Circuit Court for Montgomery County
Case No. 449913V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1445

September Term, 2019

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MARIA ISABEL SARAVIA DE HERNANDEZ, *et al*.

v.

EVANGELINE J. WOTORSON

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Beachley,
Shaw Geter,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Beachley, J.

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Filed: October 14, 2020

On April 26, 2017, an incident occurred on the corner of Fourth Street and Montrose Avenue in Laurel, Maryland, the nature of which the parties disputed at trial. Appellants, Delmis Josefina Garcia de Portillo ("Portillo") and Maria Isabel Saravia de Hernandez ("Saravia"), sued appellee, Evangeline Wotorson, claiming that Wotorson injured them by negligently striking them with her vehicle. Appellants claimed that Wotorson's vehicle struck them as they were crossing the street at a marked crosswalk. Wotorson's defense was that her vehicle never made contact with appellants, asserting that appellants laid down in the road as her vehicle approached them. A jury in the Circuit Court for Montgomery County found in favor of Wotorson.

On appeal, appellants present a single question: "In a personal injury case, is it proper to permit a defendant to present evidence and argue that a plaintiff's claim was a complete fraud, when the affirmative defense of fraud was not pled in the defendant's answer as required under Rule 2-323(g)(8) and no attempt was subsequently made to amend the answer?" For the reasons that follow, we discern no error and affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

Appellants filed a complaint against Wotorson in the Circuit Court for Montgomery County, alleging that they were injured when Wotorson negligently struck them with her vehicle. Wotorson's Answer stated:

1. That the Defendant generally denies the allegations set forth in all counts.
2. That the Plaintiff(s) claim(s) for relief are barred by contributory negligence.
3. That the Plaintiff(s) claim(s) for relief are barred by assumption of risk.

4. That the Complaint fails to state a claim upon which relief can be granted.

5. That the Plaintiff(s) cause(s) of action are barred by the applicable Statute(s) of Limitations.

6. That the Defendant denies ownership of the motor vehicle as alleged in the Complaint.

The parties stipulated to the amount of any damages, leaving the jury to decide only the question of liability. In their brief, appellants succinctly summarize the version of the April 26, 2017 events that they presented at trial: "Appellants alleged that they were lawfully crossing Fourth Street within the painted crosswalk when [Wotorson] negligently made a left turn onto Fourth Street, struck them, knocked them to the ground, and caused both of them to suffer severe injury." Wotorson denied liability, asserting that she did not cause any injury to Portillo and Saravia because they were already injured before they entered the crosswalk, that they laid down in the road before her vehicle was near them, and that her vehicle never came in contact with either woman.

In his opening statement, Wotorson's attorney told the jury that he anticipated an independent witness, Rashawn Beechum, would testify she saw the incident, that Wotorson did not strike appellants with her vehicle, and that appellants "were already in the road" before Wotorson "pulled up and stopped." At trial, Ms. Beechum testified:

> Well, while I was sitting in my car I noticed the two plaintiffs walking up and standing on the sidewalk. And while I, I was talking on the phone to a friend that I was waiting on and noticed that their faces were bloody. And I said to him wow, it looks like somebody beat them up. And they were just standing there. And then as the, I guess the Defendant was turning the corner they walked out into the street and literally laid in the street before the Defendant even approached.

Appellants moved to strike Ms. Beechum's testimony, stating, "There has never been any allegation or indication that this was a fraud case." The crux of appellants' argument on this issue at trial was that Wotorson had not raised a fraud defense in her answer and that the substance of Ms. Beechum's testimony had not been disclosed in Wotorson's answers to interrogatories.[1]

The trial court denied appellants' motion to strike, disagreeing with appellants' characterization of Ms. Beechum's testimony as implicating a fraud defense. The court stated that Wotorson's argument did not concern fraud, but instead "it's like saying we think they're lying. . . . Counsel, fraud is misrepresentation of facts with the expectation the other side will rely on them and that they do rely on them, leads to damages. . . . [F]raud is a term of art." The trial court also dismissed appellants' concern regarding any discovery violation because appellants did not object to any deficiency in Wotorson's answers to interrogatories and, because appellants had Ms. Beechum's name and address, they had the opportunity to depose her.[2]

In his closing argument, Wotorson's attorney stated without objection: "This is a scam. I have been practicing law for over 25 years. I've been talking to juries like you for over 25 years. I have never made this statement to a jury before today, but that's what this

[1] Appellants do not mount an appellate argument that there was a discovery violation.

[2] We also note that Wotorson called Dr. Lee Waite, a defense expert in biomechanical engineering, who opined that appellants' injuries could not have been caused by an impact with Wotorson's vehicle.

is. This is a scam."

The jury returned a verdict in favor of Wotorson. Appellants timely appealed.

## DISCUSSION

Appellants argue that, because Wotorson failed to raise the affirmative defense of fraud in her answer as required by Rule 2-323(g),[3] she waived that defense. Therefore, according to appellants, the trial court erred in allowing Wotorson to rely on a fraud defense at trial. On this record, we disagree that Wotorson was required to raise the affirmative defense of fraud in her answer. We hold that Wotorson's general denial of liability pursuant to Rule 2-323(d) effectively denied any tort liability for negligence, and thus was sufficient to deny causing injury to appellants.

