UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0056

September Term, 2015

MARIAH FAROUQ

v.

BRYAN ANDREW CURRAN

Wright,
Nazarian,
Wilner, Alan M.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: February 5, 2016

Appellant, Mariah Farouq, appeals from the judgment of the Circuit Court for Baltimore City to grant appellee, Officer Bryan Andrew Curran's, Motion for Summary Judgment. The case arises from an automobile accident that occurred on February 8, 2012, when Farouq was struck and injured while waiting at a bus stop by a police vehicle operated by Officer Curran which skidded as a result of wet road conditions.

On or about February 19, 2014, Farouq filed a Complaint and Demand for Jury Trial in the circuit court alleging that Officer Curran's negligence led to the collision and was the proximate cause of her injuries. After discovery was conducted and completed by both parties, Officer Curran filed a Motion for Summary Judgment on January 16, 2015, arguing that Farouq failed to generate sufficient evidence to establish his negligence as the proximate cause of her injuries. Farouq filed a Response contesting Officer Curran's argument.

The circuit court heard the Motion for Summary Judgment on February 27, 2015. It found that there was not enough evidence to generate a legitimate dispute of material facts as to Officer Curran's negligence and granted the motion. Farouq then filed this timely appeal, presenting the following question:

> Did the trial court commit reversible error by granting the Appellee his Motion for Summary Judgment?

For the reasons discussed below, we answer Farouq's question in the negative and affirm the decision of the circuit court.

FACTS

On February 8, 2012, at approximately 7:27 p.m., Farouq was waiting for the Maryland Transit Authority ("MTA") bus on the corner of eastbound Franklin Street and Edmondson Avenue in Baltimore, Maryland. Farouq was reading the bus schedule posted on a utility pole near the stop. From both Farouq and Officer Curran's recollections, the weather was wet and drizzly but without ice or snow.

At the same time, Officer Curran of the Baltimore City Police Department was in his police vehicle, a 2000 Ford Crown Victoria, as part of his routine patrol of the area during his work shift. Farouq was reading the bus schedule when Officer Curran approached the Franklin Street and Edmonson Avenue split negotiating a curve. As he went around the curve, traveling at around twenty miles per hour, Officer Curran testified that his car fishtailed, the back of his car was "sliding around," and that he applied the brakes but they did not prevent him from sliding. Officer Curran slid, in a matter of seconds, onto the sidewalk and hit the pole and Farouq. Officer Curran testified that prior to the accident, he had been operating the same vehicle without incident. He also noted that the vehicle was in "good condition," including its brakes and tires, from his previous inspections as he was required to "inspect [the entire police vehicle] at least once a week," although he did not inspect the vehicle on the day of the accident.

Farouq testified that the vehicle hit her on her left leg and the impact forced her to fall back on her head and back. She was transported to University of Maryland Shock Trauma for the treatment of her injuries.

In support of his Motion for Summary Judgment, Officer Curran submitted the affidavit of Detective Christopher Izquierdo, an accident reconstructionist with the Baltimore Police Department's Accident Investigation Unit. Det. Izquierdo arrived on the scene shortly after the accident to investigate. In his report, he noted, that:

> The roadway was very slippery. Extreme care & caution had to be taken not to slide upon approach to the scene. The roadway was slippery enough that the potential for loss of control could occur at any speed . . . . While on foot it was very noticible [sic] having to be cautions not to slip . . . . While on the scene a drag factor of the road was obtained[]resulting in a coefficient of friction 0.2, (which means in simple terms how "slicky [sic]" a road is), which is equivalent to "smooth ice" according to averages in studies & previous testing.

Det. Izquierdo then applied the "Victor Craig formula"[1] using the vehicle's measurements to determine that the speed of the vehicle at the time of collision was about seventeen miles per hour; the posted speed limit in the area is thirty miles per hour. Because Det. Izquierdo determined that Officer Curran committed no improper actions to cause the accident, he did not recommend Officer Curran for any disciplinary actions with the Baltimore City Police Department.

