Circuit Court for Baltimore City
Case No. 24C20004575

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND**

No. 1827

September Term, 2021

SHARI CHASE

v.

KENNEDY KRIEGER CHILDREN'S HOSPITAL, INC.

Leahy,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: April 5, 2023

* In the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Appellant, Shari Chase, filed suit in the Circuit Court for Baltimore City seeking damages for personal injuries she allegedly sustained when her head hit a mounted cabinet in an observation room at the Kennedy Krieger Children's Hospital, Inc. ("Kennedy Krieger"). After Ms. Chase failed to timely designate a medical expert witness, the circuit court granted Kennedy Krieger's motion for summary judgment because without expert testimony, Ms. Chase's claim failed as a matter of law.

On appeal, Ms. Chase presents seven issues for our review, which we have rephrased and consolidated as follows:[1]

I. Did the circuit court err in granting Kennedy Krieger's motion for summary judgment?

For the reasons set forth below, we affirm the judgment of the circuit court.

BACKGROUND

On or about November 2, 2017, Ms. Chase was seated in a chair in an observation room at Kennedy Krieger, where her son was receiving treatment.[2] When Ms. Chase stood from the chair, she bumped her head on a wall-mounted cabinet. Approximately three years later, on October 30, 2020, she filed suit against Kennedy Krieger,[3] alleging that she

[1] The issues, as presented by Ms. Chase, are set forth in an appendix to this opinion.

[2] In her complaint, Ms. Chase alleged that her injury occurred on November 7, 2017. The incident report prepared by Kennedy Krieger indicated that the incident occurred on November 2, 2017. On March 3, 2021, Ms. Chase moved to amend her complaint by interlineation to reflect November 2, 2017, as being the correct date of the incident. That motion was granted by the circuit court on March 15, 2021.

[3] Ms. Chase drafted and filed her complaint with the assistance of counsel. On January 15, 2021, Ms. Chase's counsel filed a motion to withdraw, explaining that "[Ms. (continued)

had sustained severe physical and mental injuries as a result of Kennedy Krieger's negligence in failing to construct and maintain the wall cabinet in a safe manner, and failing to warn her of the dangerous condition presented by the cabinet.[4]

Kennedy Krieger filed an answer asserting a general denial of liability for the alleged injuries suffered by Ms. Chase. The court then issued a scheduling order on January 21, 2021. The scheduling order provided that Ms. Chase's expert witness designation was due on or before April 23, 2021. Discovery was to conclude on September 22, 2021, and the deadline for filing dispositive motions was set for October 23, 2021.

Ms. Chase described her injury in her response to interrogatories provided on March 23, 2021. She stated that she was directed by a Kennedy Krieger employee to a seat in an observation room where she could wait during her son's treatment. When she stood up from the chair, she hit her head on an overhead cabinet.[5] Ms. Chase stated that, as a result

Chase] retained the undersigned counsel just prior to the expiration of the Statute of Limitations, at which time the undersigned counsel filed a lawsuit to toll the Statute of Limitations." Counsel asserted that, after reviewing the evidence, he did not "believe he could effectively represent [Ms. Chase] in this matter" and therefore obtained her consent to withdraw his appearance. That motion was granted by the circuit court on February 2, 2021.

[4] In her complaint, Ms. Chase named six defendant entities: (1) Kennedy Krieger Institute, Inc.; (2) Kennedy Krieger Foundation, Inc.; (3) Kennedy Krieger Children's Hospital, Inc.; (4) Kennedy Krieger Associates, Inc.; (5) Kennedy Krieger Education and Community Services, Inc.; and (6) Kennedy Krieger National Research Foundation, Inc. On March 19, 2021, the circuit court issued "Notification to Parties of Contemplated Dismissal" providing that the court would dismiss the action as to all defendants but Kennedy Krieger Children's Hospital, Inc. The docket entries reflect that five corresponding orders were entered dismissing the other affiliated entities on May 5, 2021.

[5] An incident report prepared by a Kennedy Krieger employee at the time of the incident stated that "No visible injury was noted but [Ms. Chase] complained of face pain. She was given ice and refused calling 911."

of the incident at Kennedy Krieger, she suffered injuries to her shoulder, clavicle, brain, occipital nerve, neck, and rib, and that she had "eye swing," post-traumatic stress disorder (PTSD), psychological injury, neurological injury (trigger finger condition), and mood change.

