UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0294

September Term, 2014

KAREN McKENZIE

v.

ANNE ARUNDEL COUNTY, MARYLAND

Graeff,
Kehoe,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: August 17, 2016

This appeal arises out of a negligence action filed by Karen McKenzie against Anne Arundel County for its failure to maintain a stop sign. A jury of the Circuit Court for Anne Arundel County returned a verdict in favor of the County. Ms. McKenzie has appealed and presents five issues, which we have reworded and re-ordered for purposes of analysis:

1. Did the court abuse its discretion in permitting the County to cross-examine Ms. McKenzie regarding her prior driving record?

2. Did the court err in instructing the jury as to Transportation Article § 21-403(b)?

3. Did the court err in declining to instruct the jury as to Transportation Article § 21-401?

4. Did the court err in declining to instruct the jury as to Ms. McKenzie's requested non-pattern jury instructions?

5. Did the court err in instructing the jury as to Transportation Article § 21-801?

After reviewing the record, we conclude that the trial court erred in instructing the jury as to Transp. § 21-403(b), refusing to instruct the jury on Transp. § 21-401, and in permitting the County to introduce testimony concerning Ms. McKenzie's driving record. Accordingly, we reverse the judgment of the trial court.

Statement of Facts

This appeal arises from the trial of a negligence action following an automobile accident at the intersection of Arundel Beach Road and Sunset Court in Severna Park, Maryland.

Arundel Beach Road is a highway connecting a number of residential developments with Maryland Route 2. Arundel Beach Road runs, more or less, in an east-west direction. Sunset Court is a cul-de-sac that intersects Arundel Beach Road opposite that highway's intersection with Sunset Drive. Arundel Beach Road and Sunset Drive are owned and maintained by the County; Sunset Court, on the other hand, is a private road serving four residences. At the time of the accident, the only traffic control device regulating any portion of the Sunset Drive/Sunset Court/Arundel Beach Road intersection was a stop sign facing Sunset Drive.

The collision at issue occurred when Ms. McKenzie exited Sunset Court at about 12:45 p.m. on August 12, 2010. Ms. McKenzie has no recollection of the accident, but the evidence reveals that, as she entered the intersection from Sunset Court, the driver's side of her vehicle was struck by a car traveling westbound on Arundel Beach Road.[1] According to eye-witness testimony, Ms. McKenzie entered the intersection without stopping. Following the accident, Ms. McKenzie filed an action against Anne Arundel County, asserting that the County negligently failed to maintain a stop sign at the intersection of Arundel Beach Road and Sunset Court.[2]

[1]At this point in the litigation, no one suggests that the driver of the other vehicle was at fault in the accident.

[2]Initially, Ms. McKenzie added the driver of the other vehicle as a defendant. She later dismissed that claim with prejudice.

At trial, counsel for Ms. McKenzie presented evidence intended to establish that the County had a duty to maintain a stop sign controlling traffic exiting Sunset Court, even though the cul-de-sac was privately owned. To this end, Ms. McKenzie introduced a copy of a notice of traffic control for the Sunset Court/Arundel Beach Road intersection, dated October 16, 1995. James Schroll, Chief of the Traffic Engineering Division of the County's Department of Public Works, signed the 1995 order. He testified at trial that the order directed the Department of Public Works to install a stop sign on Sunset Court, and that, upon installation of the stop sign, traffic on Sunset Court would be required to yield the right-of-way to motorists on Arundel Beach Road. Documentary evidence revealed that the stop sign was installed on November 21, 1995. Nonetheless, the stop sign was no longer in place at the time of the collision on August 12, 2010, and several residents of Sunset Court testified that throughout the time they have lived on Sunset Court there had never been a stop sign present at the intersection. No evidence was presented as to how or when the stop sign was removed. The County replaced the stop sign on August 12, 2010, after the collision.

The jury returned a special verdict finding that the County was negligent in its maintenance of the stop sign, and further that the County's negligence was a cause of Ms. McKenzie's injuries. Nonetheless, the jury found that Ms. McKenzie was

contributorily negligent in the operation of her automobile, and judgment was entered in favor of the County.

