Circuit Court for Calvert County
Case No. C-04-CV-23-000367

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1343

September Term, 2024

ROXANNE HAWKINS

v.

KUNAL AJMERA, ET AL.

Graeff,
Nazarian,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: January 27, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This appeal arises from a medical malpractice action filed in the Circuit Court for Calvert County by Roxanne Hawkins against three doctors who treated her late husband, Ronald Hawkins, during two hospital stays in 2021. Before filing her complaint, Ms. Hawkins asked the hospital to send her Mr. Hawkins's medical records from those hospital stays. The hospital sent Ms. Hawkins just under 200 pages of records, and she retained an expert to review those records and prepare a report opining on whether the doctors' treatment of Mr. Hawkins deviated from the proper standard of care.

During discovery, the doctors provided Ms. Hawkins with the full set of medical records from Mr. Hawkins's 2021 hospital stays, a total of more than 1,000 pages. Ms. Hawkins failed later on in discovery to make her expert available for deposition before the deadline in the court's scheduling order. The doctors filed a motion asking the circuit court to strike the expert as a sanction for the discovery violation and to grant summary judgment in their favor. Ms. Hawkins filed a motion to exclude the medical records produced during discovery, arguing that the doctors had fabricated the records to refute the findings in her expert's report. The circuit court denied Ms. Hawkins's motion, and it denied the doctors' motion and ordered a post-deadline deposition. Ms. Hawkins filed notices purporting to appeal from both decisions.

After Ms. Hawkins again failed to produce her expert for deposition on the date ordered, the court revisited and granted the doctors' motion to strike and for summary judgment. Ms. Hawkins appeals now from the circuit court's order granting the doctors' motion, arguing that her pending interlocutory appeals divested the court of its jurisdiction

over the case. She contends also that the court abused its discretion when it denied her motion to exclude the full set of medical records and when it ordered her to produce her expert for a post-deadline deposition. We affirm.

I. BACKGROUND

In 2021, Mr. Hawkins, who suffered from paralysis due to a stroke that occurred six years prior, received medical care at Calvert Health Medical Center ("Calvert Health") on two occasions. He was admitted initially in February for issues related to a seizure disorder, then admitted again in June for treatment for a urinary tract infection, dehydration, and acute renal insufficiency. As Ms. Hawkins alleged in the complaint underlying this case, Mr. Hawkins sustained various injuries during his stays at Calvert Health. *First*, Ms. Hawkins alleged that twice when she visited Mr. Hawkins during his February stay, she saw that he "had not been bathed and blood was running from his mouth." *Second*, Ms. Hawkins alleged that when Calvert Health discharged Mr. Hawkins in February, she noticed he had three bed sores and skin scraped off his shoulders, neck, and toes. *Finally*, Ms. Hawkins reports that when Calvert Health discharged Mr. Hawkins in June, he had a bruised and swollen eye and an IV still in his arm. Ms. Hawkins contended that these injuries resulted from the failure of Calvert Health medical personnel to provide Mr. Hawkins with the appropriate level of care.

Because of her concerns about her husband's injuries, and before any litigation was initiated, Ms. Hawkins asked Calvert Health to provide her with Mr. Hawkins's medical records from his two hospital stays. In response to her request, Calvert Health sent Ms.

Hawkins just under 200 pages of records. Believing she'd received all of Mr. Hawkins's records, Ms. Hawkins then retained Dr. Matthew Grayson Tuck, a licensed physician, to review those records and prepare an expert report.

In July 2022, Dr. Tuck produced a report in which he concluded that Drs. Kunal Ajmera, Vincent Okeke, and Mohamed Tourkey (the "Doctors") and the members of Mr. Hawkins's nursing team failed to administer the applicable level of medical care when they treated Mr. Hawkins during his two 2021 stays at Calvert Health.[1] Dr. Tuck opined that the Doctors deviated from the appropriate standard of care by failing to place the paralyzed Mr. Hawkins on "decubitus ulcer preventative measures" (*e.g.*, by repositioning him every two hours and ensuring proper hygiene and nutrition) to prevent bed sores; by failing, after Mr. Hawkins developed a bed sore, to implement a management plan for the existing wound and to prevent the development of additional sores; and by failing to remove the IV from his arm before discharging him after his June stay.