In addition to requesting Ms. Chase's account of the alleged injury, the set of interrogatories propounded by Kennedy Krieger asked Ms. Chase to state "the names and addresses of all health care providers who have examined you as a result of the occurrence here involved" as well as "the names and addresses of all physicians or other experts who you propose to call as witnesses, the subject matter of their testimony, and . . . copies of all written reports received from them." In response, Ms. Chase stated that a list of health care providers "will be attached . . . [o]n a separate document" and that she would provide "[w]itnesses to be called" on an "attached list." The record, however, reflects that no such list was attached or otherwise appended to Ms. Chase's response to interrogatories.

Kennedy Krieger's request for production of documents sought, *inter alia*, "[a]ny and all reports from experts concerning either liability or damages" and "[t]he most recent resume or curriculum vitae of each expert whom you expect to call as an expert witness at trial." In response, Ms. Chase stated that "[t]here are no expert reports to share at this time" and "[n]o experts identified at this time." Ms. Chase also appended a list of her treating physicians and physical therapists to her response.

As discovery proceeded, Kennedy Krieger obtained documents which indicated that Ms. Chase had been injured in a car accident in August 2017 in which "she was hit from behind by a truck" and which had caused her to suffer "neck pain, headache, brain fog, arm

pain and numbness … 'on and off' as well as right shoulder pain and right hand – trigger finger." Kennedy Krieger also obtained documents indicating that Ms. Chase had also sustained work-related injuries in October 2017 and February 2018, resulting in injuries to her head, brain, neck, collar bone, rib, shoulders, and arms. Ms. Chase had filed claims for her injuries and obtained compensation through settlements approved by the Worker's Compensation Commission of Maryland.

On August 27, 2021, Ms. Chase filed a motion to extend the discovery and expert designation deadlines, which the court denied by written order on October 7, 2021.[6] Thereafter, on September 21, 2021—five months after her expert witness designation deadline and the day before the close of discovery—Ms. Chase filed a list of "potential and selected expert witnesses" consisting of the names of her treating physicians. Ms. Chase had mailed Kennedy Krieger's counsel an "Expert List" on September 18, and a "Rebuttal List" on September 20, 2021. That filing purported to be dated March 22, 2021, but was entered on the court docket and stamped by the clerk of court on September 21, 2021. Kennedy Krieger then moved to strike Ms. Chase's expert witness list as untimely and noncompliant with Maryland Rule 2-402(g). The circuit court granted the motion and struck Ms. Chase's expert disclosures by order entered on November 8, 2021.

Kennedy Krieger moved for summary judgment on October 25, 2021, asserting that it was entitled to judgment because Ms. Chase had failed to provide evidence showing that "(1) Kennedy Krieger breached a duty owed to her; (2) she suffered any actual injury from

[6] Thereafter, Ms. Chase filed at least five more "emergency" motions to extend the discovery and expert designation deadlines.

[the incident]; and (3) any injury she suffered was causally related to the incident." Kennedy Krieger argued that, because Ms. Chase had suffered similar injuries on at least three occasions within months of the incident at issue, expert testimony was required to establish causation and damages, and, because she had failed to provide such testimony, her claim failed as a matter of law. Kennedy Krieger requested a hearing on the motion, but subsequently withdrew that request, and submitted on the papers.

Ms. Chase filed her opposition to the motion for summary judgment on November 1, 2021. She argued that expert testimony was not necessary, as the issues of causation and damages were within the common knowledge of the ordinary layperson. She further asserted—for the first time—that on March 22, 2021 she had submitted her designation of "preliminary medical experts" to Kennedy Krieger and filed it with the circuit court. Citing to Section 10-104 of the Courts and Judicial Proceedings Article, Ms. Chase also argued that "whether or not that list is recognized by the courts" her medical records were admissible "to prove the existence of a medical condition[.]"

Kennedy Krieger filed a Reply to Ms. Chase's opposition, denying receipt of an expert witness list dated March 22, 2021, and further highlighting the absence of an entry on the court docket for any such filing as well as Ms. Chase's assertion that she had "no experts identified at this time" in her response to Kennedy Krieger's request for production of documents filed the very next day. Due to those attendant circumstances, Kennedy Krieger pointed out that "it defies credulity to suggest at this late date that Plaintiff did timely file expert designations." The circuit court granted Kennedy Krieger's motion for summary judgment on December 22, 2021.