Having related the relevant background, we move to the issues on appeal.[3] Additional information regarding the testimony about Ms. McKenzie's driving record and the relevant jury instructions will be provided below.

Standard of Review

We review the discretionary decisions of trial courts, such as those before us in this appeal, for abuse of discretion. As this Court explained in *North v. North*, 102 Md. App. 1, 14 (1994), in order for a discretionary matter to be reversed on appellate review, "[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable."

[3]The County argues that Ms. McKenzie's appeal should be dismissed because her notice of appeal was premature. We do not agree. The judgment was entered on March 27, 2014. On April 9, 2014, Ms. McKenzie filed a motion for a new trial. This motion was untimely. *See* Md. Rule 2-533(a). The trial court eventually struck the motion as untimely filed. In the meantime, however, Ms. McKenzie filed a notice of appeal on April 25, 2014. The notice of appeal was filed within 30 days of the entry of judgment and was, accordingly, timely. *See* Md. Rule 8-202(a).

The County is correct that Md. Rule 8-202(c) changes the time-frame within which a notice of appeal may be filed if a timely post-judgment motion is filed pursuant to Md. Rules 2-532, 2-533, or 2-534. An untimely filed motion, however, does not change the 30 day window to file a notice of appeal. See Kevin F. Arthur, FINALITY OF JUDGMENTS AND OTHER APPELLATE TRIGGER ISSUES 17–20 (2d. Ed. 2014), for an extensive discussion of this topic.

Analysis

I. An Improper Cross-Examination?

During the County's cross-examination of Ms. McKenzie, the County inquired about her driving record. Counsel began the inquiry by asking Ms. McKenzie whether she considered herself "a safe driver." Ms. McKenzie answered "Yes," and counsel proceeded to ask whether the State of New Jersey had ever suspended her driver's license. Ms. McKenzie responded "Nope" and her counsel objected. Counsel then approached the bench and counsel for Ms. McKenzie requested a proffer. Counsel for the County initially responded that he sought to impeach Ms. McKenzie's credibility, and when specifically asked for his proffer, counsel stated: "I have a driving record from the New Jersey Motor Vehicle Commission that indicates her license was suspended for a week in the month of July 2009, and she's been cited for using a cell phone while driving, that she's been cited for unsafe operation – ." After allowing Ms. McKenzie's counsel time to examine the document, the court overruled his objection, and the County continued with the line of questions. In response to the County's inquiries, Ms. McKenzie stated that she did not recall whether she had been convicted of the unsafe operation of a motor vehicle, that she had been convicted of operation of a motor vehicle while using a handheld cell phone, that she had not been convicted of failure to comply

with a court installation order, and that she was unaware of any July 2009 suspension of her driver's license.

Ms. McKenzie now contends that the trial court abused its discretion when it allowed the County to pursue its line of questioning about her driving record. Ms. McKenzie asserts that the introduction of past instances of negligence was a violation of Md. Rule 5-404(b)[4] and unduly prejudicial. The County counters that its inquiry into Ms. McKenzie's past transgressions did not implicate Md. Rule 5-404(b), but rather was intended to impeach her testimony that she was a safe driver. We agree with Ms. McKenzie.

In *Nesbit v. Cumberland Contracting*, 196 Md. 36, 38–39 (1950), a case arising from injuries sustained in an automobile accident, the Court of Appeals was confronted with determining "whether the trial court committed reversible error in allowing the plaintiff to be interrogated on cross-examination as to previous traffic offenses." The cross-examination, as recounted by the Court, was almost identical to the cross-examination in the case before us:

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[4]Pursuant to Md. Rule 5-404(b):

> Evidence of other crimes, wrongs, or acts including delinquent acts as defined by Code, Courts Article, § 3-8A-01 is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

> The plaintiff testified in cross-examination that he had a driver's license at the date of the accident. He was then asked "Do you consider yourself a good driver?" There was no objection and he answered "Yes." Over objection, he was then asked and admitted that he had been convicted twice in 1944 for driving without a license, three times in 1944 and 1945 for reckless driving, driving after license revoked on April 25, 1945, and passing on a curve and failing to stop at a boulevard sign, in January 1948.

