Summary Judgment, as well as the court's denial of appellant's Motion for Reconsideration, Motion for JNOV, Motion for a New Trial, Motion to Alter or Amend, and Motion for the Court to Use its Revisory Power. However, appellant's brief merely lists the applicable standard of review for each of those issues. It does not present any argument, or even any relevant legal authority, related to any of the motions listed above.

According to Md. Rule 8-504(a)(6), an appellant is required to set forth in the brief "[a]rgument in support of the party's position on each issue." Section 8-504(c) states that "[f]or noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case . . . ." The Court of Appeals has explained that "if a point germane to the appeal is not adequately raised in a party's brief, the [appellate] court may, and ordinarily should, decline to address it." *DiPino v. Davis*, 354 Md. 18, 56 (1999); *see also Health Servs. Cost Review Comm'n v. Lutheran Hosp. of Md., Inc.*, 298 Md. 651, 664 (1984) ("This Court has consistently held that a question . . . not argued in an appellant's brief is waived or abandoned and is, therefore, not properly preserved for review.").

In that appellant failed to adequately brief its arguments on the circuit court's grant of the appellee's Motion for Summary Judgment, as well as its arguments on the court's denial of its Motion for Reconsideration, Motion for JNOV, Motion for a New Trial, Motion to Alter or Amend, and Motion for the Court to Use its Revisory Power, we decline to address any of these issues on appeal.

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