Ms. Chase noted an appeal on January 21, 2022.[7]

DISCUSSION

Standard of Review

Because the determination of whether a trial court properly granted summary is a question of law, we review the trial court's decision *de novo*. *CX Reinsurance Co., Ltd. v. Johnson*, 481 Md. 472, 484 (2022) (quoting *Rossello v. Zurich Am. Ins. Co.*, 468 Md. 92, 102 (2020)). We independently examine the record to determine whether a genuine dispute of material fact exists, and if none exists, we determine whether the prevailing party is entitled to judgment as a matter of law. *Id.* (quoting *Rossello*, 468 Md. at 102-03). In doing so, "we will 'construe the facts properly before the court, and any reasonable inferences that may be drawn from them, in the light most favorable to the nonmoving party.'" *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 313 (2019) (quoting *Remsburg v. Montgomery*, 376 Md. 568, 579-80 (2003)).

We review a circuit court's decision to impose a sanction for violation of a scheduling order for abuse of discretion, *Watson v. Timberlake*, 253 A.3d 1094, 1101 (Md. Ct. Spec. App. 2021), *cert. denied*, 476 Md. 281, 261 A.3d 248 (2021).

[7] On January 21, 2022, Ms. Chase also filed a Motion to Revise Order of Judgment under Md. Rule 2-535. It appears from the docket entries that the circuit court did not rule on this motion before sending the record to this Court. Regardless, because summary judgment was granted on December 22, 2021, Ms. Chase's motion to revise was not filed within ten days of judgment and therefore does not stay this appeal pending resolution of the motion. To the contrary, "[a] motion filed more than ten days after a judgment but within thirty days of the judgment, under Rule 2-535(a) . . . [has] no effect upon the running of the thirty-day appeal period" with the result that "appellate jurisdiction attaches and the circuit court cannot decide the motion." *Unnamed Atty. v. Atty. Grievance Comm'n*, 303 Md. 473, 486 (1985).

A. *Parties' Contentions*

Ms. Chase asserts an array of challenges to the circuit court's grant of summary judgment. She first objects, generally, that the "[t]here are numerous genuine disputes as to material facts, hence a motion for summary judgment [cannot] be granted**."** As to the issue of causation, Ms. Chase contends that the circuit court's recognition of similar injuries suffered by her around the time of the incident at Kennedy Krieger constituted an effort "to deflect blame" through use of a "smoke and mirror technique." Next, Ms. Chase argues that the circuit court erroneously struck her expert witness list because it was properly served along with her answers to Kennedy Krieger's interrogatories on March 22, 2021. Finally, Ms. Chase raises several additional sources of error, including that: she was never served with Kennedy Krieger's Reply Brief before the summary judgment hearing (Issue 1), the circuit court's pretrial scheduling order was confusing (Issue 2), Kennedy Krieger's motion for summary judgment was untimely (Issue 3), and the circuit court's untimely rulings on discovery motions damaged her case (Issue 6).

Kennedy Krieger counters that the circuit court correctly concluded that Ms. Chase was required to present expert medical testimony in proving the causation element of her negligence claim. Kennedy Krieger stresses that, because Ms. Chase sustained similar injuries in unrelated accidents around the same time as the incident at its facility, "[d]istinguishing her pre and post Kennedy Krieger incident injuries . . . is a complicated medical question and reinforces the need for expert medical testimony." Accordingly, Kennedy Krieger asserts that summary judgment was warranted because Ms. Chase lacked the ability to present such testimony given that her expert designation was untimely.

Finally, Kennedy Krieger notes that Ms. Chase's assertion that she filed an expert witness list on March 22, 2021, is not credible because "Kennedy Krieger has no record of receiving this purported expert designation[] nor is it noted in the lower court docket."

B. *The Necessity of Expert Testimony for Complicated Medical Questions*

To prevail on a claim of negligence, a plaintiff must establish the following four elements:

> (1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty.