Id. at 39. The Court concluded that introduction of the prior convictions amounted to reversible error. *Id*. at 44. The Court explained that "[i]n civil cases involving negligence there can be no question of motive or intent and the relevancy of traffic violations can hardly be maintained." *Id*. at 42. The Court acknowledged that traffic violations might "show a predisposition or a negligent character," but ultimately reiterated that "it has long been established in Maryland that such testimony cannot supply proof of negligence." *Id*. With regard to the argument that counsel sought to impeach the plaintiff's statement that he was "a good driver," the court concluded that the "contradiction appear[ed] to be no more than an effort to persuade the jury that because the plaintiff had been reckless on previous occasions he was reckless on the night of the accident." *Id*.

Applying this reasoning to the case before us, we conclude that permitting the County to introduce testimony as to Ms. McKenzie's driving record amounts to reversible error. Our review of the record reveals that the County's only purpose in inquiring about Ms. McKenzie's perception of herself as a safe driver was to impeach her

with prior traffic violations. *Nesbit* not only establishes that this was impermissible under Maryland law, but also makes clear that such a line of questioning is impermissibly prejudicial. The jury may very well have concluded that because Ms. McKenzie had previously acted in violation of traffic laws, she did so in entering the intersection of Arundel Beach Road and Sunset Court as well. On the basis of the law and the record, we conclude that the trial court abused its discretion in permitting the line of questioning to go forward.[5]

II. The Jury Instructions

At the outset of the trial, counsel for Ms. McKenzie presented the court with a request for jury instructions. Ms. McKenzie's counsel requested that the court instruct the jury as to five non-pattern jury instructions: (1) § 21-401[6] of the Transportation Article (Transp.), governing the right of way at uncontrolled intersections; (2) Transp.

[5]The County argues that any error on the trial court's part was harmless because Ms. McKenzie testified during re-direct as to her past driving record. That counsel attempted to rehabilitate his witness does not change the fact that the trial court erred in permitting the County's line of questioning in the first place.

[6]Transp. § 21-401:
Vehicle at intersection.
Except at through highways, or as otherwise provided in this subtitle, a vehicle at an intersection:
(1) Has the right-of-way over any other vehicle approaching from the left; and
(2) Shall yield the right-of-way to any other vehicle approaching from the right.

§ 21-101(x), defining "through highway"; (3) the "Heeding Presumption," pursuant to which the law presumes a person will heed a legally adequate warning; (4) the Self-Preservation Presumption, whereby the law presumes a person will exercise ordinary care for his or her own safety; and (5) the right of persons exercising due care to assume proper conduct on the part of others. Counsel also filed a memorandum asserting that the jury should not be instructed as to the Boulevard Rule, codified, in part, at Transp. § 21-403, which requires vehicles approaching through highways to yield to traffic traveling on the through highway.

At the conclusion of the evidence, the court presented counsel with its proposed instructions, and counsel and the court engaged in a prolonged discussion as to the appropriate instructions to provide the jury. Raising many of the same arguments as before this Court, counsel for Ms. McKenzie requested that the court reconsider its proposed instructions. Counsel for Ms. McKenzie asked that the court exclude its proposed instruction on Transp. § 21-403, and, in the alternative, requested that the court instruct the jury on Transp. § 21-401. Counsel also asked that the court reconsider the inclusion of an instruction on Transp. § 21-801, and its exclusion of Ms. McKenzie's proposed non-pattern jury instructions. We will discuss Ms. McKenzie's contentions with regard to the instructions in more detail below.

On the issue of negligence, the court instructed the jury as follows:

