Circuit Court for Anne Arundel County
Case No. C-02-CV-23-000980

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1275

September Term, 2024

ELIZABETH E. SMITH

v.

STEVEN G. WHITE, ET AL.

Graeff,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.

Filed: January 21, 2026

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

Elizabeth Smith, appellant, filed, in the Circuit Court for Anne Arundel County, a lawsuit against Steven White and Deborah White (collectively the "Whites") alleging negligence and strict liability following an incident in which Ms. Smith was bitten by the Whites' dog. At trial, the court permitted the jury to consider whether Ms. Smith was barred from recovery under the defense of assumption of risk. Ultimately, the jury found that, although the Whites were strictly liable, Ms. Smith had assumed the risk of her injuries and was not entitled to damages.

In this appeal, Ms. Smith presents two questions for our review. For clarity, we have consolidated those questions into a single question, which we have rephrased as[1]:

> Did the trial court err or abuse its discretion in permitting the jury to consider the defense of assumption of risk?

Finding no error or abuse of discretion, we affirm.

BACKGROUND

Ms. Smith and the Whites became acquainted through Ms. White's mother, who worked in Ms. Smith's salon. In 2020, the Whites contacted Ms. Smith, who had experience training dogs, to ask if she would help train their dog, Dex. Ms. Smith ultimately agreed, and in October 2020, she went to the Whites' home to meet Dex and go

[1] Ms. Smith phrased the questions as:

1. Did the trial court err by submitting the issue of assumption of risk to the jury and thus abuse its discretion by including an assumption of risk question on the verdict sheet?

2. If the court erred by submitting the issue of assumption of risk to the jury and thus abused its discretion by including an assumption of risk question on the verdict sheet, was that error prejudicial?

over some basic commands. Ms. Smith returned to the Whites' home a few weeks later to continue with the training. During that visit, Dex bit Ms. Smith several times on the arm and hand, resulting in multiple puncture wounds.

Ms. Smith subsequently filed a lawsuit against the Whites. She alleged, among other things, that the Whites were strictly liable for her injuries pursuant to § 3-1901 of the Courts and Judicial Proceedings Article of the Maryland Code.[2] The Whites denied liability and asserted an affirmative defense of assumption of risk.

Trial

At trial, Ms. Smith testified that she first began working with canines on her childhood farm, where she and her grandfather trained hunting beagles. Ms. Smith later joined the United States military, where she worked with canines in the Provost Marshal's Office. After being honorably discharged from the military, Ms. Smith worked for the sheriff's office in Anne Arundel County for thirteen years. Over that time, Ms. Smith founded a canine unit and trained police canines in the detection of explosive devices. Ms. Smith is certified to handle canines in the detection of explosives and narcotics.

Ms. Smith testified that, in the spring of 2020, Ms. White made comments to her regarding Dex. Ms. White told Ms. Smith that Dex had been "pulling on the leash" and "jumping onto counters." Ms. White also stated that Dex "wasn't obeying . . . basic commands" and "was being not obedient." Sometime later, Ms. White sent Ms. Smith a

[2] Under that statute, a dog owner is liable for injuries caused by the dog if the owner knew or should have known that the dog had a propensity to engage in the particular conduct that caused the injuries. Md. Code, Cts. & Jud. Proc. § 3-1901.

text message asking if she would train Dex. Ms. White reported that Dex "snatches food from people, and counters, and trash"; that he "just knocks people over to get by"; that he was "a very rough dog, not the snuggly kind"; and that, once he comes off his leash, "he's wild."

Ms. Smith testified that she eventually agreed to work with Dex and that she subsequently visited the Whites' home to meet Dex and speak with the Whites. Ms. Smith testified that the entire visit lasted "15 or 20 minutes" and that Dex did not make any aggressive actions during the visit. Ms. Smith stated that the Whites reiterated their previous concerns regarding Dex. Ms. Smith added that the Whites "also mentioned that the neighbor had hung her hands over the fence and that Dex had snapped at her." Ms. Smith stated that she "wasn't too concerned about it[.]"