In July 2023, Ms. Hawkins filed a medical malpractice complaint against Calvert Health, the Doctors, and sixteen members of Mr. Hawkins's nursing team. The complaint attached Dr. Tuck's report as an exhibit to support the claim that the defendants were negligent in caring for Mr. Hawkins. In November 2023, the circuit court granted partial

[1] According to Dr. Tuck's report, the documents that formed the basis of his expert opinion included the "complete records of Ronald Hawkins Calvert Health Medical Center, admission dates February 12, 2021-February 21, 2021, and June 2, 2021-June 7, 2021"; an EMS dispatch report from June 2, 2021; and the affidavits of Ms. Hawkins and Christine Wade, the nurse assigned by the Veterans Administration to care for Mr. Hawkins after he became paralyzed.

summary judgment in favor of several members of the nursing team, and in May 2024, Ms. Hawkins dismissed her claims against Calvert Health and the remaining nurses voluntarily. As of May 2024, only her claims against the Doctors remained.

The circuit court issued a scheduling order for the case on October 19, 2023. The order set a May 31, 2024 deadline for the parties to conduct the depositions of all witnesses, including experts, and a July 1, 2024 deadline for the completion of all discovery. During the discovery period, in January 2023, the Doctors provided Ms. Hawkins with the complete set of medical records from Mr. Hawkins's 2021 hospital stays, which totaled over 1,000 pages. Later, between February and May 2024, the Doctors' counsel contacted Ms. Hawkins's counsel repeatedly to schedule Dr. Tuck's deposition, but they received no response.[2] Counsel for Ms. Hawkins eventually responded with available dates on May 22, 2024, and the parties agreed to hold the deposition on June 12. However, on June 10, Ms. Hawkins's counsel emailed the Doctors' counsel to cancel the impending deposition, stating that the scheduling order's May 31 deadline had passed.

On June 21, 2024, the Doctors filed a motion to strike Dr. Tuck as an expert witness and for summary judgment. In their motion, the Doctors made two arguments relevant to this appeal. *First*, they argued that striking Dr. Tuck would be an appropriate sanction for Ms. Hawkins's failure to make him available for deposition during discovery.

[2] Mr. Hawkins passed away in late 2023, and the parties agreed to afford Ms. Hawkins some time to grieve the death of her husband. This mourning period may have contributed to the delay in scheduling Dr. Tuck's deposition, although the Doctors state that they began making their requests for potential dates after the mourning period had ended.

Alternatively, the Doctors asserted that the court should strike Dr. Tuck because there was no factual basis for his opinion that they had breached the applicable standard of care, because Mr. Hawkins's medical records revealed that they had taken every measure recommended in Dr. Tuck's report to prevent the development of bed sores. The Doctors contended further that if the court did strike Dr. Tuck, they would be entitled to summary judgment on Ms. Hawkins's malpractice claim because under Maryland law, she couldn't maintain a medical malpractice claim without an expert witness.

A week later, Ms. Hawkins opposed the Doctors' motion. She asserted that striking Dr. Tuck as a discovery sanction would be inappropriate because the scheduling order prohibited the parties from agreeing to a post-deadline deposition without a court order and because it was the Doctors' counsel's failure to keep track of the scheduling order that caused the parties to schedule a deposition after the deadline. Ms. Hawkins contended also that the original medical records Calvert Health sent her in response to her 2021 request supported Dr. Tuck's opinion that the Doctors failed to provide Mr. Hawkins with the appropriate level of care. She claimed that the Doctors "manufactured" the 1,000 pages of records they provided during discovery. Accordingly, she argued, the Doctors couldn't use those records to undermine the factual basis of Dr. Tuck's report and to justify the court in striking him as a witness.

On August 9, Ms. Hawkins filed several motions *in limine*, two of which are relevant to this appeal. In the *first* motion, she asked the court to issue an order "commanding and directing" the Doctors to refrain from mentioning or relying on any medical records at trial

except those that Calvert Health sent her in response to her 2021 request. In the *second* motion, she alleged again that the Doctors had manufactured the records they provided during discovery to counter the findings in Dr. Tuck's report. She asked the court to exclude those records from being entered into evidence at trial.

The court held a hearing on August 19, 2024 to rule on the parties' various motions, starting with Ms. Hawkins's motions *in limine*. As an initial matter, the court found Ms. Hawkins's assertion that the Doctors had manufactured the records they provided during discovery "to be without merit." It noted that she'd put forward no evidence to support her claim of fabrication "other than the simple fact that these records were not provided after the initial request for medical records before the onset of litigation," and that the Doctors had produced the records at an appropriate time during discovery. The court refused to punish the Doctors for Calvert Health's failure to provide Ms. Hawkins with a full set of medical records before the onset of litigation by excluding those records at trial, and it denied Ms. Hawkins's motions.

