Circuit Court for Prince George's County
Case No. CAL18-10797

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1983

September Term, 2023

JUAN CARLOS TERRONES ROJAS

v.

F.R. GENERAL CONTRACTORS, INC., et al

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

JJ.

Opinion by Shaw, J.

Filed: April 16, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises from a judgment entered by the Circuit Court for Prince George's County. Appellant Juan Carlos Terrones Rojas filed a civil complaint against his employer, F.R. General Contractors, Inc., asserting violations of the Maryland Wage Payment Collection Law and the Maryland Wage and Hour Law, and for unjust enrichment. At the conclusion of a jury trial, a judgment was entered in favor of Appellant's employer, F.R. General Contractors, Inc. ("Appellees"). Appellant timely appealed, and he presents three questions for our review:

I. Did the circuit court err when it grafted an additional requirement on the verdict sheet requiring that a jury find not only that "Plaintiff was required to report to the Parking area at Rosecroft raceway," but also that Plaintiff "use it as the sole mean[s] of accessing the MGM construction project?"

II. Where the Supreme Court clarified in *Amaya v. DGS Constr., LLC*, 479 Md. 515 (2022) that "an employee being required by an employer to report to a designated location is a sufficient basis on which to conclude that the employee engaged in hours of work," did the circuit court err when it refused to give Plaintiff's non-pattern jury instruction 17 that informed the jury that an employee "being required by an employer to report to a designated location is a sufficient basis on which to conclude that the employee engaged in hours of work?"

III. Where Plaintiff filed a complaint with a cause of action for unjust enrichment and the circuit court instructed the jury on the elements of unjust enrichment, did the circuit court err when it did not include a question on the verdict sheet to allow a jury to return a verdict in Plaintiff's favor on that claim?

For reasons that follow, we affirm the judgment of the circuit court.

BACKGROUND

In 2018, Appellant filed a civil complaint against Appellees in the Circuit Court for Prince George's County, claiming that his employer had violated the Maryland Wage Payment Collection Law and the Maryland Wage and Hour Law, and for unjust

enrichment. The circuit court granted summary judgment in favor of Appellees, and we affirmed that decision. Appellant petitioned for certiorari and the Supreme Court of Maryland, in *Amaya v. DGS Construction, LLC*, 479 Md. 515 (2022), reversed our decision and ordered that the case be remanded to the circuit court for trial.

In 2023, the circuit court held a jury trial. At trial, Appellant testified that he worked as a carpenter for Appellees on a construction project at the National Harbor, located in Oxon Hill, Maryland, from 2015 to 2016. He testified that he was instructed to park at a lot at Rosecroft Raceway each morning, and he and other employees were transported from the lot to the construction site, by a bus provided by the project's general contractor. Upon arrival, Appellant clocked in to begin his workday. Appellant called four other witnesses to testify, including the vice president of field operations of Commercial Interiors[1], the president of F.R. General Contractors, and two additional F.R. General Contractor's employees. The witnesses each testified that employees were required to report to Rosecroft Raceway in order to work or they would be reprimanded.

Appellees also called several witnesses. Appellee's witnesses testified that parking at Rosecroft Raceway was optional, and that workers parked in other areas to reach the work site. At the conclusion of the evidence, the court instructed the jury, and deliberations were held. The jury returned a verdict in favor of Appellees. Appellant timely appealed.

[1] Commercial Interiors is a commercial group comprising nearly 170 employees. Commercial Interiors was the general contractor asked to perform work for the MGM Construction Project. Appellees entered into a "Master Subcontract Agreement" with Commercial Interiors for the Project.

STANDARD OF REVIEW

A trial court has discretion in its decision to use a particular verdict sheet. *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 220 (2011) (quoting *Applied Indus. Techs. v. Ludemann*, 148 Md. App. 272, 287 (2002)). The decision to use a verdict sheet will not be reversed absent an abuse of discretion. *Alford v. State*, 236 Md. App. 57, 81 (2018) (citing *S&S Oil, Inc. v. Jackson*, 428 MD. 621, 629 (2012)). "'A court's discretion is always tempered by the requirement that the court correctly apply the law applicable to the case.'" *Am. Radiology Servs., LLC v. Reiss*, 470 Md. 555, 574 (quoting *Schlotzhauer v. Morton*, 224 Md. App. 72, 84 (2015)). As such, any question of law concerning a verdict sheet is reviewed without deference to the trial court. *See id.*

In the same way, a trial court's decisions regarding jury instructions are reviewed by an appellate court under an abuse of discretion standard. *Seley-Radtke v. Hosmane*, 450 Md. 468, 482 (2016). Whether the trial court's jury instruction is a correct statement of the law, however, is reviewed *de novo*. *Seley-Radtke*, 450 Md. at 482. An appellate court will overturn a trial court's error in giving a jury instruction or using a particular verdict sheet only where the error has prejudiced the opposing party. *Reiss*, 470 Md. at 573–74.