> The driver of a motor vehicle must use reasonable care, and reasonable care is that degree of caution and attention that a person of ordinary skill and judgment would use under similar circumstances.
>
> What constitutes reasonable care depends upon the circumstances of a particular case. Negligence is doing something that a person using reasonable care would not do or not doing something that a person using reasonable care would do. Reasonable care means that caution, attention or skill a reasonable person would use under similar circumstances.
>
> The violation of a statute, which is a cause of a plaintiff's injuries or damages, is evidence of negligence. I'm going to read you just a couple of statutes. The first is 21-403(b), vehicle entering stop or yield intersection of through highway.
>
> It provides "If the driver of a vehicle approaches a through highway, the driver shall stop at the entrance to the through highway and yield the right of way to any other vehicle approaching on the through highway."
>
> [Section] 21-101(x) provides "A through highway means a highway or part of a highway on which vehicular traffic is given the right of way and at the entrance to which vehicular traffic from intersecting highways is required by law to yield the right of way to vehicles on that highway or part of a highway in obedience to either a stop sign or yield sign placed as provided in the Maryland vehicle law."
>
> Section 21-801(c) -- and by the way, all of these are from the Maryland Transportation Code -- provides that "A driver of a vehicle shall drive at an appropriate reduced speed when approaching and crossing an intersection at which cross traffic is not required to stop by a traffic control device."
>
> Now in order for the plaintiff to recover damages, the defendant's negligence must be a cause of the plaintiff's injury. There may be more than one cause of an injury. That is, several negligent acts may work

> together. Each person whose negligent act is a cause of an injury is responsible.
>
> A plaintiff cannot recover if the plaintiff's negligence is a cause of the injury. The defendant has the burden of proving by a preponderance of the evidence that the plaintiff's negligence was a cause of the plaintiff's injury.

At the conclusion of the court's instructions, counsel for Ms. McKenzie objected, stating:

> Again, I'd like to object to the reading of 21-403(b) to the jury as the law that's applied to these facts. I'd also like to object for the record to the reading of 21-801 and again request, and I know you denied my request, I'm just doing it for the record, that the Court read our pattern jury instructions one through five that we submitted. I'm sorry, non-pattern jury instructions one through five, which includes 21-401, which I think applies to the facts in this case.

During the course of its deliberations, the jury submitted four notes, with multiple subparts. The question most relevant to the issues before us on appeal was: "is there a specific or applicable section and paragraph of the Maryland vehicle law that addresses what drivers of a motor vehicle are required to do in the absence of a traffic control device?" The court's response to all of the jury notes was the same: "'You must decide this case on the evidence you have and the law as instructed.'" As we have related, the jury concluded that the County's failure to maintain the stop sign on Sunset Court did amount to negligence. However, because the jury found that Ms. McKenzie was contributorily negligent, judgment was entered in favor of the County.

Ms. McKenzie now contends that the court erred in instructing the jury. After reviewing the law governing jury instructions, we will address Ms. McKenzie's contention that the trial court erred in instructing the jury as to Transp. § 21-403, in conjunction with her contention that the court erred in refusing to instruct the jury as to Transp. § 21-401. We will then review the trial court's refusal to instruct the jury as to Ms. McKenzie's proposed non-pattern jury instructions. Finally, we will consider the court's inclusion of Transp. § 21-801(c).

A. Applicable Law

A party is entitled to have its theory of the case presented to the jury in the form of an instruction if the theory is a correct exposition of the law and the theory is generated by the evidence presented. *Arthur v. State*, 420 Md. 512, 525 (2011). A theory is generated by the evidence when "some evidence" supporting the theory is introduced at trial. *Id*. The Court of Appeals has articulated the "some evidence" requirement as follows: "*Some evidence* is not strictured by the test of a specific standard. It calls for no more than what it says—'some,' as that word is understood in common, everyday usage." *Id*. at 526 (quoting *State v. Martin*, 329 Md. 351, 359 (1993)).

Parties are entitled to jury instructions that fairly explain the law applicable to the facts of the case. *Univ. of Md. Med. Sys. Corp. v. Malory*, 143 Md. App. 327, 337 (2001). The complaining party bears the burden of establishing prejudice and error. *Id*.

at 337. With regard to prejudice, the complaining party must show that it was probable, not merely possible. *Barksdale v. Wilkowsky*, 419 Md. 649, 662 (2011). Reversal is appropriate where the instructions fail to provide the jury with "the law relevant to the issues and evidence presented at trial." *See Malory*, 143 Md. App. at 337–38 (explaining the purpose of jury instructions and the role of the court in advising the jury of the appropriate instructions).