Macias, 243 Md. App. at 316 (emphasis omitted) (quoting *Joseph v. Bozzuto Mgmt., Co.*, 173 Md. App. 305, 314 (2007)). The element of causation further bifurcates into two sub-elements as the defendant's negligence must be "1) a cause in fact, and 2) a legally cognizable cause" of the plaintiff's injuries. *Troxel v. Iguana Cantina, LLC*, 201 Md. App. 476, 504 (quoting *Pittway Corp. v. Collins*, 409 Md. 218, 243 (2009)). Causation-in-fact "concerns the threshold inquiry of whether a defendant's conduct actually produced an injury." *Id.* (quoting *Pittway*, 409 Md. at 244). Legally cognizable causation, in turn, "involves a determination of whether the [plaintiff's] injuries were a foreseeable result of the negligent conduct." *Id.* at 505 (quoting *Pittway*, 409 Md. at 244). The plaintiff bears the burden of proving each element. *Macias*, 243 Md. App. at 316.

Whether expert testimony is required to establish a causal connection between the plaintiff's injuries and the defendant's negligence "is determined on a case-by-case basis."

Greater Metro. Orthopaedics, P.A. v. Ward, 147 Md. App. 686, 691 (2002) (citing *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357, 376 (1997)).

As the Supreme Court of Maryland[8] has explained:

> [t]here are, unquestionably, many occasions where the causal connection between a defendant's negligence and a disability claimed by a plaintiff does not need to be established by expert testimony. Particularly is this true when the disability develops coincidentally with, or within a reasonable time after, the negligent act, or where the causal connection is clearly apparent from the illness itself and the circumstances surrounding it, or where the cause of the injury relates to matters of common experience, knowledge, or observation of laymen. However, where 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 . . . proof of the cause must be made by such witnesses.

Wilhelm v. State Traffic Safety Comm'n, 230 Md. 91, 99-100 (1962) (internal citations omitted). Accordingly, expert testimony is generally required where the issue of causation involves complicated medical questions which are beyond an ordinary lay person's knowledge or experience. *See e.g., Barnes v. Greater Balt. Med. Ctr., Inc*., 210 Md. App. 457, 481 (2012) (expert testimony was required in complex medical malpractice case).

In *S.B. Thomas, Inc. v. Thompson*, this Court further distilled several factors to consider in determining whether expert testimony is required in any given case:

> To the extent to which we can distill any general wisdom out of the case law, it seems to be this. A genuine jury issue as to the causal relationship between an earlier injury and a subsequent trauma may sometimes be generated, even in the absence of expert legal testimony, when some combination of the following circumstances is present: 1) a very close temporal relationship between the initial injury and the onset of the trauma; 2) the manifestation of the trauma in precisely the same part of the body that received the impact of

[8] On December 14, 2022, the name of the Court of Appeals was changed to the Supreme Court of Maryland, following a constitutional amendment approved by the voters.

> the initial injury; 3) as in *Schweitzer v. Showell,* some medical testimony, albeit falling short of a certain diagnosis; and 4) an obvious cause-and-effect relationship that is within the common knowledge of laymen.
>
> Conversely, the causal relationship will almost always be deemed a complicated medical question and expert medical testimony will almost always be required when one or more of the following circumstances is present: 1) some significant passage of time between the initial injury and the onset of the trauma; 2) the impact of the initial injury on one part of the body and the manifestation of the trauma in some remote part; 3) the absence of any medical testimony; and 4) a more arcane cause-and-effect relationship that is not part of common lay experience.

S.B. Thomas, 114 Md. App. at 381-82.

Where a party sustains similar injuries prior or subsequent to the injury at issue, a complicated medical question requiring expert testimony is usually presented. For example, in *American Airlines Corp. v. Stokes*, we held that an employer's motion for judgment notwithstanding the verdict should have been granted due to the claimant's failure to present expert medical testimony. 120 Md. App. 350 (1998). There, the claimant—an employee of American Airlines—experienced "tightness in his back" while loading and unloading baggage and submitted a claim to the Workers' Compensation Commission. *Id.* at 353-54. The Commission denied his claim, but after a jury trial before the Circuit Court for Anne Arundel County, the jury found that the claimant had suffered a compensable accidental injury arising out of his employment with American Airlines. *Id.* at 354-55. American Airlines—having moved for a directed verdict both at the close of the claimant's case and at the close of the evidence—moved for judgment notwithstanding the verdict because the claimant failed to produce expert medical

testimony. *Id.* at 354-55. The circuit court denied the motion and American Airlines noted a timely appeal. *Id.* at 355.