Ms. Smith testified that she returned to the Whites' home a few weeks later to continue working with Dex. During that visit, Ms. Smith put Dex on a leash and showed Ms. White some basic commands. While Ms. Smith was in the process of picking up the leash, Dex lunged at her and bit her several times on the arm and hand. Ms. White eventually secured Dex, and Ms. Smith went to the kitchen to wash out her wounds. At Ms. Smith's request, Ms. White phoned Dex's veterinarian to confirm that Dex was up-to-date on his rabies vaccine. During that conversation, the veterinarian informed Ms. White that "they weren't surprised that the dog had bitten someone" and that "they had to muzzle the dog every time the dog came in." When Ms. White relayed that information to Ms.

Smith, Ms. Smith responded: "[Y]ou never told me any of this." Ms. Smith testified that she would not have agreed to work with Dex if she had known he had a propensity to bite.

Michael Rommel, Dex's veterinarian, testified that Dex's records reflected "concerns" about Dex's behavior and included a note indicating that Dex had tried to "eat" the "face" of an employee. Dr. Rommel testified that Dex's records also included a note indicating that "the owner" had called and reported that Dex had been "snapping at her" when she touched a lesion Dex had on his skin.

Tera Herman, a neighbor of the Whites, testified regarding an incident that had occurred while she and Ms. White were standing outside of their houses talking. At the time, Ms. White had Dex on a leash. According to Ms. Herman, she reached her hand toward Dex's face, and he "nipped" her. Ms. Herman testified that Dex's teeth came into contact with her skin and that Ms. White witnessed the incident.

Ms. White testified that, prior to the incident in which Dex bit Ms. Smith, Ms. White informed Ms. Smith about the "incident with Tera[.]" During cross-examination, Ms. White was confronted with her answers to interrogatories, in which she gave conflicting information regarding what was communicated to Ms. Smith. Later, during redirect, Ms. White was asked if "it was communicated to Ms. Smith that there was an incident with the neighbor, where the neighbor had gotten lunged at, nipped at, or bit[.]" Ms. White answered that question in the affirmative.

Jury Instructions and Verdict Sheet

At the conclusion of the evidence, the parties submitted proposed verdict sheets for the trial court's review. Ms. Smith's proposed verdict sheet asked the jury to consider whether the Whites were strictly liable for Ms. Smith's injuries and whether Ms. Smith was entitled to damages. The Whites' verdict sheet omitted any mention of strict liability and instead asked whether the Whites' negligence caused Ms. Smith's injuries and whether Ms. Smith assumed the risk of her injuries.

After reviewing the proposed verdict sheets, the trial court found that the issue of strict liability had been generated by the evidence and therefore should be submitted to the jury. The court found that the issues of negligence and assumption of risk had also been generated by the evidence and should also be submitted to the jury. When the court asked if the parties had any objections, Ms. Smith's counsel argued that assumption of risk should not be included on the verdict sheet. Counsel argued that the Whites had failed to present sufficient evidence to establish the defense of assumption of risk. Ultimately, the court ruled that assumption of risk would be included on the verdict sheet for the jury's consideration.

Later, the court instructed the jury on strict liability and assumption of risk as follows:

> The owner of a domestic animal is responsible for injuries or damages caused by that animal if the owner knew or by the use of reasonable care should have known that the animal had a propensity, inclination, or tendency to engage in the particular conduct that caused the alleged injuries or damages.

* * *

> A Plaintiff cannot recover damages if the Plaintiff has assumed the risk of injury. A person assumes the risk of injury [i]f that person knows and understands or must have known and understood the risk of an existing danger and voluntarily chooses to encounter that danger.

The Whites did not object to the court's instruction. At the conclusion of the instructions, the court asked if the parties were satisfied with the instructions as given. The Whites' counsel responded in the affirmative.