DISCUSSION

I. The circuit court did not err in submitting a verdict sheet to the jury that required a finding that Rosecroft Raceway was the "sole means of accessing the construction project."

Appellant argues that the circuit court erred in submitting to the jury a verdict sheet that grafted an additional liability element. He contends the jury should not have been required to find that he (1) "was required to report to the Parking area at Rosecroft raceway" *and*

that (2) "Rosecroft was the sole means of accessing the MGM construction project." This additional element, according to Appellant, improperly raised his burden of proof. Appellees argue that, in order to determine liability, the applicable law required the jury to find both that Appellant was required to report to Rosecroft Raceway and that Rosecroft Raceway was the sole means of accessing the site.

The Maryland Wage and Hour Laws, Md. Code Ann., Lab. & Employ. § 3-401, *et seq.*, and the Maryland Wage Payment and Collection Laws, Md. Code. Ann., Lab. & Employ. § 3-501, *et seq*. [hereinafter "MWHL" and "MWPCL," respectively] collectively define the burden of proof required for an employee's claims. In 1965, the Legislature enacted the MWHL for the purpose of "establishing a wage and hour law fixing minimum wages . . . and relating generally to the wages paid to and the hours worked by employees." *Amaya*, 479 Md. at 551 (quoting 1965 Md. Laws 966 (Ch. 697, S.B. 468)). One year later, the legislature enacted the MWPCL for the purpose of "relating generally to wage payment and collection, imposing requirements as to the regularity, frequency, and medium of wage payments." *Id.* at 552 (quoting 1966 Md. Laws 1213 (Ch. 686, H.B. 784)). Viewed together, the MWHL sets a minimum wage standard and defines what employees should be paid for, while the MWPCL sets standards for how and when the compensation granted in the MWHL is due. *See Cunningham v. Feinberg*, 441 Md. 310, 322 (2015) (citing *Ocean City, Md., Chamber of Com., Inc. v. Barufaldi*, 434 Md. 381, 385 (2013)). Both statutes provide employees an avenue to recover wages that have been unlawfully withheld from them. *Id.* (citing *Peters v. Early Healthcare Giver, Inc*., 439 Md. 646, 652–53 (2014)); *see also* L.E. § 3-427; L.E. § 3-507.2. The MWHL, in addition, grants the Department of

Labor the authority to make "such regulations as may be appropriate to carry out the purposes of th[e] Act." 1965 Md. Laws 969.

Under the MWHL, an employer is required to pay:

> (1) to each employee who is subject to both the [FLSA] and the [MWHL], at least the greater of:
> (i) the minimum wage for that employee under the [FLSA]; or
> (ii) the State minimum wage . . .; and
>
> (2) to each employee who is subject to [the MWHL], at least the greater of:
> (i) the highest minimum wage under the federal Act; or
> (ii) the State minimum wage. . .

L.E. § 3-413(b). "Wage," as used in the subsection, is defined as "all compensation that is due to an employee for employment." L.E. § 3-401. While the MWHL does not directly address how compensation is computed for purposes of the minimum wage to be paid, it does state that "an employer shall compute the wage for overtime . . . on the basis of each hour over 40 hours that employee works." *See* L.E. § 3-420(a) (addressing computation of overtime wages). To that end, a necessary prerequisite of an employer's duties under both the MWHL and the MWPCL is to pay an employee for any hours that employee has *worked*. L.E. 3-401; L.E. 3-501(c)(1) (emphasis added). Although both provisions are silent regarding what constitutes an employee "working," the Department of Labor's regulations, codified in Title IX of COMAR, define how employers are to measure it, stating:

> "Hours of work" means the time during a workweek that an individual employed by an employer is required by the employer to be on the employer's premises, on duty, or at a prescribed workplace.
>
> ***

> Travel time is included in computing hours of work if the individual:
> (1) Travels during regular work hours;
> (2) Travels from one worksite to another; or
> (3) Is called out after work hours in emergency situations

COMAR 09.12.41.10.