The court then turned to the Doctors' motion to strike and for summary judgment. *First*, the court recognized that the delay in scheduling Dr. Tuck's deposition "was primarily due to Ms. Hawkins's nonresponsiveness" to the Doctors' multiple requests within the discovery period for a list of dates when Dr. Tuck was available. Although it found the parties equally to blame for failing to monitor the deadlines in the scheduling order, it also found that Ms. Hawkins's cancellation of the post-deadline deposition two days before the agreed upon date "was not in good faith." A more appropriate course of

action, the court noted, would have been for the parties to hold the deposition as scheduled and then file a joint motion to amend the scheduling order. Despite concluding that Ms. Hawkins had failed to comply substantially with her obligation to make Dr. Tuck available for deposition, the court declined to strike him as a sanction for that discovery violation. Instead, it found that ordering the deposition to occur would remedy both the "severe" prejudice Ms. Hawkins would suffer if the court struck her expert witness (which "would be the death of the case") and the prejudice the Doctors would suffer if the court permitted Dr. Tuck to testify at trial without giving them an opportunity to depose him. The court ordered Ms. Hawkins to provide the Doctors with three potential deposition dates falling between August 19 and September 3 (a week before trial was scheduled to begin).

Next, the circuit court addressed the Doctors' argument that it should strike Dr. Tuck as an expert because the full set of Mr. Hawkins's medical records undermined the factual foundation of Dr. Tuck's report, which he prepared based on the incomplete records sent to Ms. Hawkins by Calvert Health in 2021. In his report, Dr. Tuck opined that the Doctors acted negligently by failing to implement decubitus ulcer preventative measures when treating Mr. Hawkins. The court found that the complete set of medical records contradicted this primary claim of negligence by showing that the Doctors had implemented measures to prevent the development of bed sores. However, the court noted, Dr. Tuck's report contained allegations of substandard care beyond the failure to implement such measures, including failures to prescribe appropriate medication; to remove the IV from Mr. Hawkins's arm before discharging him in June; and to instruct

Ms. Hawkins adequately on how to care for her husband after his discharge from the hospital. Because the complete set of Mr. Hawkins's records didn't "speak directly to these claims," and because it couldn't say with certainty that Dr. Tuck would change his opinion upon reviewing the complete set of records, the court found that a genuine dispute of material fact remained. Accordingly, the court denied the Doctors' motion to strike Dr. Tuck as an expert and for summary judgment.

After the hearing, but on the same day, the circuit court entered an order reducing its rulings to writing. Despite the court's direction that Ms. Hawkins provide the Doctors with three potential dates for Dr. Tuck's deposition that fell between the date of the order and September 3, she informed the Doctors that Dr. Tuck's earliest date of availability was September 10, the first day scheduled for trial. At a status hearing on September 4, the court agreed to allow the parties to hold Dr. Tuck's deposition on September 10; to hold a motions hearing on September 12; to vacate the original trial dates; and to begin the trial on September 16.

On September 6, Ms. Hawkins filed an interlocutory appeal from the circuit court's August 19 order denying her motions *in limine* and mandating the post-discovery deposition of Dr. Tuck, claiming that the order "permit[ted] certain erroneous procedural and evidentiary advantages" to the Doctors. On September 9, the circuit court memorialized its rulings from the September 4 status hearing in a written order. That same day, Ms. Hawkins noted an interlocutory appeal from *that* order, claiming this time that the circuit court had no authority to issue the order because her September 6 appeal had

divested it of its jurisdiction over the case. Ms. Hawkins's counsel then emailed the Doctors' counsel to inform them that he would not make Dr. Tuck available for his deposition the following day, maintaining that the circuit court was divested of jurisdiction while the case was on appeal.

The circuit court held the planned motions hearing on September 12. Neither Ms. Hawkins nor her counsel attended. At the hearing, after noting that neither it nor the Appellate Court of Maryland had issued any stay of the proceedings, and therefore that Ms. Hawkins's interlocutory appeals didn't divest the circuit court of jurisdiction, the court revisited the Doctors' motion to strike and for summary judgment. This time, following a lengthy discussion of its reasoning, the court granted the Doctors' request to strike Dr. Tuck as an expert witness. And because the court recognized that there could be no genuine dispute of material fact without Dr. Tuck's expert testimony, it entered summary judgment in favor of the Doctors. Ms. Hawkins appeals now from the court's order granting the Doctors' motion to strike and for summary judgment.