In the end, the jury found that the Whites were strictly liable for the attack on Ms. Smith, but that Ms. Smith had assumed the risk of her injuries. The jury awarded no damages.

This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

Parties' Contentions

Ms. Smith contends that the trial court erred in submitting the issue of assumption of risk to the jury. She argues that the evidence did not establish that she knew and appreciated that Dex had a propensity to bite prior to her being bitten.

The Whites contend that Ms. Smith's appellate challenge is not preserved because she did not move for judgment at the close of all of the evidence, and, at the close of the court's instructions, she expressly approved of the instructions as given. The Whites assert that preservation of the issue requires one or the other. They further contend that, regardless, there was sufficient evidence presented at trial to justify the court's submission of assumption of risk to the jury.

Preservation

We begin with the Whites' preservation argument. As noted, the Whites argue that Ms. Smith failed to preserve her appellate argument because she expressly approved of the court's instructions to the jury. We disagree.

To preserve an argument concerning what law should govern a jury's deliberations, a party must either move for judgment of acquittal or object to the jury instructions. *Gittin v. Haught-Bingham*, 123 Md. App. 44, 49 (1998). Furthermore, under Maryland Rule 2-520, "[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." Md. Rule 2-520(e). Where, however, a party lodges a clear objection before instructions are given, and where restating that objection after the instructions are given would be futile or useless, non-compliance with Rule 2-520 may be excused. *Haney v. Gregory*, 177 Md. App. 504, 510-20 (2007).

Here, Ms. Smith clearly objected to the assumption of risk instruction prior to the court's instructions to the jury, and the court unequivocally overruled the objection and determined that an assumption of risk instruction was proper because such an instruction had been generated by the evidence. At that point, the court's decision was clear, and any further objection would have been futile.[3]

[3] Relying on *Choate v. State*, 214 Md. App. 118 (2013), the Whites claim that Ms. Smith's affirmative approval of the court's instructions constituted a waiver. We disagree. In *Choate*, the appellant agreed at trial that the disputed instruction should be given and then told the court that he was satisfied with the instructions, and we held that those actions

The Whites also claim that Ms. Smith waived this issue because she failed to specifically challenge the court's instructions in her appellate brief. We disagree. Although Ms. Smith's appellate brief focuses on the verdict sheet, it is clear that Ms. Smith's appellate arguments are directed, generally, at the court's decision to submit assumption of risk to the jury and that those arguments encompass the court's decision to instruct the jury on that point of law. In any event, whether Ms. Smith's argument is directed at the verdict sheet or the instruction, the analysis is the same. *See Reiss v. Am. Radiology Servs., LLC*, 241 Md. App. 316, 333 (2019) (noting that, where a party has challenged a court's decision to include a particular point of law on a verdict sheet, the question is whether there is any admissible evidence to support the issue).

As such, the issue was preserved for our review and is properly before us. We now turn to the merits of Ms. Smith's claims.

Analysis

"In Maryland, litigants are entitled to have their theory of the case presented to the jury, provided the theory is a correct exposition of the law and is supported by the evidence." *Collins v. Nat'l R.R. Passenger Corp.*, 417 Md. 217, 229 (2010). In addition, "a trial court must properly instruct the jury on a point of law that is supported by some evidence in the record." *Boone v. Am. Mfrs. Mut. Ins. Co.*, 150 Md. App. 201, 225 (2003). Thus, "[a] party is generally entitled to present his [or] her theory of the case through a

constituted a waiver of any objection to the instruction. *Id.* at 128-30. Here, Ms. Smith did not agree that the assumption of risk instruction should be given to the jury. To the contrary, she expressly opposed such an instruction.

requested instruction when there is evidence before the jury to support the theory." *Mayor and City Council of Baltimore v. Hart*, 167 Md. App. 106, 128 (2006).