We reversed the judgment of the circuit court, explaining that judgment N.O.V. should have been granted because there were "no less than three significant additional circumstances that escalate[d] the issue of causation here into a more complicated medical question." *American Airlines*, 120 Md. App. at 360. First, the Commission expressly found that there was no causal connection between the claimant's injury and the "tightness" he experienced in his back while working at American Airlines, a conclusion which was entitled to a presumption of correctness in the circuit court proceedings. *Id.* Second, the claimant's "long history of chronic back problems . . . presented a far more likely explanation for his ultimate disability than the modest strain he suffered" while at work. *Id.* at 361. Indeed, the claimant had a nearly twenty-year history of chronic back pain with multiple flare-ups (including seeking treatment for his back after an automobile accident) in the period preceding his employment at American Airlines. *Id.* at 361-62. Finally, there was unrebutted testimony from American Airlines' expert witness that there was no causal connection between the claimant's mild back strain during his employment and the claimant's current injury. *Id.* at 362-63. That being the case, we concluded that because there was a highly credible alternative theory of causation based on a pre-existing injury, the claimant was required to present expert medical testimony and his failure to do so required judgment N.O.V. in favor of American Airlines. *Id.* at 363-65.

Similarly, in *Kantar v. Grand Marques Café*, we held that a complicated medical question requiring expert testimony was presented where the claimant had suffered a series

of unrelated injuries in the years following her initial work-related injury. 169 Md. App. 275 (2006). There, the claimant fell while working at Grand Marques Café, submitted a claim to the Workers' Compensation Commission, and was determined to have suffered "75% permanent disability to her head, neck, and back, with 5% of that disability being the result of pre-existing conditions" in 2001. *Id.* at 278. In 2004, the claimant petitioned to have her initial claim re-opened to determine whether her disabilities had worsened as a result of the compensable accidental injury. *Id.* At the hearing, the restaurant presented evidence that the claimant "had a significant history of non-accident-related conditions, both before and after the 2001 order" including "coronary artery bypass surgery" as well as "ongoing treatments for diabetes, hypertension, and thyroid conditions[ ] and surgery to relieve carpal tunnel conditions." *Id.* The Commission rejected Kantar's claim for permanent total disability and, after Kantar appealed to the Circuit Court for Montgomery County, the court granted judgment in favor of the restaurant at the close of Kantar's case due to the lack of expert medical testimony establishing causation. *Id.* at 278-80.

We affirmed, reasoning that "expert medical testimony was necessary" to prove the causation element of Kantar's claim. *Id.* at 283. Specifically, we noted that Kantar's own physician testified that "'[t]he great bulk of [Kantar's] problems are unrelated to the accident[,]'" and that "her 'significant' medical 'problems' include 'heart disease, high blood pressure, diabetes, ulcer disease, hyperthyroidism, obesity, carpal tunnel syndrome, pinched nerve in the arms[.]'" *Kantar*, 169 Md. App. at 284-85. Accordingly, "[g]iven the intervening years and the multitude of other physical conditions that could be causally linked to the heightened leg and neck pain of which [Kantar] complained[,]" we held that

expert medical testimony was required and that judgment was correctly granted due to the claimant's failure to present such testimony. *Id.* at 285-86.

C. *Analysis*

Returning to the present case, we conclude that Ms. Chase was required to present expert testimony to prove the causal connection between her injuries and Kennedy Krieger's alleged negligence. As we have explained, in her complaint, Ms. Chase averred that, as a result of the incident at Kennedy Krieger, she suffered injuries to her shoulder, clavicle, brain, occipital nerve, neck, and rib, and that she had "eye swing," post-traumatic stress disorder (PTSD), psychological injury, neurological injury (trigger finger condition), and mood change. Yet, in the months before and after the incident at Kennedy Krieger, Ms. Chase also reported injuries to the same areas of her body—*i.e.*, her head, neck, brain, shoulder, rib, and right hand—resulting from three unrelated accidents. Specifically, documents obtained in discovery indicated that Ms. Chase had been injured in a car accident in August 2017 where she was hit from behind by a truck, which had caused her to suffer "neck pain, headache, brain fog, arm pain and numbness … 'on and off' as well as right shoulder pain and right hand – trigger finger." Kennedy Krieger also obtained documents indicating that Ms. Chase had sustained work-related injuries in October 2017 and February 2018, resulting in injuries to her head, brain, neck, collar bone, rib, shoulders, and arms.