II. DISCUSSION

Ms. Hawkins presents two issues on appeal, which we rephrase and split into three:

1. Did the circuit court abuse its discretion when it denied her motion to exclude the medical records produced by the Doctors during discovery?

2. Did the circuit court abuse its discretion when it ordered her to make Dr. Tuck available for deposition after the deadline set by the scheduling order?

3. Did the circuit court err in granting the Doctors' motion to strike Dr. Tuck as

an expert and for summary judgment?[3]

First, we hold that the circuit court's denial of Ms. Hawkins's motion to exclude the

[3] Ms. Hawkins phrased the Questions Presented in her brief as follows:

1) Is it irreparably harmful, prejudicial, and beyond-the-area-of-the-lower-court's discretion to order and conduct a hearing on a case-determinative matter that is on interlocutory appeal, and when Appellants absent themselves from the hearing (due to the appeal, detrimental reliance, and certain obligations of the Maryland Attorneys' Rules of Professional Conduct), the circuit court grants Appellees' motion for dismissal of the Appellants' entire case?

2) When the circuit court does not recognize how case-determinative its decisions are regarding {i} permitting an after-discovery-deadline deposition of the opposing party's expert in a medical malpractice case, {ii} allowing over one thousand falsely manufactured medical records into the case to counter Appellants' medical expert, {iii} not applying the legal principal of detrimental reliance, and {iv} ordering a hearing thereafter to consider dismissal of Appellants' case despite its case-determinative decisions being on appeal, has the lower court acted beyond its area of discretion?

In their brief, the Doctors present the following four questions:

1) Was the Circuit Court divested of power from entering summary judgment where Appellant had filed a notice of interlocutory appeal just days before entry of the order?

2) Did the Circuit Court abuse its discretion in ordering that Appellants produce their expert for deposition where Appellants had ignored requests for the expert's deposition for months, where an agreed upon date had been reached, and where Appellants summarily canceled the deposition?

3) Did the Court abuse its discretion in holding that Mr. Hawkins' full medical record produced by the hospital more than a year and a half before trial was admissible where Appellants sought its exclusion by claiming it was "manufactured" because it had not been produced by the former defendant hospital prior to the onset of litigation?

4) Did the Circuit Court abuse its discretion in striking Appellants' expert Dr. Tuck where the Circuit Court more than once provided additional deadlines to make Dr. Tuck available for deposition and where Appellants' never produced the expert for discovery deposition even where they were permitted to do so just six days prior to trial?

medical records provided during discovery did not constitute an abuse of discretion. *Second*, we hold that the circuit court also acted within its discretion when it ordered Ms. Hawkins to make Dr. Tuck available for a post-deadline deposition. *Third*, and finally, we hold that the circuit court did not err when it granted the Doctors' motion to strike and for summary judgment. And for those reasons, we affirm the judgment.[4]

A. The Circuit Court Didn't Abuse Its Discretion When It Denied Ms. Hawkins's Motion To Exclude The Medical Records The Doctors Provided During Discovery.

First, Ms. Hawkins argues that the circuit court erred by denying her motion to

[4] In addition, we dismiss Ms. Hawkins's appeals from the circuit court's August 19 and September 9 orders. Subject to a few narrow exceptions, a party to a circuit court action may appeal only from a final judgment by that court. Md. Code (1974, 2020 Repl. Vol.), § 12-301 of the Courts & Judicial Proceedings Article. A final judgment is one that resolves all claims against all parties to an action. *Wash. Suburban Sanitary Comm'n v. Bowen*, 410 Md. 287, 295 (2009) (*citing Nnoli v. Nnoli*, 389 Md. 315, 323 (2005). Interlocutory orders, including discovery orders, don't resolve all claims against all parties and typically aren't appealable. *Nnoli*, 389 Md. at 324; *Md. Bd. of Physicians v. Geier*, 451 Md. 526, 549 (2017) ("This Court has consistently held that discovery orders, ordinarily, are not appealable prior to a final judgment terminating the case in the trial court."). The circuit court's September 6 and September 9 orders were entirely interlocutory in nature—they resolved discovery, scheduling, and evidentiary issues, not any of the claims or issues in the case. Because they don't fall under any recognized exceptions to the final judgment rule, they aren't appealable in themselves.

