Circuit Court for Baltimore City
Case No. 24-C-21-004688

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2000

September Term, 2022

KSENIJA GRGAC

v.

PAUL DAVID DASH, ET AL.

Arthur,
Beachley,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: November 14, 2023

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

Appellant, Ksenija Grgac, appeals the granting of summary judgment on her medical malpractice claim in favor of appellees, Paul Dash, M.D., and his employer, Johns Hopkins Hospital. The Circuit Court for Baltimore City granted summary judgment on the basis that Ms. Grgac failed to file her claim within the applicable statute of limitations. Ms. Grgac noted this timely appeal and presents the following two questions for our review:

1. Did the trial court err in granting [a]ppellees' summary judgment motion?

2. Did the trial court err or abuse its discretion when it denied [a]ppellant's motion for an extension of time to engage new counsel and answer the [a]ppellees' summary judgment motion?

Answering both questions in the negative, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Central to this appeal is the statute of limitations applicable to negligence claims against health care providers as set forth in Section 5-109(a) of the Courts and Judicial Proceedings Article ("CJP"):

> An action for damages for an injury arising out of the rendering of or failure to render professional services by a health care provider . . . shall be filed within the earlier of:
>
> (1) Five years of the time the injury was committed; or
>
> (2) Three years of the date the injury was discovered.

Md. Code (1974, 2020 Repl. Vol), CJP § 5-109(a). Subsection (d) of the statute provides that "the filing of a claim with the Health Care Alternative Dispute Resolution Office [(HCADRO)] . . . shall be deemed the filing of an action." Under the statute, a plaintiff's

claim filed more than five years after "the time the injury was committed" is barred by limitations, regardless of when the injury is discovered.[1] With this principle in mind, we turn to the case at bar.

At the outset we note that because this appeal is from the grant of a motion for summary judgment, we recite the facts in a light most favorable to Ms. Grgac as the non-moving party. *See Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 284 n.1 (2022). In 2008, Ms. Grgac began experiencing periodic numbness in her hands. At the time, she was a Johns Hopkins graduate student and volunteered to participate in MRI studies conducted at the Kennedy Krieger Institute. As part of her participation in the MRI research, she had an MRI of her neck. On November 25, 2008, Ms. Grgac consulted Dr. Dash for the first time. Dr. Dash examined Ms. Grgac, reviewed the 2008 MRI, and concluded that Ms. Grgac was likely suffering from carpal tunnel syndrome. In his opinion, the MRI revealed only some bulging disks in her spine.

In 2010, Ms. Grgac experienced issues with balance and word pronunciation. These issues resolved themselves after a short time, but she later developed severe pain in her neck and right arm that prompted her to obtain another MRI at Kennedy Krieger. She took a copy of this MRI to her appointment with Dr. Dash on November 12, 2010. Dr. Dash's

[1] Appellees confined their argument for summary judgment only to the five-year limitation, and never argued that Ms. Grgac filed her claim more than three years after discovery of the injury. Because the argument was not raised, and because we hold that the court was correct in determining that Ms. Grgac's claim was filed more than five years after her initial injury, we shall not address the three-year limitation in CJP § 5-109(a)(2). *See Thomas v. Shear*, 247 Md. App. 430, 467–68 (2020).

notes from this appointment indicate that Ms. Grgac was concerned that she may have multiple sclerosis ("MS"). Dr. Dash noted that his review of the MRI indicated a more severe disk bulge in her spine than evidenced in the 2008 MRI. He also noted: "On the brain, there is a single right subcortical white matter dot which I don't think is of clinical significance." Dr. Dash concluded that Ms. Grgac's symptoms were likely caused by the bulging disk.

Ms. Grgac testified that, after her 2010 appointment with Dr. Dash, she continued to experience pain and numbness. She also reported trouble moving her neck. She saw a chiropractor between December 2010 and April 2011, at which point the symptoms subsided. On September 21, 2011, Ms. Grgac obtained another MRI of her brain. Ms. Grgac indicated that she did not remember the circumstances under which she obtained the 2011 MRI, but that it may have been done as part of the Kennedy Krieger research project.

