Circuit Court for Baltimore County
Case Nos. C-03-CV-19-004503
C-03-CV-19-004483

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1172 & 1174

September Term, 2021

JAMES GRIFFIN

v.

BENJAMIN J. PETRILLI, ET AL.

JAMES GRIFFIN

v.

ROBERT BOOLHORST

Kehoe,
Reed,
Alpert, Paul E.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: July 18, 2022

These appeals arise from two lawsuits filed by James Griffin, appellant, in the Circuit Court for Baltimore County relating to the same accident in which a vehicle he was operating collided with a fallen tree limb on a public roadway. The appellees, Benjamin Petrilli and his wife, Elisabeth Radomsky (No. 1172), and Robert Bollhorst[1] (No. 1174), own land abutting the public roadway near the site where the tree limb fell. The cases were consolidated in the circuit court "for purposes of discovery and trial[.]"[2] The circuit court granted appellees' motions for summary judgment on all five counts of Griffin's second amended complaint. He appeals, presenting five questions for our review,[3] which we have combined and rephrased as one:

[1] Bollhorst's name is misspelled as "Boolhorst" in the official case caption. We use the correct spelling in this opinion.

[2] Although the appeals are not consolidated in this Court, we exercise our discretion to decide them in a single opinion because the relevant facts and proceedings are nearly identical, and the issues are interrelated.

[3] The questions as posed by Griffin are:

> 1. Are there material facts in dispute?
>
> 2. Do[] [appellees] have any duty of any kind regarding Griffin?
>
> 3. Does HIPAA, or HG §4-301 to 309 prohibit attempts to access medical records without the patient's consent?
>
> 4. Was it lawful to benefit from subpoenas commanding activities prohibited by Governor Hogan's COVID-19 March, 2020 Executive Orders?
>
> 5. Was it appropriate for the Circuit Court to dismiss Griffin's Complaint?

I. Did the circuit court err as a matter of law by granting summary judgment in favor of appellees?

We answer "No" to that question and shall affirm the judgments of the circuit court.

FACTS AND PROCEEDINGS[4]

The facts in this case are relatively straightforward. Just after midnight on November 1, 2019, Griffin was driving a Ford Taurus owned by an unidentified third person[5] westbound on Hydes Road in northern Baltimore County. It was raining and had stormed before midnight. After crossing a small concrete bridge over a stream, Griffin's vehicle collided with a large tree limb on the roadway. The tree limb had not been present at that location six hours earlier, when Griffin traversed Hydes Road in an easterly direction.

The vehicle driven by Griffin sustained damage, but he was able to continue driving several miles before calling a tow truck. He did not seek medical attention for any injuries sustained in the accident.

Around 2:09 a.m. on November 1, 2019, the Baltimore County Police Department received a report about the fallen tree limb. An officer responded to the scene, observed the tree limb, which had knocked down an electric line, and contacted Baltimore Gas & Electric ("BGE") to address the downed line. The officer placed cones and flares in the

[4] We present the facts as alleged in Griffin's second amended complaint, captioned "July 6, 2020 Amended Complaint," filed on July 7, 2020, with supplementation from other documents in the record.

[5] Griffin refused to identify the owner of the vehicle during his deposition and in his answers to interrogatories.

roadway and remained there until 4 a.m. BGE personnel arrived sometime between 4 a.m. and 6 a.m.

The location of the accident was between 5004 Hydes Road, owned by Bollhorst, and 5006 Hydes Road, owned by Petrilli and Radomsky. Each property is located north of Hydes Road and is improved by a dwelling accessible from a driveway off Hydes Road. The northern side of Hydes Road is heavily wooded.

On November 3, 2019, Griffin returned to the scene of the accident to take photographs and measurements. He observed the tree from which the limb had fallen. While at the scene, Griffin encountered Bollhorst as he drove down his driveway. According to Griffin, during a brief conversation, Bollhorst made several relevant statements: 1) that the tree from which the limb fell was on his property; 2) that his electricity went out on October 31, 2019 around 10 p.m.; 3) that between that time and 4 a.m. the following day, Bollhorst was near the site of the accident "intermittently" (though he did not witness it); and 4) that he observed the tree limb in the roadway at some point.

The Lawsuits

On December 3, 2019, Griffin filed suit against Bollhorst. The next day, he filed suit against Petrilli and Radomsky. The cases were consolidated for discovery and trial by order signed on April 23, 2020.