To resolve this appeal, we must look at the interplay between Rule 2-323(c), (d), and (g). Rule 2-323(c) sets forth the general requirement that a party must specifically admit or deny the allegations of a complaint: "Except as permitted by section (d) of this Rule, a party shall admit or deny the averments upon which the adverse party relies." But Rule 2-323(d) provides an exception to the specific pleading requirement of section (c), stating: "When the action in any count is for breach of contract, debt, or tort and the claim

[3] Rule 2-323(g) provides:

> Whether proceeding under section (c) or section (d) of this Rule, a party shall set forth by separate defenses: (1) accord and satisfaction, (2) merger of a claim by arbitration into an award, (3) assumption of risk, (4) collateral estoppel as a defense to a claim, (5) contributory negligence, (6) duress, (7) estoppel, (8) fraud, (9) illegality, (10) laches, (11) payment, (12) release, (13) res judicata, (14) statute of frauds, (15) statute of limitations, (16) ultra vires, (17) usury, (18) waiver, (19) privilege, and (20) total or partial charitable immunity.

for relief is for money only, a party may answer that count by a general denial of liability." The authors of Maryland Rules Commentary concisely summarize the significance of section (d): "With respect to the specific allegations of the complaint, the answer may deny generally any count for breach of contract, debt, or tort if the claim for relief is money only. A general denial may state simply that the defendant denies generally any liability for the claim alleged in a particular count of the complaint." Paul V. Niemeyer & Linda M. Schuett, Maryland Rules Commentary 365 (5th ed. 2019).

> The elements of a negligence claim are well-known to every first-year law student.
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> > In traditional negligence cases, the plaintiff must satisfy the following four basic elements by a preponderance of the evidence: 1) duty; 2) breach; 3) causation; and 4) harm. W. Page Keeton et al., *Prosser and Keeton on Torts* § 30, at 164-65 (5th ed. 1984). The causation element requires the plaintiff to prove that there is a reasonable connection between the defendant's negligence and the plaintiff's damages. *See id*. § 41, at 263.

*Stickley v. Chisholm*, 136 Md. App. 305, 314 (2001) (quoting *Murray v. United States*, 215 F.3d 460, 463 (4th Cir. 2000)). Here, Wotorson utilized Rule 2-323(d) when she "generally denie[d] the allegations set forth" in appellants' complaint. That general denial was legally sufficient to deny every element of the negligence claim, including causation. Conscripting language from *Fearnow v. Chesapeake & Potomac Tel. Co. of Md.*, Wotorson's "general denial was sufficient to refute 'the whole substance' of [appellants'] claim, and allowed [Wotorson] to 'offer any evidence tending to show that [appellants have] no right to recover.'" 104 Md. App. 1, 46 (1995) (first quoting *Md. Trust Co. v. Poffenberger*, 156 Md. 200, 204 (1928); then quoting *Herrick v. Swomley*, 56 Md. 439, 456 (1881)), *rev'd on other grounds*, 342 Md. 363 (1996). Pursuant to her general denial, Wotorson could

properly assert at trial that appellants were injured before Wotorson even entered the intersection and that she did not cause or exacerbate appellants' injuries.

We therefore reject appellants' contention that Wotorson was required by Rule 2-323(g) to specifically plead the affirmative defense of fraud. Although we recognize that fraud is one of the affirmative defenses enumerated in section (g) that must be specifically pleaded, the "fraud" defense contemplated by the Rule is completely unrelated to Wotorson's lack of causation defense based on appellants' allegedly fabricated claims. "Like an affirmative claim of fraud, the affirmative defense of fraud requires a showing, by clear and convincing evidence, of detrimental reliance on a knowingly false representation, made with an intent to deceive." *Hoffman v. Stamper*, 155 Md. App. 247, 315 (2004), *rev'd in part on other grounds*, 385 Md. 1 (2005). Central to the fraud defense, and the corresponding civil tort, is a false representation detrimentally relied upon by another party. *Id.* Appellants have failed to direct us to any contrary authority.

In the instant case, appellants may have made false representations pertaining to their negligence claim to Wotorson, her attorney, and the jury, but any such misrepresentations would not fall within the affirmative defense of fraud because the element of detrimental reliance is completely absent.[4] Additionally, if we were to accept

[4] A hypothetical based loosely on the facts of this case will demonstrate an appropriate use of the fraud defense. Assume appellants sued Wotorson's insurance company based on an alleged contract to settle the negligence claims for $50,000. If the insurance company intended to assert that appellants knowingly made a false representation that the insurance company relied on in reaching the settlement, Rule 2-323(g)(8) would require the insurance company to specifically plead fraud as an affirmative defense to the contract claim.

appellants' argument, we would be adopting a logically untenable premise—appellants would have to prove all four elements (including causation) of their negligence cause of action by a preponderance of the evidence, while Wotorson, in denying that she caused any injury because she never struck appellants, would have to prove the "fraudulent" nature of appellants' claims by clear and convincing evidence. We decline to place our imprimatur on such an anomaly.[5]

Accordingly, we affirm the judgment of the Circuit Court for Montgomery County.

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.**

[5] As an aside, we fail to see on this record how appellants' presentation of their tort claims was prejudiced by Wotorson's failure to plead the fraud defense.