Ms. Grgac continued to periodically experience various physical symptoms. In October 2012, she again developed pain and stiffness in her neck. In 2014 and early 2015, she experienced a few episodes of urinary incontinence. At some point prior to May 2015, Ms. Grgac experienced further difficulties with balance and developed problems with her ability to concentrate on her work.

On December 19, 2017, Ms. Grgac was diagnosed with MS. In 2018, she experienced more severe cognitive deficits, which eventually necessitated a career change. On December 17, 2020, Ms. Grgac filed a medical negligence claim against appellees with HCADRO. After the appellees waived arbitration, Ms. Grgac filed a complaint in the

Circuit Court for Baltimore City. Her complaint alleged that Dr. Dash "negligently failed to properly diagnose [Ms. Grgac] with MS in 2008."

Ms. Grgac named Benjamin Osborne, M.D., as an expert witness. In his deposition testimony, Dr. Osborne reviewed Ms. Grgac's symptoms and discussed the progressive nature of multiple sclerosis. He attributed most of Ms. Grgac's neurological problems beginning in 2008 to MS. He also testified that the 2011 MRI evidenced the formation of additional lesions on Ms. Grgac's brain. We will discuss Dr. Osborne's testimony in more detail below.

On September 8, 2022, appellees filed a motion for summary judgment, arguing that Ms. Grgac's suit was barred by the statute of limitations for medical malpractice claims as set forth in CJP § 5-109. On October 26, 2022, the circuit court held a hearing on the summary judgment motion. At the beginning of the hearing, Ms. Grgac's counsel moved to withdraw his appearance, citing disagreements with Ms. Grgac over how to proceed with her case following counsel's review of the motion for summary judgment. Appellees opposed counsel's motion to withdraw, asserting that Dr. Dash would suffer prejudice by further delay of the case, which had then been pending for nearly two years. Ms. Grgac's counsel explained that, although appellees emailed him a copy of the motion for summary judgment when they filed it on September 8, he did not see that email until October 6, 2022. Consequently, counsel requested that Ms. Grgac be given "an extra 30, 45, or 60 days" to either find a new attorney or to file an opposition to the motion for summary judgment herself. After the court determined that appellees would not be unduly

prejudiced by a slight delay, the court ruled as follows:

> Ms. Grgac, what I'm going to do is under the rule, you're entitled to 15 days to find new counsel and have new counsel enter their appearance. Today is Wednesday, October 26th. I'm going to give you until Friday, November the 11th, and I'm going to put this in an order today for which new counsel shall enter their appearance.
>
> If new counsel does not enter their appearance by that date, no future proceeding will be continued because you do not have counsel. So in other words, if you don't have new counsel by Friday, November the 11th, any future proceeding will go forward and you'll be forced to represent yourself. And because you are not specially trained in the law, you may be at a disadvantage, but you'll be forced to represent yourself.[2]

The court ordered that any opposition to the motion for summary judgment be filed by November 21, 2022, and rescheduled the hearing for December 5, 2022. Ms. Grgac confirmed that she understood the substance of the court's order.

On November 16, 2022, Ms. Grgac filed a motion to extend the time to respond to the summary judgment motion. In the motion, Ms. Grgac explained that she had found an attorney willing to represent her, "but he could not prepare the opposition to the motion for summary judg[]ment by 11/21/2022, because of not having enough time." She further explained that she was unable to work on the opposition to the motion for summary judgment because her mother had been in the emergency room for two days. Appellees opposed the motion for extension of time. Appellees argued that Ms. Grgac was aware of

[2] This order comports with Rule 2-132, which provides that, where the appearance of a party's attorney has been stricken and the party has no attorney of record, "the clerk shall mail a notice to the client's last known address warning that if new counsel has not entered an appearance within 15 days after service of the notice, the absence of counsel will not be grounds for a continuance."

the consequences of not obtaining a lawyer before November 11, 2022, and that an additional extension of time would necessitate a continuance of the hearing on the motion for summary judgment, further prejudicing appellees.