As in *American Airlines* and *Kantar*, the evidence here indicated that there were multiple potential sources of Ms. Chase's injuries both preceding and following the incident at Kennedy Krieger. To be blunt, we perceive that, as in *American Airlines*, Ms.

Chase's automobile accident in particular "presented a far more likely explanation for h[er] ultimate disability" than the act of hitting her head on a cabinet while at Kennedy Krieger's facility, for which she refused treatment at the time of injury. *American Airlines*, 120 Md. App. at 361. Given these alternative theories of causation, the issue of whether Ms. Chase suffered injuries and required medical treatment as a result of Kennedy Krieger's alleged negligence, or those other causes, was a complicated medical question that could not be determined without expert testimony. *See S.B. Thomas*, 114 Md. App. at 383 ("[W]hen there is a genuine issue as to whether there is a causal connection between an earlier injury and a subsequent disability, in the majority of cases it will be a complicated medical question requiring, as a matter of law, expert medical testimony.").

Here, Ms. Chase could not present any expert testimony to support her claim because the circuit court struck her expert designation as untimely and deficient under Maryland Rule 2-402(g)(1)(A). Specifically, the scheduling order clearly provided that Ms. Chase's expert witness designation was due on or before April 23, 2021. On September 21, 2021, nearly five months after the deadline, Ms. Chase filed her list of "all potential and selected expert witnesses" consisting solely of the names of her physicians. Kennedy Krieger moved to strike Ms. Chase's expert witness list as untimely and noncompliant with Md. Rule 2-402(g)(1)(A). The circuit court granted the motion and struck Ms. Chase's expert disclosures. Ms. Chase contends that the circuit court abused its discretion in doing so. We disagree.

Scheduling orders "are critical to the circuit court's assignment of actions for trial and the efficient management of its caseload." *Watson v. Timberlake*, 251 Md. App. 420,

432 (2021), *cert. denied*, 476 Md. 281 (2021). Accordingly, when an "expert [is] not identified until after the deadline set in the scheduling order[,]" a trial court's decision to exclude such expert testimony will be upheld absent an abuse of discretion. *Livingstone v. Greater Washington Anesthesiology & Pain Consultants, P.C.*, 187 Md. App. 346, 387-88 (2009). Ordinarily, "[a] trial court's 'action in admitting or excluding [expert] testimony will seldom constitute a ground for reversal.'" *Yacko v. Mitchell*, 249 Md. App. 640, 695 (2021), *cert. denied*, 474 Md. 737 (2021) (quoting *Alford v. State*, 236 Md. App. 57, 71 (2018)). Nonetheless, while "the decision of whether to exclude a key witness because of a party's failure to meet the deadlines in a scheduling order is generally committed to the discretion of the trial court, the imposition of such a draconian sanction must be supported by circumstances that warrant the exercise of the court's discretion in such a manner." *Maddox v. Stone*, 174 Md. App. 489, 501 (2007).

In this case, Ms. Chase's contention that she timely disclosed experts on March 22, 2021, is belied by the record. To start, the docket contains no certificate of service for an expert witness disclosure dated March 22, 2021. Additionally, Ms. Chase's contention is at odds with her own filings indicating that no such disclosure was ever made. Indeed, Ms. Chase filed a Response to Kennedy Krieger's Request for Production of Documents dated March 22, 2021—which states in response to Request No. 5 that Ms. Chase had "[n]o experts identified at this time." Several months later, on August 27, 2021, she filed a request for an extension of the expert disclosure deadline. Clearly, the motion to extend the deadline would not have been necessary, had Ms. Chase already disclosed her expert witnesses to Kennedy Krieger. And even if Ms. Chase *had* sent the purported list of experts

on March 22 rather than on September 21, 2021, that filing would have *still* been deficient because it merely provided a list of her physicians' names. Maryland Rule 2-402(g)(1)(A) requires more and mandates that an expert witness disclosure also "state the subject matter on which the expert is expected to testify and a summary of the grounds of each expert's opinion[.]" Ms. Chase's expert witness list unquestionably did not provide that information.

