Circuit Court for Prince George's County
Case No. CAL15-32800

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1747

September Term, 2017

ANTONIO THOMPSON

v.

FIRST LIBERTY INSURANCE COMPANY

Fader, C.J.,
Reed,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: August 20, 2019

Antonio Thompson, appellant, filed an underinsured motorist claim against his insurance carrier First Liberty Insurance Company ("First Liberty"), appellee, for injuries sustained in a vehicle collision in 2009. During the course of proceedings in this case, he was advised repeatedly to engage counsel, but he has proceeded self-represented throughout. On September 18, 2017, the Circuit Court for Prince George's County granted First Liberty's motion for judgment and dismissed the case with prejudice because appellant could not establish, before or at trial, that he produced his medical bills to appellee in discovery and did not have an expert to attest to the reasonableness of the medical bills. On appeal, he presents six questions:

1. Was the appellant's constitutional right to a fair trial denied due to unfair and/or unreasonable notice of Judge Davey's Order dated September 14, 2017?

2. Was the appellant's constitutional right to a fair trial denied when Judge Davey did not allow an expert witness video testimony deposed by both parties?

3. Did Judge Davey deny the appellant his constitutional right to a fair trial when he threw out appellant's case without discovery being completed?

4. Was the appellant's constitutional right to a fair trial denied when Judge Davey did not act proper in accordance with the law on numerous of the appellant's pre-trial and post-hearing motions, and especially the Circuit Court for Prince George's County Honorable Judge Leo E. Green Jr.'s Order of Court dated June 9, 2017,[1] where Judge Davey was ordered to consider excluding Dr. Abend's testimony if the Defense did not fully cooperate with the deposition?

5. Did the appellee's attorney Mr. James Mehigan's gross misconduct of lying and withholding pertinent discovery information to Judge Davey in open court concerning deposition matters, instigating a physical confrontation related to discovery matters while at the August 8, 2017, deposition that injured the appellant also deny the appellant his constitutional rights to a fair trial?

[1] We believe June 21, 2017 is the correct date of the order referred to by appellant in Question No. 4.

6. Does Prince George's Circuit Court not having a full transcript of the September 18, 2017, available deny the appellant the right to a fair trial?

We affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant's claim arose out of a motor vehicle collision that occurred on December 15, 2009. He alleges suffering serious and permanent physical injuries from that collision, and that the costs of his medical treatment and related expenses far exceeded the $20,000 policy limits of the other driver's Maryland Automobile Insurance Fund ("MAIF") policy. He asserts coverage up to $100,000 under his First Liberty uninsured/underinsured motorist policy.

When attempts to resolve the issue out of court were "unfruitful," he filed suit on November 6, 2015. Alleging claims of bad faith and breach of contract, he sought $80,000 in compensatory damages and $5 million in punitive damages.

In its answer, First Liberty denied the cause and extent of appellant's injuries and damages. It averred that appellant has had longstanding and pre-existing medical conditions that are unrelated to the 2009 accident.[2] On June 6, 2016, First Liberty served appellant with interrogatories and requests for production of documents.

The circuit court held status conferences on March 4, 2016 and June 24, 2016, during which appellant was "advised to seek counsel." A pre-trial conference was held on October 21, 2016, and trial was set for April 18-19, 2017. First Liberty designated Dr.

[2] It also moved to dismiss the bad faith claim and the request for punitive damages, which the circuit court granted on May 31, 2016.

Jeffrey A. Abend as an expert on October 19, 2016, and deposed appellant on October 27, 2016.

On March 3, 2017, appellant moved to continue the April trial date because of medical treatment for injuries from another motor vehicle accident in November 2016, the death of a close family member in another state, and several other pending legal matters. On March 30, 2017, the circuit court granted the motion, set a new trial date of June 29, 2017, and ordered: (1) the *de bene esse* deposition of Dr. Abend for March 28, 2017; (2) that appellant name his experts; and (3) that discovery be cut off on May 15, 2017.

After the March 28 deposition of Dr. Abend, appellant filed a motion to compel discovery and requesting the continuation of Dr. Abend's deposition. He argued that (1) First Liberty had produced "some but not all" of his requested documents and had not answered all of his interrogatories, and (2) that he did not have enough time to complete his examination of Dr. Abend. The circuit court, on May 22, 2017, continued the deposition of Dr. Abend at First Liberty's expense. The May 22, 2017 order did not address the discovery of documents and the answering of interrogatories.