That all said, the issues Ms. Hawkins sought to raise in those appeals are before us anyway because Ms. Hawkins also appealed from the circuit court's order granting the Doctors' motion to strike and for summary judgment. That order *is* an appealable final judgment, *Doehring v. Wagner*, 311 Md. 272, 277 (1987) (finding that an order by the circuit court granting a motion for summary judgment "was appealable as a final judgment"), and we can address Ms. Hawkins's arguments about the propriety of the circuit court's interlocutory orders on review of the summary judgment order. *See Smiley v. Atkinson*, 12 Md. App. 543, 549 (1971) (noting that interlocutory orders issued by a circuit court in the exercise of its discretion are reviewable on appeal from the final judgment), *aff'd*, 265 Md. 129 (1972).

exclude the medical records the Doctors produced during discovery. "[T]he admission of evidence is committed to the considerable and sound discretion of the trial court." *Merzbacher v. State*, 346 Md. 391, 404 (1997). As a result, we don't disturb the circuit court's decision to admit or exclude evidence unless it has somehow abused its broad discretion. *Gasper v. Ruffin Hotel Corp. of Md., Inc.*, 183 Md. App. 211, 224 (2008) (*citing Bittinger v. CSX Transp., Inc.*, 176 Md. App. 262, 273 (2007)), *aff'd sub nom.*, *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594 (2011). We see no such abuse here.

Ms. Hawkins recounts that before initiating this medical malpractice action, she asked Calvert Health to send her Mr. Hawkins's medical records. Once she obtained the records, she retained Dr. Tuck and asked him to prepare an expert report based on his review of those records. These "original, true medical records" supplied the factual basis for Dr. Tuck's expert opinion that the Doctors provided substandard medical care to Mr. Hawkins and, consequently, they "form[ed] the foundation of [Ms. Hawkins's] entire case." During discovery, however, the Doctors (suddenly, she says) produced "over one thousand pages of falsely manufactured medical records, records which were not provided to [Ms. Hawkins] by the hospital" in response to her pre-litigation request. Ms. Hawkins asserts that the circuit court abused its discretion and "pre-killed" her case by "put[ting]" these "new," fabricated records, which undermined Dr. Tuck's expert opinion, "into the case mere days before trial."

As the Doctors point out, though, and as the circuit court recognized at the August 19 motions hearing, Ms. Hawkins presented no evidence to substantiate her claim that the

Doctors manufactured the records they produced during discovery. Instead, she contends that those records must have been fabricated because (1) Calvert Health didn't send them to her in response to her pre-litigation request in 2021 and (2) they refute the conclusions in Dr. Tuck's expert report "point by point." Both statements may be true, and in fact appear to be true, but there was (and remains) no reason to believe that the records were manufactured.

The more plausible story, as the circuit court found, is that for reasons unknown, Calvert Health sent Ms. Hawkins only *some* of Mr. Hawkins's medical records in response to her pre-litigation request and then provided *all* the records on request by the Doctors during discovery. We acknowledge Ms. Hawkins's frustration at having filed a lawsuit in reliance on an expert report that was based on what she believed was a complete set of Mr. Hawkins's medical records, only to be provided with additional records during discovery that largely refuted her expert's opinions. But contrary to Ms. Hawkins's assertion, the circuit court didn't "force" the complete set of records into the case on the eve of trial. As the circuit court found, the Doctors provided the records to her early in the discovery process, about a year-and-a-half before trial was scheduled to begin. Although it wouldn't have been ideal for Ms. Hawkins to expend additional resources to have Dr. Tuck review the full set of Mr. Hawkins's medical records and, if necessary, revise his expert opinion, the timing of the Doctors' disclosure gave her plenty of time to do so before trial. And true, it's possible that Dr. Tuck would have found that the full set of records either largely or entirely contradicted his initial opinion that the Doctors breached the applicable standard

of care when treating Mr. Hawkins. But although this was an understandably disheartening prospect, it was one that she and her counsel needed to face rather than hiding behind unsubstantiated allegations of fabrication.

Ultimately, the circuit court declined to punish the Doctors, who provided Ms. Hawkins all the medical records from Mr. Hawkins's 2021 stays at Calvert Health at the appropriate time during discovery, for the hospital's failure to send her a complete set of records before litigation began. That decision wasn't an abuse of discretion.