Ms. Grgac appeared at the December 5, 2022 hearing without counsel. The court first heard argument on the motion for extension of time. Ms. Grgac explained that she first learned of the motion for summary judgment on October 13, 2022. She stated that she contacted numerous law firms after the October 26, 2022 hearing, and the only lawyer willing to represent her would not "take over the case . . . right now, because it was too soon." Ms. Grgac explained that she "kn[e]w what [she] would write" in her opposition to the motion, "[s]o that's not a problem," but that she simply needed more time to write it. Ms. Grgac asserted that her work obligations limited her time to respond to the summary judgment motion to evenings and weekends. She explained that her ability to work on her opposition was further limited because her mother, who has a heart condition, was living with her. According to Ms. Grgac, her mother disapproved of Ms. Grgac's lawsuit; therefore, Ms. Grgac could not work on the opposition when she was home because she did not want to jeopardize her mother's health by upsetting her. The court declined Ms. Grgac's request to postpone the hearing and proceeded to hear argument on the motion.

Appellees argued that, because Ms. Grgac "first suffered injury no later than 2011," her claim filed in 2020 was barred by the five-year statute of limitations provided in CJP § 5-109(a)(1). Specifically, appellees asserted that the testimony of Ms. Grgac and her expert witness, Dr. Osborne, established that Ms. Grgac sustained an injury for limitations

purposes when she experienced numerous symptoms caused by MS in 2011, and when new lesions formed on her brain between the 2010 and 2011 MRIs.

In response, Ms. Grgac first argued that the formation of additional lesions on the brain is not indicative of when an "injury" occurred because "that type of cellular injury . . . was going on . . . without knowledge of anybody," and was not causing any symptoms. She admitted that the speech and balance problems she experienced were "most likely from MS," but that those symptoms were short-lived. She asserted that because her symptoms could have been caused by diseases or disorders other than MS, those symptoms are "not something that can be really considered an injury [related to MS] at that point." She did not remember having any symptoms in 2011, other than "pain from the bulging dis[k]," and stated that the incontinence issues starting in 2014 were most likely caused by a bladder issue. She explained that she only began "suffering" from her symptoms in 2018 when her work performance deteriorated due to her increasing cognitive issues. The crux of her argument was that, because she did not have reason to suspect that MS was causing her symptoms, the symptoms were not "injuries" as contemplated by the statute:

> So 2018 was actually the first time that I really suffered from MS, that there was an injury that affected my life. That would cause me to actually do something about it. Before that, things would come and go, and they could be assigned -- although they were caused by MS. But at the time, they did not affect my life. They could actually be assigned to other things because there are other neurological diseases that can produce these symptoms.
>
> And of course, Dr. Osborne said that his opinion was that this was caused [b]y MS, because in retrospect, if you look at all of those symptoms and knowing how the situation is now, of course, this is clear that it was coming from MS. However, at the time, nobody could know that because if I had any suspicion, I would have gone to another doctor.

Ms. Grgac admitted numerous times that her MS was causing progressive damage since 2010, but emphasized that "everything that happened before 2018 was not affecting [her] life, was not impairing [her] in any way, and . . . could have been considered caused by something else."

At the conclusion of the hearing, the court denied Ms. Grgac's motion for extension of time to file a written opposition, and took the case under advisement. The court issued its written opinion granting summary judgment on December 14, 2022. The court concluded:

> Ms. Grgac's claims are barred by the statute of limitations set forth in CJP § 5-109. By her own testimony, Ms. Grgac was suffering from harm in 2010 and 2011. Her expert witness found that these symptoms constituted a worsening of her undiagnosed multiple sclerosis. Most telling, she underwent a MRI on her brain in 2011 revealing new lesions that her expert found were evidence of her worsening condition based on the undiagnosed multiple sclerosis.
>
> The record establishes that Ms. Grgac suffered an "injury" as early as 2010 and no later than 2011, based on the manifestations of her undiagnosed multiple sclerosis. Since she did not file her claim with HCADRO until December 2020, her claims are well outside the five-year statute of limitations set forth in CJP § 5-109.

(Citations omitted). Ms. Grgac noted this timely appeal. We shall affirm the court's grant of summary judgment.

DISCUSSION

Ms. Grgac presents two arguments in this appeal: *first*, that the court erred in granting appellees' motion for summary judgment, and *second*, that the court erred in

denying her motion for extension of time to file an opposition to the motion for summary judgment. We shall examine each argument in turn.