First Liberty scheduled Dr. Abend's continued deposition for June 1, 2017, but appellant did not appear on that date, contending afterwards that he had not agreed to that date. Having paid for Dr. Abend's appearance, the court reporter, and the videographer, First Liberty filed a motion for judicial relief seeking reimbursement for the incurred costs resulting from appellant's failure to appear. The circuit court denied that motion on

June 21, 2017, finding that the appellant and appellee had not agreed on the date of the deposition. It ordered the continuation of Dr. Abend's deposition for two hours on August 8, 2017, and set a new trial date for September 18-19, 2017. Dr. Abend's deposition was completed on August 8, 2017.

On August 11, 2017, appellant served Dr. Nana Mensah at his office in Washington, D.C. with a subpoena to appear at trial as an expert witness. Dr. Mensah responded with what was treated as a motion to quash the subpoena on August 30, 2017. He argued that he did not treat appellant for any injuries related to the 2009 accident; that he would not qualify as an expert in regard to those injuries; that being forced to appear would cause him and his patients severe hardship; and that he had been improperly served at his out-of-state office. The circuit court granted the motion on September 14, 2017.

Prior to the beginning of the trial on September 18, 2017, First Liberty moved to preclude appellant from introducing into evidence medical bills that he had not produced in discovery. It argued that it had not received a "meaningful response to written discovery," or copies of medical bills from appellant that would enable it to challenge any claimed medical expenses. Appellant responded that he had emailed certain medical bills to First Liberty's counsel and that he had some of those bills in a stack of papers before him. The court then asked appellant to hand the bailiff any bills he wanted to use in his case so that the court could "take a look at" them "to see if we have got anything to move forward on." The court reviewed what appellant had given the bailiff, which

included an itemized explanation of benefits from his health insurance carrier. First Liberty noted that the benefits itemization had not been provided to it and, even if it had been provided, it would not constitute an admissible medical bill.

Although appellant argued that he had emailed some medical bills to First Liberty in discovery, he did not file a notice of service, which the court explained was "not in compliance with the [Maryland] [R]ules."[3] The court concluded, "[Y]ou cannot demonstrate to the Court that you have provided them with your medical records and your medical expenses," and "any documents that have not been presented to the Defendant are inadmissible."

The court then inquired:

> THE COURT: How many times did Judge Green tell you that it was very important for you to get counsel?[4]

[3] We understand that the trial court was referring to Md. Rule 2-401(d)(1), which provides, in pertinent part:

> [T]he party generating the discovery material shall serve the discovery material on all other parties and promptly shall file with the court a notice stating (A) the type of discovery material served, (B) the date and manner of service, and (C) the party or person served. The party generating the discovery material shall retain the original and shall make it available for inspection by any other party. . . .

The Committee Note states: "Parties exchanging discovery material are encouraged to comply with requests that the material be provided in a word processing file or other electronic format." In addition, Md. Rule 1-321 provides that the notice be served on all parties by mailing or in person. And, Md. Rule 1-323 requires that it contain a certificate of service.

[4] Judge Leo E. Green, Jr. was the civil coordinating judge in the circuit court. Judge John Paul Davey was the presiding trial judge.

[APPELLANT]: At least two.

THE COURT: And did you heed any of those explanations?

[APPELLANT]: I did. I started to bring a couple of letters that I had gotten.

THE COURT: You tried to bring counsel with you?
[APPELLANT]: No.

* * *

THE COURT: Didn't Judge Green tell you very specifically that the Rules of Evidence and the Rules of Maryland Procedure were very specific and that as a self-litigant to be able to comply with those rules, was probably going to be extremely difficult? Because the next motion this gentleman is going to make is a motion to dismiss this case.

And, when First Liberty stated that it was "mov[ing] for judgment," the court stated that it was going to "spend five [more] minutes with [appellant] on this just to see exactly where we are." Relevant portions of that inquiry include:

THE COURT: Did you go to the emergency room following this accident?

[APPELLANT]: Yes, sir.

THE COURT: Okay. Where is that emergency room record?

[APPELLANT]: It's in here. This is just like one of the first records in my exhibits.

THE COURT: No, no, no. Let's assume that there are six jury members sitting in that box right this minute.

[APPELLANT]: Yes, sir.
THE COURT: Where is the evidence that you went to the emergency room and the emergency room billed you for those services?