B. The Circuit Court Didn't Abuse Its Discretion When It Ordered Ms. Hawkins To Let The Doctors Depose Dr. Tuck After The Deadline Set By The Scheduling Order.

Ms. Hawkins contends *next* that the circuit court erred when it ordered her to make Dr. Tuck available to the Doctors for deposition after the scheduling order's May 31, 2024 deadline. Importantly, the court ordered the post-deadline deposition of Dr. Tuck in lieu of striking him as a sanction for Ms. Hawkins's failure to comply with her obligation to produce him for deposition before the deadline. "Both decisions—whether to modify a scheduling order and whether to strike a witness for failure to comply with a scheduling order—are committed to the circuit court's discretion." *Asmussen v. CSX Transp., Inc.*, 247 Md. App. 529, 551 (2020). "Accordingly, we will reverse decisions to modify a scheduling order (or not) and decisions to strike witnesses for failure to comply with scheduling-order deadlines (or not) only if the circuit court's discretion has been abused." *Id.* In other words, we won't disturb the court's decision to order the post-deadline deposition of Dr. Tuck instead of striking him as an expert unless we find that the decision was unreasonable or

contrary to logic and fact, or that the court either "acted 'without reference to any guiding principles'" or failed to conduct "'an analysis of the relevant facts and circumstances . . . .'" *Id.* at 552 (*quoting Livingstone v. Greater Wash. Anesthesiology & Pain Consultants, P.C.*, 187 Md. App. 346, 388 (2009)). We make no such finding and hold that the court acted within its discretion when it ordered Dr. Tuck's deposition.

The decision whether to modify a scheduling order or to strike an expert as a sanction for a violation of a scheduling order "turns 'on the facts of the particular case.'" *Asmussen*, 247 Md. App. at 549–50 (*quoting Taliaferro v. State*, 295 Md. 376, 390 (1983)). Before making either decision, a court considers several factors, including: (1) whether the violation of the scheduling order "was technical or substantial"; (2) the timing of a party's post-deadline attempt to comply with their discovery obligations; (3) "the reason, if any, for the violation" of the order; (4) the degree of prejudice to the parties that would arise from the decision to amend the order or to strike the expert, respectively; and (5) "whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance." *Id.* (*quoting Taliaferro,* 295 Md. at 390–91). Courts often condense these factors into "two broader inquiries." *Id. First,* the court asks whether the party seeking to admit the expert testimony complied substantially with their obligations under the scheduling order. *Id.* The later the party's attempt to comply with their discovery obligations and the less "technical" the violation of the scheduling order, the less likely a court will be to find substantial compliance. *Id. Second*, the court asks whether there is good cause to excuse the failure to comply with the scheduling order. *Id.* A court will be

more likely to find good cause if the party who violated the order had a good reason for doing so, if striking the expert would cause great prejudice to the party that violated the order, and if the opposing party would suffer comparatively less prejudice from a modification of the order. *Id.* at 550–51.

Here, the circuit court conducted a detailed analysis of these factors on the record before reaching its decision to order the post-deadline deposition of Dr. Tuck instead of striking him, as the Doctors requested. *First*, the court concluded that counsel for Ms. Hawkins "did not substantially comply with his obligation to make Dr. Tuck available for depositions." The court based its conclusion primarily on the finding that Ms. Hawkins's lack of responsiveness to the Doctors' multiple requests for potential deposition dates between February and May of 2024 was the main cause of the parties' delay in scheduling Dr. Tuck's deposition. The court found that neither party bore a greater share of the blame for failing to realize that the June 12 deposition date they agreed on eventually was after the scheduling order's deadline. The court expressed its belief, though, that Ms. Hawkins's counsel's cancellation of the scheduled deposition with only two days' notice wasn't done in good faith. Rather than taking the "more reasonable course" of holding the June 12 deposition and subsequently filing a joint motion to amend the scheduling order, the court opined, Ms. Hawkins's counsel "bogged down the litigation . . . in a discovery dispute that remain[ed] unresolved three weeks before trial" and "took advantage of a delay that he ultimately caused" by attempting to prevent the Doctors from deposing Dr. Tuck.