I. Summary Judgment

A trial court may grant summary judgment where the record, viewed in a light most favorable to the non-moving party, does not generate a material issue of fact, and the moving party is entitled to judgment as a matter of law. *Thomas v. Shear*, 247 Md. App. 430, 447–48 (2020). We review the granting of summary judgment *de novo*, but ordinarily limit our review to only those grounds relied upon by the trial court. *Id.*

As mentioned above, the applicable statute of limitations is found in CJP § 5-109(a):

> An action for damages for an injury arising out of the rendering of or failure to render professional services by a health care provider, as defined in § 3-2A-01 of this article, shall be filed within the earlier of:
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> (1) Five years of the time the injury was committed; or
>
> (2) Three years of the date the injury was discovered.

The Supreme Court of Maryland has clarified that an "injury" occurs for purposes of this statute "when the 'allegedly negligent act was first coupled with harm.'" *Anderson v. U.S.*, 427 Md. 99, 126 (2012) (quoting *Hill v. Fitzgerald*, 304 Md. 689, 700 (1985)). Maryland's courts have made clear that the five-year period begins to run "without regard to whether the injury was reasonably discoverable or not." *Thomas*, 247 Md. App. at 451 (quoting *Hill*, 304 Md. at 700).

Ms. Grgac argues that the "harm" caused by Dr. Dash's failure to diagnose her MS

did not occur "until she suffered symptoms that can be definitely connected to MS."[3] According to Ms. Grgac, she first experienced harm after her MS diagnosis in 2017 because her earlier symptoms could have been attributed to other neurological conditions. She argues that, because "time of injury" is a factual question, it could not be properly resolved on summary judgment. She further argues that the court should not have considered the 2011 MRI because it was not contemporaneously reviewed by a radiologist.[4]

Appellees respond that Dr. Osborne's and Ms. Grgac's uncontradicted testimony demonstrate that Ms. Grgac was experiencing a worsening of her MS at least as early as 2011. Appellees rely on *Edmonds v. Cytology Servs. of Md., Inc.*, 111 Md. App. 233, 270 (1996), *aff'd Rivera v. Edmonds*, 347 Md. 208 (1997), to argue three points in time when an injury arises from a misdiagnosis or failure to diagnose: when (1) the patient "experiences pain or other manifestation of an injury; (2) the disease advances beyond the point where it was at the time of the misdiagnosis and to a point where (a) it can no longer effectively be treated, [or (b)] the treatment would entail expense or detrimental side effects that would not likely have occurred had treatment commenced at the earlier time[.]"

[3] Part of Ms. Grgac's argument is that she should be exempted from the "ordinary diligence" doctrine because Dr. Dash assured her in 2010 that she did not have MS. However, ordinary diligence is an aspect of the discovery rule, which as we stated above, does not apply to CJP § 5-109's five-year limitation. Whether Dr. Dash's assurance reasonably prevented Ms. Grgac from seeking a second opinion, and thus discovering the MS, is therefore immaterial to our analysis.

[4] This last argument was not made below and thus has not been preserved for appellate review. We further note that Ms. Grgac has not cited any legal authority to support her argument that the 2011 MRI should not have been considered.

Appellees aver that Dr. Osborne's testimony supports the grant of summary judgment pursuant to all three modalities.

We turn to Ms. Grgac's primary argument, that she was not "injured" for purposes of CJP § 5-109 until sometime after her 2017 diagnosis. Three cases primarily inform our analysis: *Hill v. Fitzgerald*, 304 Md. 689 (1985); *Rivera v. Edmonds*, 347 Md. 208 (1997); and *Green v. N. Arundel Hosp. Ass'n, Inc.*, 366 Md. 597 (2001).

In *Hill*, the Supreme Court of Maryland established several important principles concerning the five-year limitation in CJP § 5-109. The *Hill* Court, relying on *Oxtoby v. McGowan*, 294 Md. 83 (1982), reiterated that "all that is required [for purposes of 'injury'] is that the negligent act be coupled with some harm in order for a legally cognizable wrong—and, therefore, injury—to have occurred." *Id.* at 696. The Court proceeded to hold that CJP § 5-109 "expressly place[s] an absolute five-year period of limitation on the filing of medical malpractice claims calculated on the basis of when the injury was committed, *i.e.*, the date upon which the allegedly negligent act was first coupled with harm." *Id.* at 699–700. Finally, the Court concluded that the five-year period in CJP § 5-109 runs "without regard to whether the injury was reasonably discoverable or not." *Id.* at 700.