[APPELLANT]: This is the emergency room record, even a discharge.

THE COURT: Is the bill there? Is the bill there?

[APPELLANT]: Yes. Well, the bill was presented in one of the piles that I gave them. Yes, I did have the bill. That was one of the bills.

THE COURT: Give me the bill.

[APPELLANT]: And just -- okay. I will find it and give it to you. But just as proof of evidence that I did have it or –

THE COURT: Just find the bill and pass it up to us.

[APPELLANT]: Okay. Here is the bill.

* * *

THE COURT: When is the next time you went [to the doctor]?
(Pause.)

[APPELLANT]: And I had this here. February. Okay.

(Long pause.)

[APPELLANT]: I know I have it here. Okay. This is 2010 February and this is the bill that goes with it. No, that's not the bill that goes with it but this is it, February the 13th.

[APPELLEE'S COUNSEL]: Yes, this is the 12/26/2009 bill but that is not related to the --

THE COURT: That does or not correspond?

[APPELLEE'S COUNSEL]: The bill does not correspond to the --

THE COURT: Give him the bill back. Where is the bill for that visit?

[APPELLANT]: Okay. It should be right behind it.

THE COURT: Let's see if he has the bill.
(Long pause.)

[APPELLANT]: That's not it. That's not it.

THE COURT: How much time are you going to need to put these appointments and bills in chronological order?

> [APPELLANT]: You know, I worked on it until this morning so it seems like when I got the papers out I mixed it up so I know it would take an hour or maybe two but, you know, an hour or two.

Noting that the trial was supposed to start a "half hour ago," the court then asked, "What do you expect the Court to do?" Appellant responded with a request for a "continuation," to which the court responded, "Oh no, we are not having a continuation." Appellant then asked for a recess until the afternoon, which it appears that the court may have been willing to consider, until First Liberty stated that it was not sure that appellant had an expert witness to admit his medical evidence into evidence. Appellant responded that Dr. Abend had "already testified" to the medical records, but he did not subpoena him for trial because Dr. Abend had already been deposed.[5] Appellant also stated that he had subpoenaed Dr. Mensah, but when that subpoena was quashed, "[it] really put [him] at a disadvantage in trying to relocate someone else" and "that's one reason for a continuation."

The court concluded:

> So based upon the inability of the Plaintiff to have previously produced his medical records, to have previously identified an expert to testify as to those medical records, and this being the third time the trial has been set,

[5] Audio and audio-video depositions are governed generally by Md. Rule 2-416 and Md. Rule 2-419. Md. Rule 2-419(a)(4) provides that a deposition of an expert "may be used for any purpose even though the witness is available to testify if the notice of that deposition specified that it was to be taken for use at trial." There appears to be no rule that prohibits an expert witness who had been deposed on videotape from being subpoenaed to testify at trial.

> the Court is going ahead to grant the Defendant's motion to dismiss this case with prejudice.[6]

Appellant filed a motion for reconsideration and motion for a new trial, which the circuit court denied. He timely appealed to this Court.

STANDARD OF REVIEW

Maryland Rule 2-519 provides, in pertinent part:

> (a) A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence. The moving party shall state with particularity all reasons why the motion should be granted. . . .
>
> (b) When a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all the evidence.

The standard for reviewing a circuit court's ruling on a motion for judgment is:

> [W]e ask whether on the evidence adduced, viewed in the light most favorable to the non-moving party, any reasonable trier of fact could find the elements of the [claim] by a preponderance of the evidence.... If there is

[6] This case never went beyond a preliminary motion and a related request for a continuance or recess, when the evidence that was intended to be offered had been deemed inadmissible. And in addition, had it been admissible, there was no available witness to attest to the appropriateness and reasonableness of the medical bills that appellant intended to offer. What is now a motion for judgment was, in a bench trial, formerly referred to as a motion to dismiss. Niemeyer, *Md. Rules Commentary*, at 557 (4th ed.). Both terms were used in this case when appellant was left with no admissible evidence. Md. Rule 2-519(a) provides that, in a bench trial, a party "may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party." The docket record reflects: "Defendant's Motion by Counsel for Judgment - Granted[.] Case dismissed with prejudice[.]"

> even a slight amount of evidence that would support a finding by the trier of fact in favor of the plaintiff, the motion for judgment should be denied.