STANDARD OF REVIEW

An appellate court reviews the summary judgment decision of the circuit court *de novo*. *United Servs. Auto. Ass'n v. Riley*, 393 Md. 55, 67 (2006) (citing *Myers v.*

[1] This is a formula for determining the pre-impact motion of a vehicle before a fixed object collision. Joseph N. Cofone, Andrew S. Rich & John C. Scott, *A Comparison of Equations for Estimating Speed Based on Maximum Static Deformation for Frontal Narrow-Oject Impacts* (2007), http://ww4n6xprt.com/Equation_Comparison-Frontal_Narrow_Object_Impacts.pdf.

Kayhoe, 391 Md. 188, 203 (2006)). In our review of a grant of summary judgment, we "examine[] the same information from the record and determine[] the same issues of law as the trial court." *Id.* (citing *PaineWebber Inc. v. East,* 363 Md. 408, 413 (2001)). Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the [moving] party is entitled to judgment as a matter of law." Md. Rule 2-501(a). In *Barber v. E. Karting Co.*, 108 Md. App. 659, 671-72 (1996), we explained the principles governing our review of summary judgment on appeal:

> A material fact is a fact the resolution of which will somehow affect the outcome of a case. If the facts are susceptible to multiple inferences, all inferences must be resolved in favor of the non-moving party (appellant in this case). In addition, the inferences drawn must be reasonable. Where several inferences may be drawn, summary judgment must be denied and the dispute submitted to the trier of fact. Conclusory denials or bald allegations will not defeat a motion for summary judgment. Similarly, a mere scintilla of evidence in support of the non-moving party's claim is insufficient to avoid the grant of summary judgment.

(Internal citations omitted).

DISCUSSION

Farouq presents several arguments before this Court in support of her position that the circuit court committed reversible error. First, Farouq maintains that Det. Izquierdo's expert testimony was not required to be accepted by the jury and, thus, did not need to be taken into consideration at summary judgment. Second, Farouq argues that "there are several other facts that support a verdict of negligence in favor of the Appellant[.]" We consider each of Farouq's arguments in turn. And, as the record shows that there is no genuine dispute as to any material fact necessary to resolve the controversy as a matter of

law, and that the movant is entitled to judgment, we conclude that the entry of summary judgment was proper.

I. Evidence of Detective Izquierdo's expert testimony was not inappropriately considered by the circuit court.

Farouq contends that "expert testimony does not need to be accepted" by the circuit court considering a Motion for Summary Judgment. In support, Farouq cites only the Maryland Civil Pattern Jury Instruction 1:4 which states, in pertinent part, "You are not required to accept any expert's opinion. You should consider an expert's opinion together with all the other evidence." From this, Farouq argues that because a jury would be at liberty to "completely ignore the uncontested testimony (for whatever reason)," a potential jury in this case could possibly completely ignore Det. Izquierdo's testimony.

We disagree with Farouq's argument for several reasons. First, as Officer Curran notes in his brief, the pattern jury instruction is intended to guide the jury during its deliberations *after* it has had an opportunity to hear the case. The pattern jury instructions are guidelines that "direct the jury's attention to the legal principles that apply to the facts of the case." *Dickey v. State*, 404 Md. 187, 197 (2008) (citing *General v. State,* 367 Md. 475, 485 (2002)). Md. Rule 2-501(a) guides the court as to its pre-trial decision to determine whether a jury will hear the case in the first place. *Assoc. Realty Co. v. Kimmelman*, 19 Md. App. 368, 373 (1973) (summary judgment does not impair the right to jury trial but determines simply what if any issues are to be tried). A trial court is not required to ignore evidence based only on the notion that the jury would have

discretion in weighing that particular evidence at trial. This argument amounts to the proverbial "putting the cart before the horse."