The operative complaint is the second amended complaint filed on July 8, 2020, asserting five counts. In addition to the above stated facts, Griffin alleged that the vehicle

he was operating on November 1, 2019 sustained extensive damage, including destruction of the front bumper, air conditioning condensing radiator, transmission oil cooler, and radiator. He alleged that he suffered bodily injury to his "head, neck, back, hands, arms and legs." By the time of the filing of the second amended complaint, appellees had developed through discovery the fact that Griffin was treated by a dentist on January 24, 2020 and received an estimate in excess of $13,000 to repair four cracked teeth that he alleged were injured as a direct result of the accident.

In Count I, Griffin asserted a claim for negligence. He alleged that appellees had a duty as landowners to periodically inspect the trees on their property and keep their premises in "such a condition as to not endanger travelers in their lawful use of the highway[.]" He further alleged that upon being put on notice that a tree limb may have or had in fact fallen, the appellees were under a duty not to "wil[l]fully refuse to know" or "avoid making reasonable inquiry[] about a foreseeable danger" and to exercise reasonable care to prevent injury to travelers by alerting authorities or taking other actions to warn drivers about the danger, or by removing the tree limb from the roadway.

According to Griffin, Petrilli and Radomsky were on notice around 10 p.m. on October 31, 2019 when their electricity went out that a tree limb may have fallen and that they had a duty to make reasonable inquiry. Had they done so, they would have discovered the tree limb on their property and encroaching on Hydes Road. They breached duties owed to Griffin by not alerting authorities, placing cones or flares at the scene, and/or trying to remove the limb from the roadway. Griffin alleged that Bollhorst,

by his own admission, was aware of the loss of electricity and the fallen tree limb around 10 p.m. on October 31, 2019. He likewise breached a duty of care owed to Griffin by not alerting authorities, taking steps to warn motorists of the hazard, or attempting to remove the limb from the roadway because it was foreseeable that it could cause personal injury.

In Count II, Griffin asserted a claim for nuisance *per se* premised on an "unlawful encroachment upon a public road" and in Count III, he asserted a claim for trespass based upon appellees' "dominion and control" over the tree limb.

Count IV asserts a claim for invasion of privacy arising during discovery in this case. According to Griffin, subpoenas issued by request of counsel for Petrilli and Radomsky, directing Erie Insurance Exchange and Keith Boenning, DDS to produce Griffin's medical records were unlawful under the "Confidentiality of Medical Records" subtitle of the Health-General Article, the Health Insurance Portability and Accountability Act ("HIPAA"), and the federal regulations implementing HIPAA. Griffin reasoned that Bollhorst was "equally culpable" for the violations after the cases were consolidated for discovery.

Count V, captioned "Additional Negligence," asserts that counsel for Petrilli and Radomsky violated Governor Hogan's March 23, 2020 Executive Order ("the Executive Order") prohibiting "non-essential activities and travel" due to the COVID-19 pandemic by causing subpoenas to be served on the Driver Records Unit of the Maryland Motor Vehicle Administration ("MVA"), Sprint Spectrum, L.P., and the Boenning dental practice. Griffin asserts that counsel for appellees used the power of the circuit court to

command third parties "to commit prohibited acts[,]" *i.e.*, to travel to produce the requested records and/or to go to the workplace to make requested copies, in violation of the Executive Order. He alleges that Bollhorst "act[ed] in concert" with counsel for Petrilli and Radomsky to violate the Executive Order and/or failed to take steps to terminate the unlawful subpoenas.

In all five counts, Griffin alleged that appellees acted with actual malice and sought punitive damages.

Motions for Summary Judgment

On October 23, 2020, Petrilli and Radomsky, on the one hand, and Bollhorst, on the other, moved for summary judgment and adopted each other's motions in whole or in part. The motions were supported by Griffin's deposition testimony, answers to interrogatories, and other materials. Appellees argued that no duty is imposed on landowners in rural and wooded areas to inspect trees. Petrilli and Radomsky argued that they had no liability given that Griffin testified at his deposition that the tree from which the limb fell was on Bollhorst's property and there was no evidence that they were on notice that a tree limb fell at any time before the accident. Alternatively, they maintained that Griffin failed to present any evidence supporting his claims for damages given that he did not own the car he was driving and his medical expert did not offer any opinion as to the cause of his cracked teeth.