Sugarman v. Liles, 234 Md. App. 442, 464 (2017), *aff'd*, 460 Md. 396 (2018); *Asphalt & Concrete Services, Inc. v. Perry*, 221 Md. App. 235, 271-72 (2015). We give no deference to the circuit court's legal conclusions, which we review de novo. *Cattail Assocs., Inc. v. Sass*, 170 Md. App. 474, 486 (2006).

DISCUSSION

Appellant's six questions share a common grievance: the denial of his constitutional right to a fair trial. His request, however, that we "order a new trial for this case for whatever reasons [we] see fit" (Br. 5) mirrors the unstructured contentions of error presented in his six questions for our review. Because appellant is self-represented and we are mindful of his right to a fair trial, we will endeavor to construe his contentions and supporting arguments liberally. *See Mitchell v. Yacko*, 232 Md. App. 624, 643 n.12 (2017) (quoting *Simms v. Shearin*, 221 Md. App. 460, 480 (2015)). On the other hand, appellate courts do not "range forth, like knights errant, seeking flaws in trials." *Austin v. State*, 90 Md. App. 254, 265 (1992). Our role is "far more modest . . . [our review is] for the limited purpose of seeing if the trial judge committed error." *Id.* With an exception, we will address appellant's questions in the order presented.

Motion to Quash Dr. Mensah's Subpoena

The court's September 14, 2017 order granted Dr. Mensah's motion to quash the subpoena that appellant had served on him at his medical office in the District of Columbia. Appellant contends that he only learned that the motion to quash existed

when the order was emailed to him on the afternoon of Friday, September 15.[7] Because trial was set for the following Monday, he argues that he did not have proper notice of the motion or an opportunity to respond to it. And, because the court on the day of trial had determined that emailing the medical records to First Liberty was not sufficient, he argues that the court's use of email to notify him of Dr. Mensah's unavailability "less than half a business day" before trial was also insufficient and "unjust." As a result, he was unable to make alternate arrangements or to organize properly for trial. Therefore, the trial court should have either denied the motion to quash or granted a continuance.

We review the trial court's ruling on the motion to quash under an abuse of discretion standard. *See Doe v. Maryland Bd. of Social Workers*, 154 Md. App. 520, 527-28 (2004); *WBAL-TV Div., Hearst Corp. v. State*, 300 Md. 233, 247 (1984). But, when the ruling "involves an interpretation and application of Maryland statutory and case law, we must determine whether the trial court's conclusions are legally correct under a de novo standard of review." *Johnson v. Francis*, 239 Md. App. 530, 542 (2018) (internal quotations omitted).

The court's September 14, 2017 order cited *Bartell v. Bartell*, 278 Md. 12, 19 (1976), for the proposition that "the subpoena powers of the State of Maryland stop at the state line." And, it further stated that appellant had failed to comply with § 9-402 of the

[7] Dr. Mensah's "plea to be excused from testifying in the case number CAL15-32800," which was treated as a motion to quash, reflects that a copy was sent to appellant at 6906 Cherryfield Road, Fort Washington, Maryland 20744, which is his address reflected in the court file.

Courts and Judicial Proceedings Article ("CJP") [also known as the Maryland Uniform Interstate Depositions and Discovery Act[8]], which provides the procedure for issuing a subpoena to an out-of-state witness for discovery purposes in a Maryland court case:[9]

> (a)(1) To request issuance of a subpoena under this section, a party shall submit a foreign subpoena to a clerk of the circuit court for the county in which discovery is sought to be conducted in this State.
> (2) A request for the issuance of a subpoena under this subtitle does not constitute an appearance in the courts of this State.
>
> (b) When a party submits a foreign subpoena to a clerk of court in this State, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

To serve Dr. Mensah in the District of Columbia, it would be necessary to invoke the provisions of that jurisdiction's version of the Uniform Act and submit the subpoena to the D.C. Superior Court to issue a subpoena for service upon Dr. Mensah.

[8] The Uniform Interstate Depositions and Discovery Act relates to out-of-state depositions that could be used in a Maryland trial. *See* Comment, § 3 Unif. Interstate Depositions and Discovery Act; *see also In re Roche Molecular Sys., Inc.*, 60 Misc.3d 222, 227, 76 N.Y.S.3d 752, 756 (N.Y. Sup. Ct. 2018) ("New York's version of the Uniform Interstate Depositions and Discovery Act . . . provides a way to enforce an 'out-of-state subpoena,' defining that term as 'a document, however denominated, issued under authority of a court of record requiring a person to [inter alia]... attend and give testimony at a deposition.'").