But despite concluding that Ms. Hawkins had failed to comply with her obligations

under the scheduling order, the court *then* determined there was good cause to excuse this failure and to amend the scheduling order instead of striking Dr. Tuck as an expert. The court acknowledged that Ms. Hawkins would be prejudiced severely if it struck her expert witness because it would mean "the death of [her] case."[5] The court acknowledged as well that the Doctors would be prejudiced if it allowed Dr. Tuck to testify at trial after "they were prevented from deposing [him], despite their diligent efforts." The way to ensure the least prejudice to both parties, the circuit court concluded, was to decline to strike Dr. Tuck:

> Given the absolute prejudice . . . that [Ms. Hawkins] would suffer and the fact that a remedy exists to mitigate the prejudice suffered by [the Doctors], the [c]ourt does not see fit to strike Dr. Tuck as an expert for [Ms. Hawkins's] delay in scheduling and subsequent cancellation of Dr. Tuck's deposition.

Instead, the court ordered Ms. Hawkins to produce Dr. Tuck for a post-deadline deposition.

The court's decision—which, again, stopped well short of the relief the Doctors were seeking—was grounded in a thorough analysis of the facts of the case against the appropriate guiding principles. *See Asmussen*, 247 Md. App. at 550 (citation omitted). Of

[5] "[I]n the ordinary medical malpractice case, because of the complexity of the subject matter, expert testimony is required to establish negligence and causation." *Meda v. Brown*, 318 Md. 418, 428 (1990). So if the court had stricken Dr. Tuck, Ms. Hawkins's only expert witness, she couldn't have sustained her burden of proof on the appropriate standard of care or on causation. *See Rodriguez v. Clarke*, 400 Md. 39, 74 (2007) ("[W]ithout expert witness testimony, the [plaintiffs] could not sustain their burden of proof as to standard of care or causation . . . ." With no genuine dispute of material fact as to the elements of duty and causation, the court's only option would have been to enter summary judgment for the Doctors. *See Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 443 (2007) ("Respondents failed to produce an expert who could testify to specific causation within a reasonable degree of scientific certainty. Without such an expert, Respondents' claims must fail as a matter of law.").

the two choices the court had before it—ordering Dr. Tuck's post-deadline deposition or striking him as an expert—the court chose the option more favorable to Ms. Hawkins. Nevertheless, Ms. Hawkins characterizes the court's decision as "downright doctor-advocacy." She argues that the court caused her "insurmountable prejudice" by "ordering [her] to submit [her] expert to an after-discovery-deadline deposition with over one thousand pages of falsely manufactured medical records," which would have made her expert appear "incompetent and/or inattentive" because he didn't consider those records when writing his report. But again, the record reflects no basis on which to conclude that the medical records to which she refers were fabricated, and, again, the Doctors provided them to her with plenty of time for Dr. Tuck to evaluate them before the scheduling order's deposition deadline. The court recognized that it might be difficult for Dr. Tuck to review all 1,000 pages of Mr. Hawkins's medical records before his after-deadline deposition, but it still wasn't unreasonable for the court to conclude that ordering the deposition would be less prejudicial to Ms. Hawkins than striking Dr. Tuck completely. We hold that because the circuit court's decision to order Ms. Hawkins to make Dr. Tuck available for a post-deadline deposition was reasonable and was grounded in logic and the facts of the case, *see id.* at 550–51, the court didn't abuse its discretion in making it.

C. The Circuit Court Didn't Err When It Granted The Doctors' Motion To Strike Dr. Tuck And For Summary Judgment.

Finally, Ms. Hawkins asserts that the circuit court erred when it granted the Doctors' motion to strike Dr. Tuck as an expert and for summary judgment because her pending interlocutory appeals divested the court of its jurisdiction over her case. We disagree.

Ms. Hawkins's argument that the circuit court lacked jurisdiction to rule on the Doctors' motion fails for two reasons. *First*, as we explained in footnote 4 above, the court's August 19 and September 9 orders weren't appealable final judgments. *See Nnoli*, 389 Md. at 324 ("An order that is not a final judgment is an interlocutory order and ordinarily is not appealable . . . ."); *Geier*, 451 Md. at 549. *Second*, even if they were appealable, the pendency of an interlocutory appeal alone doesn't divest the circuit court of its "'fundamental jurisdiction' to proceed with a case." *Pulley v. State*, 287 Md. 406, 414–17 (1980) (defining "fundamental jurisdiction" as "'the power residing in [a] court to determine judicially a given action, controversy, or question presented to it for decision'" and holding that although Mr. Pulley had the right to appeal immediately from the circuit court's denial of his motion to dismiss on double jeopardy grounds, his pending appeal didn't deprive the court of its fundamental jurisdiction to proceed with the criminal action (*quoting Fooks' Ex'rs v. Ghinger*, 172 Md. 612, 621 (1937))). Unless a statute or rule states otherwise, a party posts an appeal bond, or either the circuit court or the appellate court grants a stay of the proceedings, the circuit court retains its fundamental jurisdiction over a case in the event of an appeal. *See id. at* 417–18 (noting that "it would be unnecessary to require [a stay]" if a pending appeal divested the circuit court of its jurisdiction automatically). And because none of these exceptions applies here, the circuit court would have retained its jurisdiction over Ms. Hawkins's case even if its August 19 and September 9 orders were appealable.