Bollhorst denied that he had made a statement that he observed the tree limb in the roadway prior to Griffin's accident but argued that even assuming the truth of that fact,

he did not owe a duty to warn or to remove the tree limb both because it fell onto the public road and/or the Petrilli/Radomsky property and because, by Griffin's admission, it was too large to be removed without heavy equipment.

Appellees further argued that Griffin did not make out a claim for trespass based upon the fallen tree limb in the roadway because there was no evidence that the appellees acted intentionally or that Griffin had a possessory interest in the Ford Taurus. They maintained, moreover, that the temporary encroachment of Hydes Road occasioned by the fallen tree branch did not amount to a nuisance as a matter of law.

Appellees asserted that the lawful use of subpoenas to obtain Griffin's medical records and other discoverable materials was not actionable as an invasion of privacy or negligence. There likewise was no evidence supporting an inference that appellees acted with evil motive or an intent to injure Griffin, making his claim for punitive damages improper.

The Circuit Court's Rulings

On September 1, 2021, the court held a hearing on the motions for summary judgment and, two days later, issued written decisions granting summary judgment on all five counts of the second amended complaints. On the negligence count, the court reasoned that appellees owed no duty to Griffin as a matter of law. First, it determined that "Maryland follows the prevailing rule that the owner of rural land is not required to inspect it to make sure that every tree is safe, and will not fall over into the public highway." (Citing *Hensley v. Montgomery Cnty.*, 25 Md. App. 361 (1975).) Further, the

court ruled that a duty to warn or remove the hazard did not arise because the tree limb was "laying on public property" and was too heavy to remove without commercial machinery and because the appellees and Griffin were strangers to one another.

Turning to the nuisance and trespass counts, the court reasoned that there was no evidence that appellees interfered with Griffin's use and enjoyment of his property or exerted any physical act or force upon the vehicle operated by Griffin. It followed that summary judgment was warranted on those counts.

There likewise was no evidence supporting liability for invasion of privacy or additional negligence. The court reasoned that appellees reasonably sought Griffin's medical records in discovery through appropriate means because he put his medical condition at issue. In any event, the subpoenaed medical records never were provided by the third parties and, thus, there was no injury. Appellees also could not be liable in negligence for the actions of their attorneys to the extent that the subpoenas violated the Executive Order.

Even if Griffin was entitled to relief on any of the counts of the second amended complaint, the court ruled that he had not adduced any evidence that appellees acted with actual malice and, consequently, his claim for punitive damages failed.

These timely appeals followed. We shall include additional facts as necessary to our discussion of the issues.

STANDARD OF REVIEW

Summary judgment is appropriate when the material facts in a case are not subject to genuine dispute and the moving party is entitled to judgment as a matter of law. Md. Rule 2-501(f). This Court reviews the grant of a motion for summary judgment without deference, "examining the record independently to determine whether any factual disputes exist when viewed in the light most favorable to the non-moving party and in deciding whether the moving party is entitled to judgment as a matter of law." *Steamfitters Loc. Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704, 746 (2020) (citing *Rowhouses, Inc. v. Smith*, 446 Md. 611, 630 (2016)). "A fact is material if the outcome of the case depends on how the factfinder resolves the disputed fact." *Ritter v. Ritter*, 114 Md. App. 99, 104 (1997) (citation omitted).

DISCUSSION

A. Negligence (Count I)

Griffin asserts a two-pronged theory of negligence. First, appellees were under a duty to inspect the trees on their property that abutted Hydes Road to ensure that the trees were not in a condition to fall into the roadway, causing harm to motorists. Second, after the tree limb fell, appellees were under a duty to warn authorities and motorists and/or to remove the limb. With respect to Petrilli and Radomsky, he argues that they knew or should have known that a tree limb fell around 10 p.m. on October 31, 2019 when their electricity went out. Griffin maintains that Bollhorst, by his own admission, was on actual notice of the fallen tree limb. Because we agree with the circuit court that

appellees were not under a duty to inspect, to warn, or to remove the limb, we affirm the grant of summary judgment on this count.