[9] "Subpoena" is defined to mean "a document, however denominated, issued under authority of a court of record requiring a person to: (1) Attend and give testimony at a deposition; (2) Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or (3) Permit inspection of premises under the control of the person." CJP § 9-401(f).

We perceive neither error nor abuse of discretion in the court's decision to quash the subpoena for Dr. Mensah's presence in court. And, as we will note in the continuance discussion below, it is doubtful that Dr. Mensah would have been able to advance appellant's case.

Judgment in Favor of First Liberty

Appellant contends that the trial court erred by granting judgment in favor of First Liberty because he had provided medical records to First Liberty and the audio-video deposition testimony of Dr. Abend was available, but was not considered. Appellant also asserts that the trial court only considered First Liberty's pre-trial motions and not his pre-trial concerns and pending motions, involving discovery and depositions issues. These include: (1) that appellant's discovery requests were incomplete; (2) that the deposition of Dr. Abend was incomplete and violated the court's June 21, 2017 order; and (3) that First Liberty's counsel had engaged in gross misconduct.

Discovery

Appellant contends that the trial judge "threw out [his] case without discovery being completed." We are not persuaded that this is so.

On April 7, 2017, First Liberty served appellant with discovery materials and responses to his interrogatories and requests for documents. On April 11, 2017, appellant filed his motion to compel discovery, arguing that First Liberty had produced "some but not all" of his requested documents and had not answered all his interrogatories. On the same day, appellant filed a second set of interrogatories and requests for production of

documents, to which First Liberty did not respond. It appears that the court did not expressly rule on appellant's April 11, 2017 motion as to the documents and interrogatories. But, appellant did not raise the issue again and there was no motion to compel as to the second set of interrogatories and production of documents.

First Liberty responds that it was appellant who was delinquent in discovery. Its interrogatories specifically asked appellant to itemize his medical expenses and economic damages related to the 2009 accident. Appellant's response to that interrogatory was: "Those billing handed to you and spoke upon at deposition." At appellant's deposition on October 27, 2016, he was asked, "What's the total amount cost of treatment as a result of the injuries you sustained in the [2009] accident[?]" He replied, "It's unknown, but at one particular time . . . a piece of paper given to me that Blue Cross and Blue Shield came up with, and they had it over $69,000." First Liberty had also requested a "copy of each and every medical, doctor, hospital, or other related medical bills claimed by Plaintiff . . . to have been incurred as a result of the accident in question." First Liberty claimed that this request had not been met, and appellant, at trial, was unable to establish that he had responded to this request.

Even if we were to assume discovery violations, appellant did not seek a pre-trial continuance, or argue, on the day of trial, that discovery was incomplete. Moreover, the bulk of appellant's April 11, 2017 motion to compel was devoted to extending Dr. Abend's deposition. Only a small portion of it addressed the production of documents and interrogatories with few specific details. The court granted the motion regarding Dr.

Abend's deposition. It is reasonable to believe that the court thought it had dealt with the motion. And, only First Liberty made a preliminary motion on the day of trial, which was to exclude medical bills that appellant did not produce in discovery.

Dr. Abend's Deposition

Appellant contends that Dr. Abend's *de bene esse* deposition on August 8, 2017 was abruptly ended by the witness stating "it is finished." He argues that the witness should not have so much control as to when a deposition ends, and that ending the deposition in this manner violated the court's June 21, 2017 order.

Dr. Abend, who was First Liberty's expert witness, was first deposed on March 28, 2017. According to First Liberty, it had paid for two hours of Dr. Abend's time, examined him for 20 minutes, and then ceded the balance of time to appellant. In a motion to continue the deposition, appellant stated that Dr. Abend refused to answer any questions after 4:00 p.m. Citing Maryland Rule 2-415(i),[10] the circuit court ordered the deposition to reconvene. When appellant was not present on the date that First Liberty scheduled to continue Dr. Abend's deposition, the court ordered that deposition to be re-scheduled again for August 8, 2017. On that date, appellant deposed Dr. Abend for another two hours.[11] At around the two-hour mark, the following exchange ensued:

[10] Md. Rule 2-415(i) provides: "When a deponent refuses to answer a question, the proponent of the question shall complete the examination to the extent practicable before filing a motion for an order compelling discovery."