Of course, the untimely and deficient filing by Ms. Chase did not automatically justify the striking of her expert witness disclosure. The trial court's discretion to impose the sanction is dependent on the "facts of the particular case" as filtered through several factors by which the egregiousness of the discovery violation is measured.[9] *Taliaferro v. State*, 295 Md. 376, 390-91 (1983). As we recently discussed in *Asmussen v. CSX Transp., Inc.*, at its core, this analysis condenses to "two broader inquiries": (1) whether "the party seeking to have the evidence admitted *substantially complied* with the scheduling order" and (2) whether "there [is] *good cause* to excuse the failure to comply with the order[.]" 247 Md. App. 529, 550 (2020) (emphasis in original).

Here, Ms. Chase can demonstrate neither substantial compliance nor good cause. First, as we have noted, Ms. Chase's expert designation was not only filed nearly five months after the deadline for disclosure of her expert witnesses; it was also facially

[9] These factors were first announced in *Taliaferro* and are commonly known as the *Taliaferro* factors. The *Taliaferro* factors are "whether the disclosure violation was technical or substantial, the timing of the ultimate disclosure, the reason, if any, for the violation, the degree of prejudice to the parties respectively offering and opposing the evidence, whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance." *Taliaferro v. State*, 295 Md. 376, 390-91 (1983).

deficient because it provided no information whatsoever regarding the subject matter on which her designated experts proposed to testify or the grounds for their opinions. *Cf. Asmussen*, 247 Md. App. at 553-54 (lack of substantial compliance where initial and amended expert witness designations provided only a barebones identification of proposed experts and the general subject matter of their testimony and full disclosure of ground for their opinions was only provided six months after the close of the deadline). That does not even remotely approach substantial compliance with the scheduling order or with the provisions of Rule 2-402(g). Second, Ms. Chase has failed to identify any good cause for her untimely and facially inadequate expert witness disclosure. At most, Ms. Chase continues to proclaim that she timely disclosed her list of expert witnesses to Kennedy Krieger on March 22, 2021. As we have explained, that contention has no support in the record and Ms. Chase fails to offer any other rationale excusing her lack of diligence. *Cf. Asmussen*, 247 Md. App. at 555-56.

Accordingly, we discern no abuse of discretion in the circuit court's decision to strike Ms. Chase's expert witness disclosure. Ms. Chase provides no cognizable explanation for her untimely and deficient filing. The timing of her disclosure—five months after her expert disclosure was required and on the day before the close of the discovery—would have caused Kennedy Krieger to suffer prejudice insofar as it would not have been able to depose plaintiff's experts or name its own rebuttal experts prior to the close of discovery. We can hardly say that "no reasonable person would take the view adopted by the [circuit] court" or that the court acted "without reference to any guiding

principles" in deciding to sanction Ms. Chase by striking her expert witness disclosure. *Asmussen*, 247 Md. App. at 552 (quoting *Livingstone*, 187 Md. App. at 388).

Once the circuit court struck Ms. Chase's list of expert witnesses, she was unable to prove that the incident at Kennedy Krieger caused her injuries. Absent evidence of causation, her negligence claim failed as a matter of law because where a plaintiff fails to produce expert testimony when it is required, the defendant is entitled to summary judgment. *See, e.g.*, *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 443 (2007) ("Despite three amended scheduling orders, and approximately 11 months allotted to conduct discovery, 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."). Absent expert testimony, there existed no genuine dispute of material fact on the issue of causation, a necessary element of Ms. Chase's claim, and the circuit court did not err in granting summary judgment in favor of Kennedy Krieger on those grounds.

Finally, Ms. Chase asserts a number of additional claims of error which she contends caused or contributed to the court's erroneous grant of summary judgment. Specifically, she contends that: (1) the deadlines in the Pretrial Scheduling Order were confusing; (2) she was not served with Kennedy Krieger's Reply memorandum in the circuit court; (3) that she was prejudiced by delays in the circuit court's rulings on motions and various filing errors; and (4) that Kennedy Krieger's motion for summary judgment was filed "a day late and served 6 days after the end of discovery."