In *Rivera*, the Supreme Court considered whether the trial court erred in granting summary judgment based on CJP § 5-109's statute of limitations. 347 Md. at 216. The Estate of Debra Edmonds filed a claim in 1993 against two doctors and their employers, alleging that they failed to diagnose Ms. Edmonds's cervical cancer in 1983. *Id.* at 212–

14. Ms. Edmonds first experienced symptoms caused by cancer in 1989, and was diagnosed shortly thereafter. *Id.* at 214. Ms. Edmonds died in 1990. *Id.* The doctors argued that Ms. Edmonds first experienced an injury in 1983 as a result of the misdiagnosis, and the Estate argued that the first injury occurred in 1989, when Ms. Edmonds began experiencing pain and other symptoms. *Id.* at 216. Notably, the Estate's expert witness testified that the evidence did not reveal when Ms. Edmonds's cancer started progressing after the failure to diagnose the cancer in 1983. *Id.* at 222. In fact, the expert opined that cancer "may lie dormant" for up to five years. *Id.*

The Court reviewed several cases, including *Hill*, that informed the "time of injury" calculus resulting from a misdiagnosis or failure to diagnose. *Id.* at 217–20. The Court found *Jones v. Speed*, 320 Md. 249 (1990), instructive. *Jones* involved a negligent failure to diagnose a brain tumor. *Rivera*, 347 Md. at 218. The plaintiff there first visited the defendant in 1978, complaining of severe headaches. *Id.* At that time, a brain scan would have revealed the tumor. *Id.* The plaintiff continued to be treated by the defendant until 1985. *Id.* The tumor was discovered in 1986 after the plaintiff suffered a seizure. *Id.* The plaintiff filed suit in July 1986, pleading each of his fifteen visits with defendant between 1978 and 1985 as a separate negligence claim. *Id.* at 218–19. The defendant moved for summary judgment on all counts, arguing that the plaintiff's injury occurred at the time of the initial failure to diagnose in 1978, thereby rendering all claims outside the five-year limit in CJP § 5-109. *Id.* The plaintiff filed an affidavit of a neurological surgeon who opined that, at each appointment with the defendant, "a separate medical injury occurred"

because the defendant failed "to detect a progressively worsening and changing medical condition." *Id.* The Court held that summary judgment was appropriate only as to the counts based on visits that occurred more than five years before the claim was filed. *Id.*

Applying principles gleaned from prior caselaw, the *Rivera* Court provided the following succinct analysis:

> The decision in this case turns on the nature of microscopic cervical cancer, as revealed by the record. Because the standard of care calls for surgery or radiation treatment when the condition is diagnosed, the Defendants contend that any delay, and certainly a protracted delay, caused by a misdiagnosis is a harm within the meaning of *Hill*. Ordinarily we would have no disagreement with that assessment in a case, such as *Jones v. Speed*, 320 Md. 249, where the uncontradicted evidence on summary judgment is that the undiagnosed cancer was progressing and worsening during the period following the misdiagnosis, even if the cancer was asymptomatic. *Id.* at 256.
>
> Here, however, the evidence most favorable to the party opposing summary judgment is that the cancer that allegedly should have been detected in Mrs. Edmonds in July 1983 could remain dormant for as long as five years. The inference most favorable to the plaintiff is that there are no additional adverse consequences if the microscopic tumor remains unchanged. The Defendants have not attempted to demonstrate that Dr. Rocereto's statement is junk science. Nor did the Defendants develop from him the probability of the undiagnosed condition's remaining dormant for five years.
>
> Five years from July 1983 would mean that the injury could have been "committed" as late as July 1988 so that the five-year bar under the Act did not operate until July 1993. The instant action was filed in April 1993. Consequently, on this record, the Defendants were not entitled to summary judgment.

Id. at 222–23.

