

Circuit Court for Caroline County
Case No. C-05-CV-19-000168

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1564

September Term, 2022

CHARLES DUGGINS, JR.

v.

SHARICE NICOLE HAAPALA, *et al.*

Leahy,
Friedman,
Gill Bright, Robin D.
(Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: November 15, 2023

*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 MD. RULE 1-104(a)(2)(B).

Appellant Charles Duggins, Jr., appeals the grant of a motion for summary judgment by the Circuit Court for Caroline County in favor of appellees Mohammad Khawar Ullah and Muhamman Amjed Ulla-Alvi in his negligence action against them. Duggins contends that the circuit court erred in granting summary judgment because material facts were in dispute and because Ullah and Ulla-Alvi committed spoliation of relevant evidence, which a jury should have been permitted to consider. For the reasons that follow, we find no error in the circuit court’s grant of summary judgment in favor of Ullah and Ulla-Alvi and affirm the order of that court.

FACTS AND LEGAL PROCEEDINGS

At approximately 2:20 a.m. on September 7, 2018, Duggins was driving on Maryland Route 313 in a rural area of Caroline County when he struck and killed a black angus cow that was walking in the roadway. Duggins suffered personal injury and damage to his vehicle. While his vehicle was disabled in the roadway after the collision, a vehicle driven by Haapala struck his vehicle from behind.

After receiving the call about the accident, local 911 operator Steven Scharf called his friend Ullah, who lived nearby on a farm owned by his brother, Ullah-Alvi. Scharf asked if Ullah would assist the police in removing the cow from the ditch by the roadway into which it had been thrown. Scharf said that he called Ullah to save Duggins’s insurance company the cost of sending removal equipment and because, on the Eastern Shore, “everybody helps everybody.”

Ullah and his son Muhammed Faizan Ullah (“Faizan”) proceeded to the scene of the accident, and after observing the dead cow, which had no identifying markings or tags,

determined it was not one of the black angus cows they owned and kept on their property. Nonetheless, as Ullah had lived in the neighborhood for 30 years and always helped his neighbors, Ullah had Faizan remove the cow with a tractor and bury it in the woods. By the time Duggins filed his lawsuit, more than two years later, Faizan was unable to remember exactly where he had buried the cow.

Upon his belief that the cow was owned or controlled by Ullah or his brother, Ulla-Alvi, Duggins filed suit, alleging negligence by Ullah and Ulla-Alvi for failing to ensure that the cow remained contained and out of the roadway and against Haapala for negligent driving.

During the discovery phase of the litigation, Ullah answered interrogatories and was deposed. In his answers to interrogatories, he repeatedly and unequivocally denied ownership of the cow that Duggins had struck. In his deposition, Ullah explained that he was sure that the dead cow was not one of his because the cow hit by Duggins was castrated, and none of the nine male black angus cows he owned were castrated.¹ Moreover, Ullah kept his cows penned in a locked fenced-in area, and in his 30 years of living on the property, none had ever escaped the pen. Nonetheless, he and Faizan checked the cow pen after Duggins's accident, and all of their cows were present. Ullah and Faizan also checked the physical fence around the pen, which was intact, and the electric fence, which had not been breached. Ullah did not know to whom the dead cow belonged, but he

¹ Cows are female. “Male cows” are bulls. Our task, however, is merely to explain the record, not grammar or biology.

said that on Route 313, there is a whole line of properties “loaded with Angus cows.... Everybody owns cows.”

Ulla-Alvi testified at his deposition that he was not involved in the accident and did not know to whom the cow belonged.

Faizan stated in his deposition that during the day, the Ullahs’ cows stay in the fenced area of the farm and almost always go in the shed at night. On the night of the accident, all of the cows were accounted for. Moreover, when he went to remove the dead cow from the road, Faizan saw that it was castrated, unlike the Ullahs’ cows. In addition, he had noted that the cow Duggins hit was clean, while the Ullahs’ cows usually spend their days standing in a pond on the property and, as a result, tend to be “pretty muddy.”

Haapala, when asked during her deposition if she knew who owned the cow, answered that she had told her insurance company that she did not know where the cow came from because she was not the person who hit it. Furthermore, she asserted that her only information on the subject was obtained from Duggins’s complaint.

Duggins himself was unable to say who owned the cow when asked at his deposition:

Q. As you sit here today, do you know who owns the cow that you hit?

A. All I know is, from the court documents that I received, someone, Mohammad something or other. From what I understand, my landscaper told me it was the guy -- and the lady that was at the scene of the accident, told me it was the guy that owns the store in Federalsburg, the U 5 in Federalsburg. That’s all I know. I don’t even know if he’s the one that owns it or who exactly owns it.