As this Court has explained:

> To make out a cause of action for negligence, a plaintiff must prove that the defendant owed "him (or to a class of which he is a part)" a duty of care; that the duty was breached; that the breach was a proximate cause of the harm suffered; and damages. *Jacques v. First Nat'l Bank of Md.*, 307 Md. 527, 531 (1986). Thus, "[d]uty is a foundational element in a claim of negligence." *Pace v. State*, 425 Md. 145, 155 (2012). Whether a duty of care exists is a pure question of law for the circuit court to decide in the first instance, and for this Court to review *de novo*. *See Valentine v. On Target, Inc*., 353 Md. 544, 549 (1999) (existence *vel non* of a legal duty of care in tort is a question of law subject to *de novo* review). *See also Patton v. United States of America Rugby Football*, 381 Md. 627, 636 (2004).

Cash & Carry Am., Inc. v. Roof Sols., Inc., 223 Md. App. 451, 461 (2015).

"A duty of care is 'an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another.'" *Id*. (quoting W. Page Keeton *et al., Prosser and Keeton on the Law of Torts*, § 53, at 356 (5th ed. 1984)). In assessing whether a tort duty should be recognized under particular facts, we consider, among other things:

> "[T]he foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered the injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and the consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost and prevalence of insurance for the risk involved."

Steamfitters Loc. Union, 469 Md. at 728 (quoting *Ashburn v. Anne Arundel Cnty.*, 306 Md. 617, 627 (1986)). "Among these factors, foreseeability weighs the heaviest." *Id.* (citation omitted).

Maryland adheres to the majority rule that "neither a possessor of land, nor a vendor, lessor, or other transferor, is liable for physical harm caused to others outside of the land by a natural condition of the land." Restatement (Second) of Torts, § 363(1) (1965).[6] Urban landowners are excepted from that rule in one important respect: "A possessor of land in an urban area is subject to liability to persons using a public highway for physical harm resulting from his failure to exercise reasonable care to prevent an unreasonable risk of harm arising from the condition of trees on the land near the highway." *Id*. at § 363(2).

This Court addressed the interplay of these principles in *Hensley*, 25 Md. App. at 362, where a man driving to his job on a public roadway was seriously injured by a tree limb that fell through his windshield. The tree from which the limb fell was dead. *Id*. at 363. The public road provided access to a new subdivision that housed between 100 and

[6] The Restatement (Third) of Torts (2012) altered this rule, replacing it with § 54(b):

> For natural conditions on land that pose a risk of physical harm to persons or property not on the land, the possessor of the land
>
> (1) has a duty of reasonable care if the land is commercial; otherwise
>
> (2) has a duty of reasonable care only if the possessor knows of the risk or if the risk is obvious.

Though no Maryland decisions have adopted the new rule, even if it applied, here there was no evidence that the risk that the limb would fall was known to appellees or was obvious.

125 families and also was used by workers, like the plaintiff, employed in the development of the remaining houses. *Id*. at 362-63. The plaintiff sued Montgomery County and a landowner adjacent to the road where the limb fell. *Id*. at 363. At trial, the court directed a verdict in favor of the defendants and the plaintiff appealed. *Id*.

As pertinent, this Court explained that "[t]o impose a liability upon the landowner, [the plaintiff] must have shown not only that the tree constituted a danger to the lawful users of the abutting public road, but that the owner of the land upon which it stood was cognizant of the deteriorated condition of the tree or should have been cognizant of its condition." *Id*. at 364. The evidence, viewed in a light most favorable to the plaintiff, showed that there was "no actual notice that the condition of the tree constituted a danger to travelers on the road, either express or implied[.]" *Id*. Recognizing the prevailing "rural rule," which provides that "the owner of rural land is not required to inspect it to make sure that every tree is safe, and will not fall over into the public highway and kill a man," this Court considered whether that rule was equally applicable to a suburban forest. *Id*. at 366-67 (cleaned up). We declined to extend the "urban inspection responsibility to suburban forests" and held that the circuit court had not erred by directing judging in favor of the adjacent landowner. *Id*. 369-70.

We return to the case at bar. Here, viewing the evidence on summary judgment in the light most favorable to Griffin, as the non-moving party, we deduce the following facts: that the tree from which the limb fell was located in a heavily wooded area in a rural area abutting Hydes Road; that Griffin travelled the road frequently and never had

occasion to notice the tree or the limb; that the limb fell after dark and while it was still raining; and that the limb was so large as to make it impossible to move without first cutting it up.