In *Amaya*, the Supreme Court of Maryland examined whether Appellant and other workers were entitled to compensation under the MWHL and MWPCL for hours spent parking at one location and being transported by buses to the worksite by their employer. *Amaya*, 479 Md. 515. The Court stated that the critical issue was "whether the workers were either required by their employer to report during work hours to a location that is the employer's premises, to be on duty, or to report to a prescribed workplace, or whether the employees were traveling from one worksite to another." *Id.* at 526. If so, the Court stated that the workers were entitled to compensation. *Id.* The Court stated:

> It follows that hours of work would include time that an employee spends traveling from one prescribed workplace or location on which employee is required to be on duty or required to be on the employer's premises to another such location. As such, a worksite would include *a prescribed workplace*, *an employer's premises*, or *a location where an employee is on duty if the employee is required during work hours by the employer to be at the location.*

Id. at 572 (emphasis added). The Court concluded that the circuit court erred in granting summary judgment. *Id.*

On remand, during discussions with the court at trial, Appellant's counsel objected to the court's proposed verdict sheet that asked, "Do you find that Plaintiff was required to report to the Parking arena at Rosecroft raceway and use it as the sole means of accessing the MGM construction project?" Appellant's counsel requested that the second half of the question be struck, arguing that "even if there was another method of doing so . . . if [the

workers] were required to report to the parking area at Rosecroft Raceway, it is still compensable time . . . It's not an accurate statement of the law." The court overruled the objection, stating "I took that language directly from the case. It was remanded for that determination to be made so the verdict sheet will remain."

In our view, the Supreme Court made clear, in *Amaya*, that an employee could establish hours of work in three ways, "namely, an employee being required to be (1) on the employer's premises, (2) on duty, or (3) at a prescribed work place." Thus, in the present case, the jury could render a verdict in favor of Appellant by finding: (1) Rosecroft Raceway was Appellee's premises; (2) Rosecroft Raceway was a prescribed workplace; or that (3) Appellant was on duty at Rosecroft Raceway. The verdict sheet asked the jury to consider whether Rosecroft was a prescribed workplace and whether it was Appellee's premises. The verdict sheet also asked whether Appellant was required to go to Rosecroft and whether it was the sole means of access to the actual worksite at the National Harbor. As explained in *Amaya*:

> [A]lthough there was no alleged concession by [Appellees] that the [sic] Rojas and Torres were *required to be present* at Rosecroft, there was evidence that Rojas and Torres could not access the construction site by *any means other than* reporting to Rosecroft and taking a bus to the construction site. In that respect, there was evidence that was legally sufficient to generate a question for the jury such that the motion for judgment at the conclusion of Rojas's and Torres's case should have been denied.

479 Md. at 573 (emphasis added).

Thus, the question regarding Rosecroft being the only access to the job was inextricably linked to whether Appellant was on duty and required to be there. If Appellant had the ability to access the construction site in another way, he could not be compensated for

travel and wait time. For this reason, the language in the verdict sheet was an accurate statement of the law, the court did not graft an additional element, and therefore, the court did not err or abuse its discretion.

II. The circuit court did not err in declining to give Appellant's non-pattern jury instruction.

A trial court is required to ensure that its jury instructions "encompass the substantive law applicable to the case." *Collins v. Nat'l R.R. Passenger Corp.*, 417 Md. 217, 228–29 (2010). A party's request for a particular jury instruction should be granted if "(1) the theory is a correct statement of the law; (2) the theory is supported by the facts of the case; and (3) the substance of the requested instruction is not fairly covered by the instructions actually given." *S&S Oil, Inc. v. Jackson*, 428 Md. 621, 640 (2012). If the court declines to give an instruction where the matter is "fairly covered" by instructions already provided to the jury, it does not abuse its discretion. Md. Rule 4-325(c).

Appellant contends that the court erred in not instructing the jury that an employee "being required by an employer to report to a designated location is a sufficient basis on which to conclude that the employee engaged in hours of work." Appellees argue that the proposed non-pattern instruction was not accurate and the pattern instruction given by the court fully and accurately stated the applicable law.

Appellant's requested non-pattern jury instruction stated:

> For purposes of both the Maryland Wage and Hour Law and Maryland Wage Payment and Collection Law, the word "employ" means to engage an individual to work and includes allowing an individual to work and instructing an individual to be present at a work site. An employee being required by an employer to report to a designated location is a sufficient basis on which to conclude that the employee engaged in hours of work.

The instruction given by the court, MJPI-Cv Pattern Jury Instruction 22:3, states:

> An employer who fails to pay an employee wages due and owing is liable to the employee for the unpaid wages.
>
> Employees are entitled to be compensated for all hours worked.
> "Hours of work" means the time during a workweek that an individual employed by an employer is required by the employer to be on the employer's premises, on duty, or at a prescribed workplace.
>
> Travel time is included in computing hours of work if the individual:
> Travels during regular work hours; travels from one worksite to another; or is called out after work hours in emergency situations.
>
> Waiting and travel time performed either before or after the commencement of the actual work may be included if the employee was required to report to a prescribed workplace or was required to be on duty.