Neither the landscaper nor “the lady that was at the scene of the accident” were deposed.

After discovery had closed, Ullah and Ulla-Alvi moved for summary judgment, asserting that they were entitled to judgment as a matter of law because no evidence uncovered during discovery showed that they owned or bore any responsibility for the cow that Duggins had hit. In addition, they argued that, in fact, no one involved in the lawsuit knew to whom the cow belonged. Furthermore, all the testimony provided during the depositions supported the undisputed fact that Ullah and Ulla-Alvi were not involved in the accident aside from “providing a neighborly volunteer service to their community” by removing the cow from the scene of the accident.

In response, Duggins acknowledged that Ullah’s and Ulla-Alvi’s duty to him arose only if “their Black Angus cow was roaming at large and unsupervised in the dark early morning hours of September 7, 2018.” (Emphasis in original). Duggins argued that ownership of the cow was a material fact in dispute, and summary judgment was not appropriate because Ullah and Faizan’s removal of the cow, proximity of their residence to the location of the accident, and ownership of other black angus cows raised the question as to whether they owned the cow that was hit. Furthermore, Duggins alleged that discrepancies between Ullah and Faizan’s testimonies about the accident and the 911 operator’s decision call to Ullah rather than any other cow owners in the area gave rise to at least an inference of ownership.

Duggins added that Ullah and Ulla-Alvi’s responses to his discovery requests “attached nothing pertaining to purchase, ownership, identification, registration, gender specification, castration, veterinary records, or number of cows they owned,” and surmised that “at least some documents requested ... exist, and if they support Defendants’ claim

that this was not their cow, that the documents would be provided.” Because Faizan had buried the cow in an unknown place, Duggins concluded that “there [was] a significant concern for spoliation” and that confirming ownership “as a fact is now impossible.”

During argument on the summary judgment motion, Ullah and Ulla-Alvi reiterated that they did not own the cow, that no evidence had been produced during discovery suggesting that they owned the cow, and that in fact, no evidence had been discovered at all showing who may have owned the cow. They argued that it would be greatly prejudicial to go to trial because there was so little evidence that a jury would be able to do no more than speculate as to the owner of the cow.

Duggins argued that the fact that no one could say where the cow had been buried was “very, very important” because that could cause a factfinder to question Ullah and Ulla-Alvi’s credibility and their motivation in making it impossible for anyone to verify the cow’s ownership, leaving the only option to take their word for it that they did not own the cow.² Haapala agreed with Duggins’s argument and added that the Ullahs owned the property on both sides of the road near the scene of the accident, raising at least the possibility that the cow came from across the street and wandered into the roadway. She further posited that the 911 operator called Ullah not because that’s how things work on the Eastern Shore, but because he believed the cow involved in the accident was Ullah’s cow. Haapala also asserted that it was “a bit either convenient, [or] odd” that Faizan could

² At that point, the circuit court questioned what relevance anyone’s memory of the location of the cow’s burial site would have to the case so long after the accident, when “there’s now [a] skeleton or whatever remains of a cow after three years in the ground.”

not remember where he buried a thousand-pound cow when identification of the cow's owner was in question. She argued that ownership of the cow was a material fact still at issue, and a factfinder could draw reasonable inferences from the evidence that Ullah and Ulla-Alvi owned the cow.

In its written opinion and order, the circuit court found that: (1) Ullah and Ulla-Alvi denied that the cow belonged to them, with reasons to account for their certainty, including the fact that they don't castrate their cows, while the struck cow was castrated, and that all their cows were present in their pen after the accident; (2) several other farmers in the area own black angus cows; (3) it was unclear how long or how far the cow had wandered from its home before being involved in the accident; and (4) the cow had no identifying marks or tags to indicate ownership. As such, the court ruled, there was no direct evidence that Ullah and Ulla-Alvi owned the cow, nor was there sufficient circumstantial evidence to demonstrate a reasonable likelihood that they owned the cow, which was fatal to Duggins's claim.

The circuit court acknowledged that issues of credibility are not for it to decide on summary judgment, but also pointed out that Ullah and Ulla-Alvi's credibility was not at issue when there was nothing to demonstrate they were the proper defendants in Duggins's lawsuit. With no evidence to contradict the defendants' sworn testimony that they did not own the cow, there could not be a material dispute of fact. All Duggins could establish was that Ullah and Ulla-Alvi *might* have owned the cow, and even in the light most favorable to Duggins, that was not sufficient for the case to proceed against those defendants on a

negligence claim. The court therefore granted the motion and dismissed the case against Ullah and Ulla-Alvi, with prejudice.