Given the rural character of the area, as depicted in the photographs and described by Griffin at deposition, appellees were not under a duty to inspect the trees on their properties abutting Hydes Road to ensure that they were not a danger to passing motorists. Consistent with the prevailing rural rule, the burden on property owners like Petrilli, Radomsky, and Bollhorst of requiring routine inspection of thousands of trees is too great to justify such a duty and the circuit court correctly held that no duty could be imposed as a matter of law.

Secondarily, however, we must determine whether any duty arose after the tree limb fell onto the public road and before Griffin collided with it. As to Petrilli and Radomsky, there was no evidence that they were on notice that the tree limb fell before the accident. We decline Griffin's invitation to speculate that the loss of power to their home put them on notice that a tree limb may have fallen. Given that they were under no duty to inspect their trees for defects, we reject the suggestion that a duty to inspect the road adjacent to their property for obstructions arose in the middle of a stormy night.

With respect to Bollhorst, assuming, as we must at this procedural juncture, that he observed the tree limb in the roadway sometime after 10 p.m. on October 31, 2019, we conclude that he was not under a duty to alert authorities, to warn motorists of the hazard or to remove it. As set out above, the prevailing rule is that as "a possessor of land,"

Bollhorst was not "liable for physical harm caused to others outside of the land by a natural condition of the land." Restatement (Second) of Torts, § 363(1). The comments to that section make clear that "the natural growth of trees" is a "natural condition of land." *Id.* at cmt. b. Further, upon breaking, the tree limb fell onto the public roadway (and the Petrilli/Radomsky property). Bollhorst's observance of it did not give rise to a duty to warn others or to remove the limb as the law does not impose a general duty to act to protect others.[7] *See* Restatement (Second) of Torts, § 314 ("The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action."); *Barclay v. Briscoe*, 427 Md. 270, 295 (2012) (recognizing that Maryland follows the general rule set out in § 314 of the Restatement (Second) of Torts). Bollhorst, like Griffin, was not obligated to act to protect the world at large from the risk of colliding with a tree limb on a public road.

B. Nuisance (Count II)

Griffin contends that the fallen tree limb amounted to a public nuisance because it encroached upon a public roadway and caused injury to him. A public nuisance is a "nuisance which has a common effect and produces a common damage." *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 82 n.5 (2013) (cleaned up). "The obstruction

[7] We emphasize that there was no evidence that Bollhorst knew or should have known in the "very dark[] and rain[y]" conditions on October 31, 2019 into November 1, 2019, that the tree limb fell from a tree on his property. Griffin testified at deposition that there were thousands of trees along the roadway and that the limb fell on the Petrilli/Radomsky property and the public road.

of a public highway is a public nuisance[.]" Restatement (Second) of Torts, § 821B, cmt. g. To be liable for a public nuisance, a defendant's "interference with the public right" must either be intentional or, if unintentional, "otherwise actionable under the principles controlling liability for negligent or reckless conduct or for abnormally dangerous activities." *Id.* at cmt. e. Here, there is no dispute that appellees did not intentionally cause the tree limb to fall onto Hydes Road. For the reasons already discussed, the obstruction also was not actionable under principles of negligence, nor was there any evidence supporting a claim that appellees acted in a reckless fashion. Consequently, there can be no liability for nuisance and summary judgment properly was entered on Count II of the second amended complaint.

C. Trespass (Count III)

"In order to prevail on a cause of action for trespass, the plaintiff must establish: (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." *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 445 (2008) (cleaned up) (emphasis added). Here, as the circuit court reasoned, there was no evidence that appellees engaged in a physical act or force against the vehicle operated by Griffin, rather he drove his car into a fallen tree limb. It follows that the action for trespass fails.

D. Invasion of Privacy (Count IV)

The "tort of invasion of privacy is not just one tort, but encompasses four different types of invasion tied together under one common title. One form of invasion of privacy

is the tort of unreasonable intrusion upon the seclusion of another[.]" *McCauley v. Suls*, 123 Md. App. 179, 190 (1998) (quotation marks and citation omitted). Intrusion upon seclusion has been defined as: "'The intentional intrusion upon the solitude or seclusion of another or his private affairs or concerns that would be highly offensive to a reasonable person.'" *Furman v. Sheppard*, 130 Md. App. 67, 73 (2000) (quoting *Pemberton v. Bethlehem Steel Corp.*, 66 Md. App. 133, 163 (1986)).