"'The threshold determination of whether the evidence is sufficient to generate the desired instruction is a question of law for the judge.'" *Rainey v. State*, 252 Md. App. 578, 591 (2021) (quoting *Bazzle v. State*, 426 Md. 541, 550 (2012)). In reviewing that determination, we look at the evidence in a light most favorable to the requesting party, *Rainey*, 252 Md. App. at 591, and we assess whether the requesting party "'produced that minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired.'" *Hollins v. State*, 489 Md. 296, 310 (2024) (quoting *Dishman v. State*, 352 Md. 279, 292 (1998)). "This threshold is low, in that the requesting party must only produce 'some evidence' to support the requested instruction." *Page v. State*, 222 Md. App. 648, 668 (2015). The "some evidence" test is not confined by a specific standard and "calls for no more than what it says – 'some,' as that word is understood in common, everyday usage." *Bazzle*, 426 Md. at 551 (quotation marks omitted) (quoting *Dykes v. State*, 319 Md. 206, 216-17 (1990)). Moreover, the source and weight of the evidence is immaterial. *Dashiell v. State*, 214 Md. App. 684, 696 (2013). "As long as the relied-upon evidence, if believed by a rational juror, supports the proponent's claim, the proponent has met the burden of showing that the requested jury instruction applies to the facts of the case." *Hollins*, 489 Md. at 312.

In the present case, the Whites asked the trial court to submit their theory of the case – assumption of risk – to the jury. Ms. Smith objected and argued, as she does here, that such a theory was not supported by the evidence. The question here, then, is whether there was "some evidence" to generate an instruction on assumption of risk.[4]

"In Maryland, assumption of risk is an affirmative defense that completely bars a plaintiff's recovery." *Warsham v. James Muscatello, Inc.*, 189 Md. App. 620, 639 (2009). "The assumption of risk doctrine 'is grounded on the theory that a plaintiff who voluntarily consents, either expressly or impliedly, to exposure to a known risk cannot later sue for damages incurred from exposure to that risk.'" *Id.* (quoting *Crews v. Hollenbach*, 358 Md. 627, 640 (2000)). To establish an assumption of risk defense, "'the defendant must show that the plaintiff: (1) had knowledge of the risk of the danger; (2) appreciated that risk; and (3) voluntarily confronted the risk of danger.'" *S & S Oil, Inc. v. Jackson*, 428 Md. 621, 643 (2012) (quoting *ADM P'ship v. Martin*, 348 Md. 84, 90-91 (1997)).

The doctrine of assumption of risk may be applicable, as a matter of law, if "'the undisputed evidence and all permissible inferences therefrom *clearly* establish that the risk of danger was *fully* known to and *understood* by the plaintiff.'" *Poole v. Coakley &*

[4] The Whites claim that Ms. Smith waived this issue because she failed to specifically challenge the court's instructions in her appellate brief. We disagree. Although Ms. Smith's appellate brief focuses on the verdict sheet, it is clear that Ms. Smith's appellate arguments are directed, generally, at the court's decision to submit assumption of risk to the jury and that those arguments encompass the court's decision to instruct the jury on that point of law. In any event, whether Ms. Smith's argument is directed at the verdict sheet or the instruction, the analysis is the same. *See Reiss v. Am. Radiology Servs., LLC*, 241 Md. App. 316, 333 (2019) (noting that, where a party has challenged a court's decision to include a particular point of law on a verdict sheet, the question is whether there is any admissible evidence to support the issue).

Williams Constr., Inc., 423 Md. 91, 123 (2011) (emphasis in original) (quoting *Schroyer v. McNeal*, 323 Md. 275, 283 (1991)). Otherwise, "it is for the jury to determine whether a plaintiff knew of the danger, appreciated the risk, and acted voluntarily." *Warsham*, 189 Md. App. at 640. Stated differently,

> [w]here there is a dispute whether the risk is assumed or not, that question is usually left to the jury . . . because the role of the fact finder is to assess the credibility of the evidence and draw a conclusion from among the inferences which may be reasonably drawn from that evidence.