Duggins immediately appealed the court’s ruling. This Court dismissed Duggins’s appeal, on the ground that it was not taken from a final judgment of all claims against all parties.

Following an October 2022 trial, a jury found that Haapala was negligent in causing the accident, but that Duggins was contributorily negligent. Duggins filed a timely notice of appeal from that final judgment but made no claim of error relating to the jury’s verdict. Rather, he specifically stated that the circuit court only erred in granting Ullah and Ulla-Alvi’s motion for summary judgment.³

DISCUSSION

The circuit court’s decision to grant a motion for summary judgment is one of law, which we review without deference. *Asmussen v. CSX Transp., Inc.*, 247 Md. App. 529, 558 (2020). As the Supreme Court of Maryland recently explained in *Romeka v.*

³ In her brief, Haapala not only agrees with Duggins that the circuit court erred in granting summary judgment in favor of Ullah and Ulla-Alvi but also asks that we formally dismiss the case against her, with prejudice. We will not do so.

Even if we were to reverse the grant of summary judgment and return Ullah and Ulla-Alvi to the circuit court proceedings, Haapala could argue that *res judicata* or collateral estoppel barred any further action against her, and, if the circuit court agreed, she would avoid a judgment against her. See *Garrity v. Maryland State Bd. of Plumbing*, 221 Md. App. 678, 687 (2015) (*Res judicata* and collateral estoppel are based on “the sound and obvious principle of judicial policy that a losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on an issue identical in substance to the one he subsequently seeks to raise.” (cleaned up)). Any ruling by this Court on the subject would be advisory, and it is not our role to render advisory opinions. *Montgomery Cnty. Career Fire Fighters Ass’n v. Montgomery Cnty.*, 210 Md. App. 200, 209 (2013).

RadAmerica II, LLC, 485 Md. 307, 330-31 (2023), in reviewing the issue of the grant of summary judgment pursuant to Maryland Rule 2-501(f)

we determine (1) whether a dispute of material fact exists, and (2) whether the trial court was legally correct. For the purposes of summary judgment, a material fact is a fact the resolution of which will somehow affect the outcome of the case. We independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. We view the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the facts against the moving party.

To oppose summary judgment, a party must “identify with particularity” each material fact in dispute and “identify and attach the relevant portion of the specific document, discovery response, transcript[,] ... or other statement under oath that demonstrates the dispute.” MD. RULE 2-501(b). “[M]ere general allegations or conclusory assertions which do not show facts in detail and with precision will not suffice to overcome a motion for summary judgment.” *Educ. Testing Serv. v. Hildebrant*, 399 Md. 128, 139 (2007). Additionally, “[t]he facts offered by a party opposing summary judgment must be material and of a substantial nature, not fanciful, frivolous, gauzy, spurious, irrelevant, gossamer inferences, conjectural, speculative, nor merely suspicions.” *Gurbani v. Johns Hopkins Health Sys. Corp.*, 237 Md. App. 261, 291 (2018) (cleaned up).

A genuine dispute can arise not just from proffered facts, but also from the inferences that reasonably may be drawn from those facts. *See Cadon v. Yes Organic Mkt. Hyattsville, Inc.*, 253 Md. App. 628, 635 (2022). Nonetheless, any such inferences must be

reasonable and based upon “specific facts,” not “actions ... [that] can be second guessed.” *Rite Aid Corp. v. Hagley*, 374 Md. 665, 688-89 (2003).

Here, the summary judgment record consisted of answers to interrogatories and excerpts from the deposition testimony of Ullah, Ulla-Alvi, Faizan, Scharf, Haapala, and Duggins. These materials, taken in the light most favorable to Duggins, established the following undisputed facts:

1. Duggins hit and killed a black angus cow that was walking in the unlit roadway of Route 313 near farm property owned by Ulla-Alvi and managed by Ullah.
2. Scharf received the 911 call of the accident and called Ullah to ask if he would assist the police in removing the cow carcass.
3. The cow had no identifying markings or tags.
4. Ullah and Faizan observed the dead cow and saw that it was castrated, in contrast to their uncastrated black angus cows, thereby determining the dead cow was not one of theirs.
5. Ullah and Faizan checked their cow pen and the surrounding fence to ensure none of their nine cows was unaccounted for. All their cows were present in the pen.
6. Faizan returned later the same morning and removed the dead cow, burying it in the woods. By the time Duggins filed his lawsuit, Faizan did not remember where he had buried the cow.
7. Ullah and Ulla-Alvi denied ownership of the dead cow.
8. Several other farm owners along Route 313 owned black angus cows.
9. Neither Duggins nor Haapala had any information about who owned the cow, other than references to undeposed witnesses.