Next, Farouq asserts that the circuit court is not permitted to consider expert testimony when evaluating a summary judgment motion. We disagree. In a summary judgment proceeding, a court must use the "evidence and pleadings in the record" to resolve all disputes of fact in summary judgment cases. *Bagwell v. Peninsula Reg'l Med. Ctr.*, 106 Md. App. 470, 488 (1995). *See, Tucker v. Univ. Specialty Hosp.*, 166 Md. App. 50, 63 (2008) (examining "whether the evidence before the motions court-*including the expert testimony*-was sufficient to generate disputes of material fact that made summary judgment on the issue of liability inappropriate" (emphasis added)). The evidence a court may consider for summary judgment is limited only by its admissibility at trial. Md. Rule 2-501(c) ("An affidavit supporting or opposing a motion for summary judgment . . . shall set forth such facts as would be admissible in evidence . . ."); *see, Gooch v. Md. Mech. Sys., Inc.*, 81 Md. App. 376, 396 (1990). The admissibility of expert testimony is a matter soundly within the trial court's broad discretion, and the court's decision rarely will constitute grounds for reversal.[2] *Carter v. Shoppers Food Warehouse MD Corp.*,

[2] Md. Rule 5-702 provides the standards for admissibility of expert testimony, stating:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified

(continued…)

126 Md. App. 147, 154 (1999). The same rules governing the admissibility of expert testimony at trial also apply to summary judgment. Id. at 154 n.7. As Farouq provides no persuasive argument for how the circuit court abused its discretion, Det. Izquierdo's testimony was not inappropriately considered in granting Officer Curran's motion.

II. Farouq fails to provide "other negligent acts" committed by Officer Curran.

In Maryland, a finding of negligence requires that the plaintiff "allege and prove facts demonstrating (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." *Dehn v. Edgecombe*, 384 Md. 606, 619 (2005) (citations omitted). Farouq lists several reasons why Officer Curran was negligent in "fail[ing] to take all appropriate steps to stop the vehicle and failure to warn" her. However, all of her arguments fail to support a "breach of the duty" that Officer Curran owed Farouq.

First, Farouq argues that although Officer Curran was driving under the speed limit, "it would still be up to a jury to determine if [Officer Curran] was traveling too fast

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> as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

In the instant case, Det. Izquierdo was appropriately labeled an expert witness because he had extensive experience in the field. He had over six years of experience as a collision reconstruction expert and investigated over 133 accidents. Furthermore, he was previously accepted as an expert in collision reconstruction in the Circuit Court for Baltimore City. Det. Izquierdo also laid out the factual basis to support his findings and conclusions in the case.

for the road conditions . . . [at the] time of the accident." However, "[a]s on the issue of negligence, whether an operator's negligence as to rate of speed was a proximate cause of an accident may be ruled on as a matter of law where reasonable persons could not differ on the issue." *Myers v. Bright*, 327 Md. 395, 403 (1992) (citation omitted). "[M]ere conjecture that the accident might have been caused by the alleged speeding is insufficient to send the case to the jury." *Id.* at 405. At the time of the incident, Officer Curran's vehicle was traveling at twenty miles per hour or less in a zone where the posted speed limit was thirty miles per hour. Contrary to Farouq's assertion, we do not agree that a reasonable jury would find that speed to be negligent, especially because, as Officer Curran notes, "there is no evidence suggesting that Officer Curran was on notice to reduce his speed even further, given that it was 'just' raining and he had driven without incident prior to this accident." Absent evidence of speed exceeding that which is objectively reasonable under the circumstances or other evidence of negligence, "the mere skidding of the automobile on the slippery [road] in and of itself would not warrant an inference of negligence[.]" *Glass v. Blair*, 233 Md. 194, 196 (1963).

Next, Farouq posits that "it would be up to a jury to determine why a car would lose control and slide for any sort of distance when there is no ice on the ground." She states that because "cars do not slide and lose control on just plain wet roads without speeding or other acts of negligence," a jury "could certainly determine that the failure of [Officer Curran] to check his tire tread and brakes (of a 12 year old car) was negligent."