In *Green*, our Supreme Court again considered when an "injury" occurs, albeit for the purpose of determining venue. The patient, Darwin Green, was born with a medical

condition requiring the placement of shunts in his brain to relieve cranial pressure. *Id.* at 602. When Darwin was 11 years old, he experienced a severe headache, drowsiness, and vomiting. *Id.* at 603. His father took him to the North Arundel Hospital Association ("NAHA") emergency room, where he underwent several tests, including a CT scan. *Id.* The CT scan revealed the shunts and two cysts in Darwin's brain. *Id.* The treating physician, Dr. Fields, determined that Darwin was suffering from a vascular headache, and could be released as soon as his headache was relieved with prescription painkillers. *Id.*

After his release, Darwin continued to complain of headaches, and was "drowsy and was staggering." *Id.* His primary care physician arranged for Darwin to be seen at the University of Maryland Hospital in Baltimore City, where doctors determined that he was experiencing a shunt malfunction requiring surgical correction. *Id.* at 603–04. After surgery, Darwin "suffered a cardiac arrest, which left him severely brain-damaged." *Id.* at 604. A lawsuit was filed on Darwin's behalf in the Circuit Court for Baltimore City against Dr. Fields and NAHA, both of whom resided and did business only in Anne Arundel County. *Id.* at 605. The circuit court transferred the case to Anne Arundel County, where a trial ended with judgments in favor of the defendants. *Id.* at 605–06.

The Court was tasked with determining where the negligence claim accrued, which hinged on when Darwin experienced an injury caused by the failure to diagnose the shunt malfunction. *Id.* at 607. After discussing prior cases, including *Rivera*, the Court looked to the evidence indicating that "Darwin suffered a continued 'neurological deterioration' from the ever-increasing intracranial pressure," and that he continued to suffer from

headaches and drowsiness immediately after his release from NAHA. *Id.* at 612. The Court concluded that the "headaches, drowsiness, and neurological deterioration" constituted a legal injury, and therefore the negligence claim accrued in Anne Arundel County. *Id.*

Applying these principles to the instant case, Dr. Osborne's and Ms. Grgac's testimony clearly establishes that, no later than 2011, Ms. Grgac experienced an injury caused by Dr. Dash's failure to diagnose her MS. Dr. Osborne opined that all of Ms. Grgac's 2008 and 2010 symptoms were caused by MS. He testified that treatment for MS "can help mitigate and reduce the frequency of relapses, the number of MRI lesions and the risk of permanent disability." He also testified that patients have worse outcomes if their treatment is delayed, and that as more lesions develop on the brain, MS can become "more challenging" to treat effectively. According to Dr. Osborne, the neck stiffness and shoulder pain Ms. Grgac experienced in 2011 were caused by MS. He further opined that the new lesions visible on the 2011 MRI were caused by MS and indicated that the disease was progressing between 2010 and 2011. Ms. Grgac testified that she continued to experience pain and numbness after her appointment with Dr. Dash in 2010, through April 2011. She also testified that she experienced various symptoms at unspecified times prior to May 2015.[5]

[5] Although Ms. Grgac asserts that her symptoms could have been caused by other neurologic conditions, Dr. Osborne opined that her neck stiffness and shoulder pain were caused by MS.

Thus, the uncontradicted testimony of Ms. Grgac and Dr. Osborne demonstrates that Ms. Grgac was experiencing manifestations of the undiagnosed MS in 2011. As noted, these manifestations included both the additional brain lesions shown on the 2011 MRI and the pain, stiffness, and numbness she continued to experience after her last appointment with Dr. Dash in 2010. Ms. Grgac's argument that these symptoms do not qualify as an "injury" because they did not affect her life in a significant way misses the point. Numerous cases have held that a legally cognizable injury occurs at the *first* instance of harm, not when the most severe harm occurs. *See Burnside v. Wong*, 412 Md. 180, 206–07 (2010) (noting that injury occurred at time of misdiagnosis of progressively worsening background retinopathy, not when worsening culminated in proliferative retinopathy); *Green*, 366 Md. at 607, 612 (holding that injury occurred when patient experienced headaches and drowsiness from deteriorating medical condition, not when patient later experienced cardiac arrest and brain damage); *Jones*, 320 Md. 249, 255–56 (1990) (noting that failure to diagnose brain tumor resulted in immediate injury where the tumor was progressing and the patient continued to experience symptoms of the tumor). In the parlance of *Thomas*, Ms. Grgac "cannot run away from the testimony of her expert[] establishing that the statute of limitations began to run at the latest" when the 2011 MRI objectively showed that her MS was worsening, which was corroborated by her reports of MS symptoms. *See Thomas*, 247 Md. App. at 475.