As we see it, Appellant's use of "designated location" in the proposed instruction misconstrues the *Amaya* Court's holding and COMAR 09.12.41.10A, the operable regulation. The term "designate" means "to choose (someone or something) for a particular . . . purpose." *Designate*, BLACK'S LAW DICTIONARY (12th ed. 2024). The word "prescribe" means to "dictate, ordain, or direct." *Prescribe*, BLACK'S LAW DICTIONARY (12th ed. 2024). Appellant contends that the use of "designate" in his proposed instruction is reflective of the change made by the Amaya Court. We disagree. The Supreme Court did not expand the reach of COMAR 09.12.41.10A, but rather clarified its application. The Court specified that "it is sufficient that the employer require the employee to be on duty, *on the premises*, or *at a prescribed workplace*." (emphasis added).

Here, the circuit court did not err in declining to give Appellant's proposed instruction. The pattern instruction given by the court was a more comprehensive statement of law than

Appellant's proposed instruction which injected the term "designated," a term not found in the statute or regulations.

III. The circuit court did not err in failing to include a question regarding unjust enrichment on the verdict sheet.

Appellant argues that because he asserted a cause of action for unjust enrichment and the judge instructed the jury on its elements, a question addressing it was required. He contends that the court's error prevented him from recovering under this separate cause of action. Appellee contends that Appellant did not object to the omission and thus, he failed to preserve the issue. Alternatively, Appellee argues that the court did not err because the question regarding whether Appellant was entitled to be paid for his wait and travel time was dispositive of the unjust enrichment claim. Appellee argues that because the jury found that Appellant was not entitled to compensation under the statutes, Appellant could not recover for unjust enrichment.

Under Maryland Rule 2-522(b)(2)(A), a jury may be required to return a verdict in the form of written findings and a court has discretion in submitting issues it deems appropriate. Md. Rule 2-522(b)(2)(A). A party objecting to the verdict sheet must state the grounds for its objection on the record. *See* Md. Rule 2-522(b)(5) ("No party may assign as error the . . . refusal of the court to submit a requested issue unless the party objects on the record . . . stating distinctly the matter to which the party objects and the grounds of the objection.").

As a preliminary matter, we hold that Appellant did preserve this issue. At the conclusion of the trial, prior to the jury's deliberations, the court held a bench conference

where it gave the parties an opportunity to review the verdict sheet. Appellant's counsel objected, stating:

> Just – with respect to the unjust enrichment –
>
> Yeah. We would just except to the failure to include a question for unjust enrichment as a question yes or no on the verdict sheet. We request that be on the verdict sheet, the jury answer that question yes or no at this stage.

The court then stated: "I'm not going to replace the verdict sheet. It will be [sic]– go back to the jury as it stands." Based on this exchange, we hold that the issue is preserved. *See* Md. Rule 2-522(b)(2)(B) ("If the court fails to submit any issue raised by the pleadings or by the evidence, all parties waive their right to [have the issues heard] unless *before the jury retires* a party demands its submission to the jury.") (emphasis added).

Under Maryland Rule 2-522(b)(2)(B), a court is required to "submit[] any issue raised by the pleadings or by the evidence" to the jury. The court must instruct the jury in a manner that will enable it to make findings on the issues presented in the case. Md. Rule 2-522(b)(2)(A). A court, however, does not need to raise an issue, even when requested by the parties, if that same or a substantially similar issue is already before the jury. *S&S Oil, Inc. v. Jackson*, 428 Md. 621, 631 (2012) (quoting *Kruszewski v. Holz*, 265 Md. 434, 446 (1972)); *see also* Md. Rule 2-520(c) (indicating that a court may refrain from giving a requested jury instruction on a particular issue if "the matter has been fairly covered").

Assuming arguendo, without deciding whether the court erred, we hold that the court's decision not to include unjust enrichment did not prejudice Appellant. As stated by the Supreme Court in *Amaya,* Appellant's unjust enrichment claim "would be *viable* only to the extent that [Appellant was] entitled to be compensated." 479 Md. at 574. We find

the Supreme Court's decision in *Baltimore Gas & Electric Co. v. Flippo* also instructive. 348 Md. 680 (1998). There, the Court examined a trial court's inclusion of contributory negligence, but not assumption of the risk, on a verdict sheet. 348 Md. at 705. The Supreme Court held that the trial court erred by failing to include both questions, but that there was no prejudice. *Id.* at 707. The Court stated:

> Since the trial court submitted the issue of contributory negligence to the jury and it found in favor of [the plaintiff] on that issue, the jury in essence found that the factual basis for [assumption of the risk] was not established . . . . [T]he jury's finding that [the plaintiff] was not contributorily negligent would have also precluded a finding that he assumed the risk. By returning a verdict in favor . . . the jury essentially considered and rejected the defense.

Id. at 707–08.

Similarly, here, Appellant's unjust enrichment claim was "viable" only to the extent that questions 1 and 2 were answered in the affirmative. The jury answered "No" to both questions. As such, there was no factual basis for an unjust enrichment claim, even in the absence of the question being submitted.

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