Poole, 423 Md. at 124 (quotation marks and citations omitted).

Against that backdrop, we hold that the trial court did not err in instructing the jury on assumption of risk and permitting the jury to consider that theory in reaching its verdict. The evidence adduced at trial established that Ms. Smith was an experienced dog trainer and that her interactions with Dex, including the interaction in which she was bitten, occurred while she was acting in her capacity as a dog trainer. Prior to agreeing to train Dex, Ms. Smith was told that Dex had been "pulling on the leash" and "jumping onto counters"; that he was "snatch[ing] food from people, and counters, and trash"; that he "knock[ed] people over to get by"; and that he was "a very rough dog" and "wild." According to Ms. Smith's testimony, she was also told "that the neighbor had hung her hands over the fence and that Dex had snapped at her." Lastly, Ms. White testified that, prior to Ms. Smith agreeing to train Dex, Ms. White told Ms. Smith "that there was an incident with the neighbor, where the neighbor had gotten lunged at, nipped at, or bit[.]"

Viewing that evidence in a light most favorable to the Whites, we conclude that there was "some evidence" to support an instruction on assumption of risk. The Whites

approached Ms. Smith for the express purpose of having her train Dex, whom the Whites described as wild, rough, and disobedient. The Whites also told Ms. Smith about at least one incident in which Dex had either bitten or attempted to bite a neighbor. Armed with that knowledge, Ms. Smith voluntarily chose to train Dex and, in so doing, was bitten. Given those circumstances, the jury could have reasonably concluded that Ms. Smith, an experienced dog trainer, was aware of the risk of being bitten by Dex, that she appreciated the risk, and that she voluntarily confronted that risk. *See Crews*, 358 Md. at 653-54 (holding that a gas company worker, who was injured in a gas explosion while he was attempting to repair a gas leak, had assumed the risk of his injuries because the gas explosion was the sort of risk that "might reasonably be expected to exist" for someone hired to fix a gas leak).

Because there was "some evidence" to support an assumption of risk instruction, the Whites were entitled to have that theory of the case presented to the jury. That there may have been other evidence, or even overwhelming evidence, to refute that theory is irrelevant. There was, at the very least, a "minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired." *Hollins*, 489 Md. at 310 (quotation marks and citation omitted). Importantly, that evidence included testimony indicating that Ms. Smith knew that Dex had a propensity to bite. Any dispute as to the credibility or weight of the evidence, including any dispute as to whether Ms. Smith *actually* knew and appreciated the risk, was a matter for the jury to decide. *See S & S Oil*, 428 Md. at 647-48

("Whether to believe [conflicting testimony] is an issue of credibility, and credibility is a question for the trier of fact.").

Ms. Smith attempts to draw comparisons between the facts of her case and those present in *Slack v. Villari*, 59 Md. App. 462 (1984), *Moura v. Randall*, 119 Md. App. 632 (1998), and *Finneran v. Wood*, 249 Md. 643 (1968), but those cases are inapposite. None of those cases involved victims who were experienced dog trainers and who were attacked while training a dog. Furthermore, in each of those cases, the issue was sufficiency of evidence for purposes of strict liability and they turned on their facts. *E.g.*, *Finneran*, 249 Md. at 648; *Moura*, 119 Md. App. at 652; *Slack*, 59 Md. App. at 476-77. Here, not only was there evidence that Dex had exhibited a propensity to bite people on other occasions, but there was further evidence that Ms. Smith had been informed about at least one of those occasions before she agreed to train Dex.

In sum, sufficient evidence was presented to show that Ms. Smith had knowledge of the risk of the danger, appreciated the risk, and voluntarily confronted the risk. As such, the court did not err in instructing the jury on assumption of risk or in submitting that theory of the case to the jury.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.