Here, Griffin maintains that Petrilli and Radomsky intruded upon his seclusion by their use of compulsory process to seek his medical records in this litigation "prior to obtaining [his] authorization[.]" He contends that Bollhorst "act[ed] in concert" with Petrilli and Radomsky in improperly seeking the records. Because the record belies these assertions, we conclude that the circuit court did not err by entering summary judgment in favor of appellees.

As pertinent, § 4-306(b)(6) of the Health-General Article ("Health-Gen.") of the Maryland Code permits a health care provider to disclose a medical record "in accordance with compulsory process" if they receive a written assurance from the requestor that the "person in interest has not objected to the disclosure of the designated medical records within 30 days after the [required] notice was sent[.]" Consistent with this provision, on February 6, 2020, counsel for Petrilli and Radomsky requested issuance of a subpoena and attached notice of deposition to Erie Insurance Exchange seeking information about prior claims for bodily injury made by Griffin, and on March 9, 2020, requested issuance of a subpoena and attached notice of deposition to the Boenning

dental practice seeking Griffin's treatment records. On each subpoena, counsel checked the box certifying compliance with Health-Gen. § 4-306 and any other applicable law relative to the disclosure of medical records. Counsel explained in its opposition to Griffin's later filed motions to quash that it was the practice of her law firm to first serve a copy of the subpoena and the required notice on the person whose records were being requested and, if no objections were filed, to then serve the subpoena along with a "Certificate of Satisfactory Assurances" in compliance with Health-Gen. § 3-406(b)(6)(i)(1)(B). She noted that the production dates on each subpoena were more than 60 days beyond the date of issuance. Thus, the subpoenas were not served on the third parties, but only on Griffin.

After Griffin moved to quash both subpoenas, Petrilli and Radomsky withdrew the Erie subpoena and the circuit court denied that motion to quash as moot. Petrilli and Radomsky opposed the motion to quash the Boenning subpoena, however, arguing that it sought relevant and discoverable medical records.

By order entered April 19, 2020, the circuit court ruled that the dental records sought were relevant and discoverable but, consistent with Maryland law, could not be produced by the third party if Griffin objected. If Griffin did not consent to disclosure, however, Petrilli and Radomsky could move to exclude Griffin from offering any expert testimony pertaining to the alleged dental injury. The court directed Griffin to file a notice within 20 days if he consented to the disclosure and, if not, the court would grant a protective order. Griffin responded that he would consent to the disclosure of treatment

records from his January 24, 2020 office visit, but not his prior dental records. The court entered a "Memorandum to the File" reiterating that all of Griffin's dental records were discoverable. The record does not reflect that Griffin thereafter consent to disclosure of the dental records.

Plainly, because Griffin was pursuing damages for injuries to his teeth that he alleged he sustained in the accident, his dental records were discoverable. Petrilli and Radomsky, through counsel, complied with the Health-General Article by putting Griffin on notice of his right to object to the production of those records, a right he exercised. The use of compulsory process consistent with the law is not actionable as an invasion of privacy and, in any event, no intrusion occurred because Griffin timely objected, preventing the disclosure of the records.

E. Additional Negligence (Count V)

Griffin contends that the circuit court erred by granting summary judgment on his claim that appellees and/or their counsel violated the Executive Order by subpoenaing various records at a time when non-essential travel and activities were prohibited. This contention lacks merit. To the extent that the Executive Order barred compliance with a subpoena issued by appellees, the subpoenaed third party could have moved to quash or sought a protective order. The alleged violation is not actionable by Griffin under principles of negligence or otherwise.

F. Punitive Damages

In Maryland, "'in order to recover punitive damages in any tort action . . ., facts sufficient to show actual malice must be pleaded and proven by clear and convincing evidence.'" *1st Team Fitness, LLC v. Illiano*, 228 Md. App. 137, 152 (2016) (emphasis omitted) (quoting *Scott v. Jenkins*, 345 Md. 21, 29 (1997)). Actual malice is defined as "conduct of the defendant characterized by evil motive, intent to injure, ill will, or fraud[.]" *Owens-Illinois v. Zenobia*, 325 Md. 420, 460 (1992). There was no evidence that appellees, who were strangers to Griffin, acted with the evil motive necessary to support a claim for punitive damages and the circuit court did not err by granting summary judgment on those claims.

APPEAL NO. 1172, SEPT. TERM, 2021, JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

APPEAL NO. 1174, SEPT. TERM 2021, JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.