Additionally, and although Ms. Hawkins doesn't explicitly argue in her brief that

the circuit court's ultimate decision to grant the Doctors' motion to strike and for summary judgment was an abuse of discretion, we address—and agree with—the Doctors' contention that the court's decision wasn't in error. When the court revisited the Doctors' motion at the September 12 hearing, it engaged again in a detailed, step-by-step analysis guided by the factors first articulated in *Taliaferro v. State*, 295 Md. 376 (1983), and later applied in the context of a motion to strike an expert as a discovery sanction in *Asmussen v. CSX Transp., Inc.*, 247 Md. App. 529 (2020). Just as it had at the August 19 hearing, the court concluded again that Ms. Hawkins hadn't complied with her discovery obligations, in full or substantially. The court recognized that on "the eve of trial," Ms. Hawkins's counsel continued to "improperly shield[] his expert from rendering an opinion" on the complete set of Mr. Hawkins's medical records by refusing to make Dr. Tuck available for deposition "despite the court giving [him] repeated chances."

This time, however, the court found that there was no good cause to excuse Ms. Hawkins's failure to comply with her obligations. *First*, the court stated that there wasn't "a good or sufficient reason for [Ms. Hawkins's] [c]ounsel to declare the [medical] records produced in discovery as manufactured and withhold them from Dr. Tuck" for a year-and-a-half. In addition, the court noted that there was no good reason for Ms. Hawkins's counsel, after being completely unresponsive to the Doctors' requests for deposition dates before the scheduling order deadline, to cancel agreed-upon post-deadline depositions twice (the second compelled by an order of the court) at the last minute.

Next, the court looked at the degree of potential prejudice to both parties. Again, it

acknowledged that on one hand, Ms. Hawkins would be unable to proceed with her case if it struck Dr. Tuck as an expert. On the other hand, the court recognized that the Doctors "would be greatly prejudiced" and put "at an unfair disadvantage" if it allowed Dr. Tuck to testify "without [the Doctors having] the opportunity to properly depose him and without him ever addressing" the complete set of Mr. Hawkins's medical records. The court then concluded that although a postponement would alleviate the prejudice to Ms. Hawkins by granting her "a do-over opportunity," it wouldn't alleviate the prejudice to the Doctors because a postponement "would do nothing to alleviate the loss of income and loss of career opportunities that they ha[d] already suffered."

Ultimately, the circuit court decided that a continuance wasn't desirable in this case because it did "not appear or seem appropriate to alleviate [the] prejudice for [Ms. Hawkins] and increase the prejudice for [the Doctors], because of discovery violations" committed by Ms. Hawkins. Accordingly, the court granted the Doctors' motion to strike Dr. Tuck and, recognizing that there could be no genuine dispute of material fact as to Ms. Hawkins's malpractice claims without Dr. Tuck's testimony, granted summary judgment in the Doctors' favor. *See Meda*, 318 Md. at 428; *Rodriguez*, 400 Md. at 74 (precluding plaintiffs from offering expert testimony as a discovery sanction and noting that "without expert witness testimony, the [plaintiffs] could not sustain their burden of proof as to standard of care or causation"); *Aventis Pasteur*, 396 Md. at 443.

As with the circuit court's initial decision at the August 19 hearing to amend the scheduling order instead of striking Dr. Tuck as an expert, its decision to reverse course

and strike Dr. Tuck at the September 12 hearing was reasonable, logical, and based on a thorough application of the appropriate guiding principles to the facts of the case. *See Asmussen*, 247 Md. App. at 552 (citation omitted). We hold that the court acted well within its discretion when it granted the Doctors' motion to strike and for summary judgment.

JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. APPELLANT TO PAY COSTS.