Because the uncontradicted evidence shows that Ms. Grgac experienced an injury in 2011 resulting from Dr. Dash's failure to diagnose MS, her claim filed in December

2020 is time-barred. Accordingly, the circuit court properly granted summary judgment.

II. Motion for Extension of Time

Ms. Grgac argues that the circuit court abused its discretion in denying her motion for an extension of time to submit a written opposition to appellees' motion for summary judgment. She avers that good cause existed for the extension because she had found new counsel (who would not represent her until the motion for summary judgment was resolved), and that appellees were not sufficiently prejudiced by any delay in resolving their summary judgment motion. Ms. Grgac's argument focuses entirely on the fact that she was self-represented at the summary judgment hearing, whereas appellees were represented by counsel.

Appellees respond that Ms. Grgac did not demonstrate good cause for a second delay because she had already been given adequate time and warning of the consequences of failing to secure counsel when the court granted the first extension of time.

We review a circuit court's decision to grant or deny a motion for extension of time for abuse of discretion. *Md. Green Party v. State Bd. of Elections*, 165 Md. App. 113, 142 (2005). A court abuses its discretion when the decision under consideration is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Woodlin v. State*, 484 Md. 253, 277 (2023) (quoting *State v. Matthews*, 479 Md. 278, 305 (2022)). Where a court has *denied* a motion for extension, abuse of discretion is more challenging to establish because "[f]ar less is required to support a merely negative instance of non-persuasion than is required to support

an affirmative instance of actually being persuaded of something." *Mitchell v. Hous. Auth. of Balt. City*, 200 Md. App. 176, 212 (2011) (alteration in original) (quoting *Pollard's Towing, Inc. v. Berman's Body Frame & Mech., Inc.*, 137 Md. App. 277, 289–90 (2001)).

Rule 1-204(a) provides that a court may, "for good cause shown," shorten or extend the time required for certain motions.[6] Although our research did not reveal any case interpreting what constitutes "good cause" in the context of Rule 1-204, we find analogous caselaw instructive.

Touzeau v. Deffinbaugh, 394 Md. 654 (2006), involved a motion for continuance of a custody modification hearing. *Id.* at 659. Ms. Touzeau filed the motion in order to obtain counsel after a custody evaluator recommended that Mr. Deffinbaugh be granted primary custody of the child. *Id.* The motion was denied, and Ms. Touzeau raised the motion again at the hearing. *Id.* Ms. Touzeau stated that she had obtained counsel, but he was not yet

[6] Rule 1-204(a) provides:

> When these rules or an order of court require or allow an act to be done at or within a specified time, the court, on motion of any party and for cause shown, may (1) shorten the period remaining, (2) extend the period if the motion is filed before the expiration of the period originally prescribed or extended by a previous order, or (3) on motion filed after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect. The court may not shorten or extend the time for filing a motion for judgment notwithstanding the verdict, a motion for new trial, a motion to alter or amend a judgment, a motion addressed to the revisory power of the court, a petition for judicial review, a notice of appeal, an application for leave to appeal, or an action to reject a health claims award or assessment of costs under Rule 15-403, or for taking any other action where expressly prohibited by rule or statute.

able to enter his appearance and already had another obligation on the day of the hearing. *Id.* at 660. The trial court again denied the motion, pointing out that Ms. Touzeau had known that custody of her child was at issue for several months and waited until the last moment to seek counsel or file for a continuance. *Id.* at 662.