First, it is not clear that Ms. Chase's confusion regarding the Pretrial Scheduling

Order is preserved for our review because the record does not indicate that Ms. Chase ever raised this issue before the circuit court. Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal."). Even if she had, the court's scheduling order is entirely unambiguous. The order provides that "Plaintiff(s) *shall* identify experts 3 months after the date of this order – **4/23/21**[.]" (emphasis in original). Given that mandatory language, we fail to see the source of Ms. Chase's confusion about whether that command functioned as a deadline or a guideline. That she chose to treat it as the latter does not render the scheduling order misleading and Ms. Chase's contentions to the contrary are without merit.

Next, though Ms. Chase states that she was not served with Kennedy Krieger's Reply memorandum and that there were delays in rulings by the trial court, she fails to explain how she was prejudiced by the problems she encountered, and how the errors, if any, denied her relief to which she was entitled. At most, Ms. Chase asserts that the court's denial of her motions to compel deprived her of information regarding potential witnesses to the incident. Yet, even if Ms. Chase were supplied with that information, summary judgment would have nonetheless remained appropriate due to the lack of a timely expert designation. Additionally, with respect to Ms. Chase's contention that she was not served with the Kennedy Krieger's Reply, we note that the record indicates that the certificate of service for the Reply stated that, on November 12, 2021, the Reply was hand-filed with the court and sent electronically *via* e-mail to Ms. Chase.

Last, Ms. Chase asserts a challenge to the timeliness of the filing of the motion for summary judgment. We note from the record that the deadline for filing dispositive motions was October 23, 2021, and that day was a Saturday. Pursuant to Md. Rule 1-203(a)(1), when the date a motion is due is a Saturday, Sunday or holiday, the motion becomes due at "the end of the next day that is not a Saturday, Sunday, or holiday." Accordingly, dispositive motions in this case were due on Monday, October 25, 2021. Because Kennedy Krieger's motion for summary judgment was filed on October 25, 2021, it was timely filed, and Ms. Chase's challenge to the timeliness of the motion is without merit.

Based on the record in this case, we conclude that the circuit court did not err in determining that Kennedy Krieger was entitled to summary judgment on Ms. Chase's claims.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY COSTS

APPENDIX TO OPINION IN CASE NO. 1827, SEPTEMBER TERM, 2021

The issues, as presented in Ms. Chase's brief are here presented verbatim:

1. Plaintiff was not served with the Defendant's Reply Brief that Judge Geller used to formulate his decision to Grant the Defendants Motion for Summary Judgment, leaving a disadvantage to the Plaintiff and tainting the scales of justice[.]

2. The Pretrial Scheduling Order (Exhibit C) has conflicting language that caused confusion with the definitive deadlines[.] Although Plaintiff used those dates as a guideline, many of the line items do not have deadlines but rather say submit after a date of which was done. For example, Item #2 uses the word "shall" but #4 has Must. As for the Pretrial Scheduling Order #3 and #4 have definitive language of No later than. Plaintiff used those dates as guidelines but understood that the last date to enter other witnesses, etc date of discovery was a definitive deadline of 9/22/21. The word "shall" as the Supreme court ruled upon, is not a word of obligation.

3. Motion for Summary Judgment was filed a day late and served 6 days after the end of discovery.

4. Defendant claims that they did not receive the Expert Witnesses at all. This is a false statement. In fact the Defendant and Court received the list of experts that were signed and enveloped 3/22/21 and picked up by US mail postage prepaid served 3/23/21 both as an individual filing and attached to the Plaintiff's answers to interrogatories. This was paramount for the ruling of Judge Geller.

5. There are numerous genuine disputes as to material facts, hence a motion for summary judgment [cannot] be granted.

6. The Circuit Court of Baltimore City had slow ruling on motions up to 8 months after filing motions, blatantly denying motions, errors with adding to the Case History, accidentally returning pleadings without due cause damaged the Plaintiff[']s case.

7.[10] Defendant contends a wall unit fell on Plaintiff[']s head on 10/30/17. They contend that the same injuries occurred that were stated at Kennedy Krieger and that she was paid via Workmen's Compensation for those injuries.

[10] Ms. Chase misidentified the 7th issue in her brief as "Issue #8."