[11] We do not have the full transcript of Dr. Abend's deposition in the record, only portions.

> [APPELLEE'S COUNSEL]: Mr. Thompson, you're going to have to wrap it up here.
>
> [APPELLANT]: Okay.
>
> [DR. ABEND]: This is it.

After the August 8, 2017 deposition, appellant did not indicate to the trial court that he still needed more time to depose Dr. Abend.

In short, we perceive no violation of the June 21, 2017 order. The order expressly provided that the deposition would be continued for two hours, and Dr. Abend was entitled to leave at the close of the scheduled deposition time. In pertinent part, it stated: "if the Defendant and Defense counsel do not fully cooperate with the deposition, the trial judge shall consider excluding Dr. Abend's testimony." There is no evidence presented that First Liberty and its counsel did not cooperate with the deposition. And, the order only stated that the trial court "shall consider" excluding Dr. Abend's testimony. Appellant also contends that, even without his own expert witness, the case *could have proceeded* because "the court had available at its disposal the video deposition of [] expert witness, Dr. Abend." Again, we are not persuaded.

"[W]here the cause of an injury claimed to have resulted from a negligent act is a complicated medical question involving fact finding which properly falls within the province of medical experts (especially when the symptoms of the injury are purely subjective in nature, or where disability does not develop until some time after the negligent act), proof of the cause must be made by such witnesses." *Wilhelm v. State Traffic Safety Comm'n*, 230 Md. 91, 100 (1962). And, medical testimony is also required

to establish the reasonableness of medical bills. *See Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 56 (2013); *Desua v. Yokim*, 137 Md. App. 138, 143-44 (2001).

Appellant has alleged serious injuries and the need for treatment resulting from the 2009 accident. That claim would require expert medical testimony to establish causation and the need for treatment. Appellant did not have an expert to attest to the reasonableness of any medical expenses and establish their relationship to the 2009 accident. The burden was on appellant to introduce admissible evidence into the record for consideration, which he was unable to do. *See Floyd v. Baltimore City Council*, 241 Md. App. 199, 216 (2019). In short, we perceive neither error nor abuse of discretion in granting judgment in favor of First Liberty.

Continuance

At trial, appellant asked for a continuance in response to First Liberty's motion to preclude the admission of medical bills that it had not received. He contends that the quashing of his subpoena for Dr. Mensah created his need for more time to secure an expert witness.

"[T]he granting or withholding of a continuance is discretionary with the trial court, and . . . [the court's] action in this respect, unless arbitrary, will not be reviewed on appeal." *Cruis Along Boats, Inc. v. Langley*, 255 Md. 139, 142 (1969). Stated differently, "[w]e will reverse the circuit court only in exceptional instances where there was prejudicial error." *Serio v. Baystate Properties, LLC*, 209 Md. App. 545, 554 (2013) (internal quotations omitted).

Maryland Rule 2-508 provides:

> (a) On motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require.
>
> (b) When an action has been assigned a trial date, the trial shall not be continued or postponed on the ground that discovery has not yet been completed, except for good cause shown.

"Failure to adequately prepare for trial is ordinarily not a proper ground for continuance or postponement." *Quarles v. Quarles*, 62 Md. App. 394, 401 (1985); *see Cruis Along Boats, Inc. v. Langley*, 255 Md. 139, 143 (1969) (holding no abuse of discretion in denial of continuance on ground that defendant's general counsel was unable to be present, where the local counsel, who was in the case since its inception two and a half years prior to trial and who had filed all the pleadings and taken depositions, was present and able to try the case); cf. *Thanos v. Mitchell*, 220 Md. 389 (1959) (holding abuse of discretion in refusal to grant postponement when the plaintiff, whose testimony was material, was certified to be ill, supported by affidavits of two doctors, and unable to appear).

Clearly, appellant was not prepared to present his case. Not only could he not establish proof of service of his medical bills, he did not have an expert to testify to their reasonableness in relation to the 2009 accident. The court in this case was, in our view, eminently patient in giving appellant the time and opportunity to present evidence so long as he could establish that it had been produced in discovery.

Appellant contends that the quashing of the subpoena of Dr. Mensah and his lack of an expert witness supported a continuance. Again, we are not persuaded. Our review of Dr. Mensah's request not to testify in this case included not having treated appellant in

relation to the 2009 accident. In addition, he disclaimed being an expert in the applicable field of medicine. In other words, Dr. Mensah, had he appeared, would not have advanced appellant's case.