Our Supreme Court summarized prior decisions that analyzed judicial abuse of discretion in the context of a denial of a continuance. Certain situations that may constitute an abuse of discretion include: when the continuance is "mandated by law," when counsel has acted diligently to prepare for trial but was "taken by surprise by an unforeseen event, . . . or, in the face of an unforeseen event, counsel had acted with diligence to mitigate the effects of the surprise." *Id*. at 669–70 (citing *Mead v. Tydings*, 133 Md. 608, 612 (1919); *Plank v. Summers*, 205 Md. 598, 604–05 (1954); *Thanos v. Mitchell*, 220 Md. 389, 392–93 (1959)). The Court provided several examples of cases where there was no abuse of discretion in denying a continuance because a party was not surprised or did not exercise diligence. *Id.* at 672–74. In *Hughes v. Averza*, 223 Md. 12 (1960), the Court held that there was no element of surprise where the parties had sufficient advance notice of the need for a handwriting expert, but failed to retain one. *Touzeau*, 394 Md. at 672–73. In *Butkus v. McClendon*, 259 Md. 170 (1970), the Court held that the denial of a request for continuance did not constitute an abuse of discretion where the party requesting the continuance did not exercise proper diligence in attempting to depose a witness. *Touzeau*, 394 Md. at 673–74. The Court further noted, "Our reticence to find an abuse of discretion in the denial of a motion for continuance has not been ameliorated, nor have we found it to

be an 'exceptional situation,' when the denial has had the effect of leaving the moving party without the benefit of counsel." *Id.* at 674.

Here, there was no "unforeseen event" that would justify an extension under the *Touzeau* rationale. Ms. Grgac was aware of the motion for summary judgment at least as of October 13, 2022. By October 21, 2022, she was aware that she would either need to retain new counsel or represent herself. On October 26, 2022, the court granted Ms. Grgac an extension of time to file an opposition until November 21, 2022. Additionally, the court informed her of the importance of hiring new counsel and ordered that, if she did not secure new counsel by November 11, 2022, no further extensions would be granted on the basis of not having legal representation. Ms. Grgac did not secure new counsel before November 11, 2022, nor did she file an opposition by November 21, 2022. Indeed, she had not prepared an opposition even by the December 5, 2022 hearing. At that point, Ms. Grgac had been afforded 40 days since she was granted an extension of time in October to draft an opposition. Not only is there no element of surprise in this case, but the circuit court could have independently concluded that Ms. Grgac was not diligent in preparing her opposition. *See Touzeau*, 394 Md. at 670–75; *see also W.D. Curran & Assocs., Inc. v. Cheng-Shum Enters., Inc.*, 107 Md. App. 373, 389 (1995) ("'The primary focus of [a good cause] inquiry should be on diligence . . . .' Good cause is a flexible term for dealing with unanticipated circumstances[.]" (first quoting *Stanford v. Dist. Title Ins. Co.*, 260 Md. 550, 555 (1971), then citing *In re Trevor A.*, 55 Md. App. 491, 496 (1983))).

Under the circumstances, we cannot say that the court abused its discretion in

denying Ms. Grgac's request, particularly where the court afforded Ms. Grgac the opportunity to orally present her opposition arguments at the hearing. Ms. Grgac stated at the December 5, 2022 hearing, "I would write the opposition to the motion for summary judgment myself and actually do know what I would write. So that's not a problem." She therefore was not asking for more time to conduct research or formulate an argument, but merely time to commit her thoughts to writing. The court afforded Ms. Grgac the opportunity to present her opposition argument. The only arguments Ms. Grgac presented to the circuit court for granting a second extension were that (1) the attorney she hired would not work on the case until the summary judgment motion was decided, and (2) her ill mother was living with Ms. Grgac, and disapproved of Ms. Grgac pursuing this case.

In summary, Ms. Grgac was adequately warned that if she did not find new counsel, she would need to prepare and submit a written opposition to the motion. She was certainly advised that no further extension would be granted based on her failure to obtain counsel, yet her primary reason for requesting a second extension was her lack of representation. Moreover, after Ms. Grgac informed the court that she had already formulated her arguments, the court gave her the opportunity to orally present any such arguments. Under these circumstances, the court did not abuse its discretion by declining to give Ms. Grgac more time to write an opposition. In short, the court's decision was not "well removed from any center mark imagined by" this Court or "beyond the fringe of what [this C]ourt deems minimally acceptable." *See Woodlin*, 484 Md. at 277.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.