To contest the deposition testimony, taken under oath, Duggins was required to come forward with competent evidence that called into question Ullah and Ulla-Alvi’s denial of ownership of the cow. He did not do so. None of Duggins’s claims that Ullah and Ulla-Alvi owned the cow generates a genuine dispute with any of the above facts. Instead,

the competent evidence is undisputed that Ullah and Ulla-Alvi did not own the cow and did not know who did.

Duggins’s contention that Ullah and Ulla-Alvi must have owned the cow because they removed it from the scene of the accident and then buried it in an unidentified location, thus making it impossible for anyone to prove ownership, does not rise above conjecture and speculation, given Ullah’s and Scharf’s uncontested testimony that Ullah and Faizan removed the cow to be neighborly after Scharf asked them to help. Additionally, Haapala’s argument that Ullah and Ulla-Alvi must have owned the cow because the accident occurred near their property is equally unavailing. As the circuit court observed, several other farm owners along the same road also owned black angus cows, and there was no evidence regarding how long the cow had been wandering in the roadway that may have helped determine how far it was from its farm.

Moreover, Duggins’s argument that Ullah and Ulla-Alvi should have produced documentation as to ownership of their cows amounts to improper burden shifting, as he acknowledged that the success of his negligence claim rested on proof that it was Ullah’s and Ulla-Alvi’s cow that he hit.⁴

Simply put, even though it is possible—to the extent that anything is possible—that Ullah and Ulla-Alvi owned the cow, a reasonable trier of fact could not have found, based

⁴ In his brief, Duggins argues that asking for discoverable information from Ullah and Ulla-Alvi, which wasn’t provided, shifted not the *burden* but the *obligation* of production to them. Any alleged failure of discovery, however, should have been raised in an appropriate and timely manner in the circuit court and not, for the first time, on appeal.

on the evidence before the circuit court during the hearing on the motion for summary judgment, that they did own the cow or even that it was likely that they owned the cow. Duggins’s allegations and suspicions that Ullah and Ulla-Alvi owned the cow are not facts, and Duggins failed to point to particular facts in the record that supported his allegations. Accordingly, summary judgment was warranted.

In sum, Ullah and Ulla-Alvi supported their summary judgment motion with undisputed evidence that they did not own the cow. Because Duggins failed to generate a genuine dispute as to that fact, Ullah and Ulla-Alvi were entitled to summary judgment as a matter of law.⁵ See *Dashiell v. Meeks*, 396 Md. 149, 163 (2006) (“Only when there is an

⁵ To the extent that Duggins argues that Ullah and Ulla-Alvi committed spoliation of relevant evidence that a fact-finder should have been permitted to consider, we point out that spoliation only applies when the following four factors are met: “(1) [a]n act of destruction; (2) [d]iscoverability of the evidence; (3) [a]n intent to destroy the evidence; [and] (4) [o]ccurrence of the act at a time after suit has been filed, or, if before, at a time when the filing is fairly perceived as imminent.” *Cumberland Ins. Grp. v. Delmarva Power*, 226 Md. App. 691, 701-02 (2016) (quoting *Klupt v. Krongard*, 126 Md. App. 179, 199 (1999)). Even assuming for the sake of argument that the first two factors were met here, we could not say that Ullah intended to destroy evidence in burying the cow or that the filing of a lawsuit was imminent when he did so.

Intent has been held to include “knowledge of imminent or reasonably foreseeable litigation.” *White v. Office of the Public Defender for the State of Md.*, 170 F.R.D. 138, 148 (D.Md. 1997). At the time of Duggins’s accident, Ullah had no knowledge that the cow carcass would be of relevance to a lawsuit. Ullah was not put on notice of a suit, he was not instructed by anyone to preserve the cow, and he did not have a reason to anticipate litigation against him in light of his asserted lack of ownership of the cow. Moreover, Duggins’s decision to file suit more than two years after the accident demonstrates that litigation was not imminent when the cow was buried. See *Cumberland*, 226 Md. App. at 702 (citing *Klupt*, 126 Md. App. at 199). Therefore, spoliation is not a relevant issue in this matter and has no effect on the circuit court’s grant of summary judgment in favor of Ullah and Ulla-Alvi.

absence of a genuine dispute of material fact will the appellate court determine whether the trial court was correct as a matter of law.””).

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