However, Farouq does not cite any authority that would suggest or require Officer Curran to inspect the tires and brakes of his patrol vehicle before he operates it for each shift.[3]

Further, while the underlying assumption in Farouq's argument is that the brakes or tires of the vehicle must have been defective because, she argues, "cars do not slide on cement without icy conditions,"[4] she offers no evidence of brake failure or that the tires were defective. Because parties had completed discovery before summary judgment, any such defects with the car could and should have been identified.

Lastly, Farouq claims that Officer Curran was negligent by "not attempting to either throw the car into park (when [he] lost control of his vehicle) or at least activate his emergency equipment or blow his horn to warn" Farouq. Farouq makes this conclusory statement without providing any support that such actions could have prevented the accident. Farouq argued before the circuit court that "throw[ing] the car in park . . . would have locked up the wheels more . . . and at that point in time it could have brought

[3] As Officer Curran notes in his response brief, Farouq does "not even establish[] that [Officer Curran] is qualified to inspect vehicle tires and brakes."

[4] We must also note that Farouq's underlying assumption that cars do not skid on non-icy surfaces absent negligence is wrong. The phenomenon of hydroplaning, for example, is the "complete loss of directional control when a tire is moving fast enough that it rides up on a film of water and thereby loses contact with the pavement," John C. Glennon & Paul F. Hill, *Roadway Safety and Tort Liability 180* (2nd ed. Lawyers & Judges Publishing Co., Inc. 2004), and "can occur on any wet road surface, however, the first 10 minutes of a light rain can be the most dangerous." *Hydroplaning Basics: Why it Occurs and How You Can Avoid it*, http://www.safemotorist.com/articles/hydroplaning_basics.aspx (last visited Jan. 20, 2016).

the car to a stop." That statement, without evidence, is speculative. As we noted earlier, "bald allegations will not defeat a motion for summary judgment." *Barber*, 108 Md. App. at 672. Further, Officer Curran's failure to blow the car horn to warn Farouq is not negligent; the Court of Appeals has considered similar cases where not sounding the horn has not led to findings of negligence. *See, e.g., Trusty v. Wooden*, 251 Md. 294 (1968) (finding no negligence on the part of a driver skidding in snow and striking pedestrians on a sidewalk without blowing her horn to warn them); *Alina v. Raschka*, 254 Md. 413 (1969) (same). Farouq's theories fail to show a breach of duty by Officer Curran.[5]

We agree with the circuit court, that Farouq "is proceeding on nothing more than inviting a jury to speculate that [] the officer must have been negligent because the accident happened." We reiterate the language of *Fowler v. Smith*, 240 Md. 240, 247 (1965):

> The rule [on claims of negligence] is that where the facts are undisputed, or the facts most favorable to the party carrying the burden of establishing another party's negligence are assumed to be true and all favorable inferences, fairly deducible therefrom, are drawn in favor of the burden-carrying party, and such undisputed facts (or the said favorable facts and inferences) lead to conclusions from which reasonable minds could not differ, then the question of negligence, *vel non*, becomes a question of law.

[5] In her brief, Farouq states, "The Doctrine of *Res Ipsa Loquit[u]r*, is a substitution for negligence which is not really needed in this case . . . ." *Res ipsa loquitur* is available to plaintiffs in the absence of direct proof of negligence where "the accident or injury is one which ordinarily would not occur without negligence on the part of the operator of the vehicle and the facts are so clear and certain that the inference of negligence arises naturally from them." *District of Columbia v. Singleton*, 425 Md. 398, 407 (2012) (citation omitted). However, "[t]he majority of courts hold that the mere fact that a vehicle skids or slides on a slippery highway does not of itself constitute evidence of negligence and that in such cases the doctrine of *res ipsa loquitur* does not apply." *Christ v. Wempe*, 219 Md. 627, 635 (1959) (citations omitted).

(Citations omitted). Thus, there is no reason for disturbing the circuit court's grant of Officer Curran's Motion for Summary Judgment.

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