The court had previously continued the trial date twice in order to accommodate appellant: once because of family and ongoing legal matters; and another time to allow him additional cross-examination of Dr. Abend at the continued *de bene esse* deposition. And, on two prior occasions prior to trial, the court had advised appellant to obtain counsel for representation. Appellant filed suit on November 6, 2015 and was totally unprepared to present his case on September 18, 2017. The trial court's denial of his request for continuance was clearly not arbitrary.

Conduct of First Liberty's Counsel

Appellant accuses First Liberty's counsel of "gross" misconduct that denied him his right to a fair trial. The alleged misconduct includes:

- Lying at trial when he stated that appellant did not provide medical records in discovery.
- Withholding some of appellant's medical record from Dr. Abend for his review.
- Engaging in a "physical confrontation" with appellant at the August 8, 2017 deposition.

First, we are not fact finders. The record does not establish and the trial court did not find that counsel lied regarding the medical records. In support of the motion to preclude introduction of medical bills not produced in discovery, appellee's counsel stated that he "did not get any meaningful response to written discovery," and "did not

receive any medical bills" from the appellant. Appellant responded that he had emailed medical bills and that some of them were in a stack of papers before him. And, even when he could not provide evidence of discovery service, the court permitted appellant to submit any bills alleged to have been sent to First Liberty for the court's inspection. The court reviewed what he presented, including an explanation of benefits, but ultimately concluded that none of it was admissible, stating: "[Y]ou cannot demonstrate to the Court that you have provided them with your medical records and your medical expenses."

Second, appellant's general allegation that First Liberty withheld medical records for review by Dr. Abend is not supported in the record. Appellant does not specify the records that were not reviewed. Aspects of his deposition indicate that Dr. Abend did review some of his medical records, one of which he found illegible. Contrary to appellant's claim, when being question by appellant, Dr. Abend did not attribute appellant's complaints and treatment after a certain date to the accident.

Third, appellant, in his brief, alludes to a "physical confrontation" between him and First Liberty's counsel at the August 8, 2017 deposition. First Liberty responds that, during the deposition, "it became clear that appellant was in possession of a confidential communication of [First Liberty], erroneously produced by [First Liberty] in response to discovery requests." And, "when [First Liberty's] counsel asked the appellant to return the confidential communication, appellant told defense counsel to go to court and yanked

the letter out of counsel's hands."[12] The deposition transcript shines some light on the issue:

> [APPELLEE'S COUNSEL]: Mr. Thompson, you have what was produced from my office a mediation prep binder, which includes my letter --
>
> [APPELLANT]: Excuse me, I'm gone, ya'll.
>
> [APPELLEE'S COUNSEL]: Let the record reflect Mr. Thompson just left. He has a copy of . . . a letter that I sent to Liberty Mutual; it's a confidential letter. He should have returned it, and he hasn't. I see that he still has it. I'm asking him for it back now, and in response he tells me to go to court, he yanks it out of my hand, and he's now packing up and leaving and not providing me a copy of that record -- or the original of that record back. That's it.

In short, we are not persuaded that this so-called "physical confrontation" has any material relevance to the issues before this Court.

Question No. 6

Appellant's final question is puzzling. He appears to argue that there is no available "full transcript of the September 18, 2017" hearing. But, we have found (and have read), within the record of this case, the full transcript of the September 18, 2017

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[12] In an "emergency motion to amend complaint [] to include acting in bad faith against [First Liberty]," filed in this Court on February 14, 2019, appellant alleged that he "is currently and at that time of the confrontation (physical activity by Mr. Mehigan upon the Appellant) under a doctor's care due to chronic pain and was in no condition to fist fight and/or wrestle over papers." First Liberty opposed that motion, responding that its counsel did not batter appellant, that there is no evidence supporting the accusation, and that these un-adjudicated claims should not be considered by this Court.

In the emergency motion, appellant also alleged that First Liberty has been sending him unwanted emails and that this was harassment. First Liberty responded that these were commercial emails from Liberty Mutual Insurance Company, a related entity to appellee but not a party in this case.

hearing in the circuit court. Appellant makes no additional argument or explains how the lack of a full transcript denied him a fair trial. First Liberty does not respond to it, and we will not address it further.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.