We explained the framework through which we assess jury instructions in *Malik v. Tommy's Auto Serv., Inc.*, 199 Md. App. 610, 616 (2011), as follows:

> When we review a trial court's ruling to grant or deny a requested jury instruction, we consider whether the requested instruction was a correct exposition of the law, whether that law was applicable in light of the evidence before the jury, and finally whether the substance of the requested instruction was fairly covered by the instruction actually given.

(Citation and quotation marks omitted). With this framework in mind, we review the instructions at issue in the case before us.

B. and C. The Boulevard Rule: Transp. §§ 21-403 and 21-401

The Boulevard Rule imposes "the absolute and unequivocal duty [upon an] unfavored driver to stop and yield the right of way to all traffic during his entire passage through the favored highway [and] is only tempered by the doctrine of last clear chance or a finding of contributory negligence on the part of the favored driver." *Creaser v. Owens*, 267 Md. 238, 249 (1972). Moreover,

> It is well-settled that there are two physical conditions precedent to the application of the Boulevard Rule. An intersection of a favored highway and an unfavored intersecting street, at which unfavored street traffic was required to (1) stop *by some form of traffic control device* and (2) yield the right-of-way to traffic approaching on the favored highway, is the first of the two necessary physical factors.

Dennard v. Green, 95 Md. App. 652, 660 (1993), *aff'd*, 335 Md. 305 (1994) (citation omitted; emphasis added).

The Boulevard Rule is reflected in Transp. §§ 21-403 and 21-101(x). Section 21-403 states in pertinent part (emphasis added):

> 21-403. Vehicle entering stop or yield intersection or through highway.
>
> . . .
>
> (b) If the driver of a vehicle *approaches a through highway*, the driver shall:
> (1) Stop at the entrance to the through highway; and
> (2) Yield the right-of-way to any other vehicle approaching on the through highway.

Section 21-101(x) defines "through highway" (emphasis added):

> "Through highway" means a highway or part of a highway:
> (1) On which vehicular traffic is given the right-of-way; and
> (2) At the entrances to which vehicular traffic from intersecting highways is *required by law to yield the right-of-way* to vehicles on that highway or part of a highway, *in obedience to either a stop sign or yield sign* placed as provided in the Maryland Vehicle Law.

When the Boulevard Rule does not apply, Transp. § 21-401 states (emphasis added):

> *Except at through highways*, or as otherwise provided in this subtitle, a vehicle at an intersection:

> (1) Has the right-of-way over any other vehicle approaching from the left; and
> (2) Shall yield the right-of-way to any other vehicle approaching from the right.

In its instructions, the trial court provided the jury with the substance of §§ 21-403 and 21-101(x), that is, the Boulevard Rule. The trial court refused to instruct the jury as to § 21-401. When asked by the jury during its deliberations for "a specific or applicable section and paragraph of the Maryland vehicle law that addresses what drivers of a motor vehicle are required to do in the absence of a traffic control device?", the court again declined to instruct on § 21-401.

To this Court, Ms. McKenzie asserts that the trial court should not have instructed the jury as to the Boulevard Rule for two reasons. First, she asserts that the Boulevard Rule was not applicable as a matter of fact because there was no evidence that Arundel Beach Road was a "through highway" at the Sunset Court/Arundel Beach Road intersection. Second, she contends that the Boulevard Rule is conceptually inapplicable because the purpose of the rule is to allocate liability between favored and unfavored drivers and their passengers, and not the liability of third parties whose negligence may have been a proximate cause of the accident. We agree with Ms. McKenzie as to both points.

Our basis for this conclusion is our analysis in *Dail v. Tri-City Trucking Co*., 39 Md. App. 430 (1978). That case involved an action by a driver against a contractor for

negligent failure to post warnings that the westbound lanes of a divided highway had been closed for road repair, and that, as a result, the eastbound lanes carried traffic in both directions. *Id*. at 431–33. Dail was attempting to cross the eastbound lanes and his vehicle was struck by a truck traveling westbound, *i.e*., in the wrong direction. *Id.* at 431.The trial court granted the contractor's motion for summary judgment on the ground that the Boulevard Rule barred recovery because Dail was the unfavored driver at the intersection. *Id.* at 432. Writing for this Court, Judge Rita Davidson stated:

> The Court of Appeals has applied the boulevard rule only in suits between favored drivers, unfavored drivers, and their passengers. In these cases, that Court has jealously guarded and upheld the favored driver's right of way on the favored boulevard, in order to discourage interference with the flow of traffic. . . . The Court of Appeals has never applied that rule in a suit between an unfavored driver and a party other than a favored driver or passenger. We decline to do so here.
>
> . . . .
>
> The obvious and essential purpose of [the Boulevard Rule] is to accelerate the flow of traffic over through highways by permitting travellers thereon to proceed within lawful speed limits without interruption. That purpose would be completely frustrated if such travellers were required to slow down at every intersecting highway, and the vast sums which have been spent in their construction in an effort to accommodate the great volume of automobile traffic which is so indispensable a part of modern life, would be largely wasted. . . . .
>
> The boulevard rule's purpose of facilitating the flow of traffic is fully effectuated if uninterrupted travel is encouraged by protecting the favored driver's right of way and recklessness is discouraged by penalizing the unfavored driver for failure to yield the right of way. The favored driver is protected by virtual immunity against actions brought by the unfavored driver. The unfavored driver is penalized by being found contributorily negligent as a matter of law.

> The rule's purpose would not be significantly advanced by barring an unfavored driver from recovery against a negligent party other than the favored driver. Indeed, it would be antithetical to the rule's purpose to immunize such a negligent party from liability when that party's actions caused the disruption of the flow of traffic on a through highway by causing the unfavored driver's failure to yield the right of way. In addition, it would be unfair to immunize that negligent party under such circumstances by applying the boulevard rule.
>
> We decline to apply the boulevard rule here because it would not serve that rule's purpose and would be unfair. We shall not immunize the Contractor from liability by holding Dail contributorily negligent as a matter of law where, but for the Contractor's alleged negligence in failing to post warning signs, Dail may not have failed to look for and see the approaching tractor-trailer.

Id. at 433–36 (1978) (footnotes, citations, and quotation marks omitted).

This reasoning is applicable in this case. No one contended that the operator of the other vehicle was driving negligently, or had the last clear chance to avoid the collision with Ms. McKenzie's vehicle. Likewise, there was evidence that Arundel Beach Road was intended to function as a "through highway" at the Sunset Court intersection. But, in order for Arundel Beach Road to be a through highway for purposes of the rule, access from Sunset Court had to be controlled by a stop sign or similar traffic control device. The evidence was that there was no stop sign or other control device.[7]

[7] Ms. McKenzie is also correct that the Boulevard Rule instruction was inappropriate because there was no evidence that there was a stop sign in the relevant location. *See Houlihan v. McCall*, 197 Md. 130, 136 (1951) ("[I]t is clear that the erection of signs by the proper authorities is a necessary prerequisite to the creation of a through highway or stop intersection."). The County's argument that Arundel Beach Road was a through highway because there was a stop sign at the intersection of Sunset

(continued...)

Because the liability of Ms. McKenzie vis à vis the other driver was not an issue, the court's decision to give the Boulevard Rule instruction was erroneous. We conclude that the error was not harmless as the jury note clearly indicated that the jury was confused as to the appropriate legal standard.

D. Non-pattern Jury Instructions

Ms. McKenzie also contends that the court erred in refusing to instruct the jury on her proposed non-pattern jury instructions. As stated above, Ms. McKenzie requested that the court instruct the jury on the Heeding Presumption and the right to assume proper conduct of others. With regard to the Heeding Presumption, Ms. McKenzie recognizes that it is an instruction ordinarily provided in products liability cases, but contends that it is applicable under the facts of her case. Ms. McKenzie asserts that the court's failure to provide the instruction limited her ability to present to the jury the theory that she would have stopped at the stop sign had it been present, and thus to establish the effect of the County's negligence. In support of the instruction that a person exercising due care is not required to anticipate negligent conduct on the part of others,

[7](...continued)
Road and Arundel Beach Road, as opposed to Sunset *Court* and Arundel Beach Road is unpersuasive because drivers are not under a duty to stop because there is a stop sign facing in the opposite direction on the opposite side of the street. The testimony of the experts, that Arundel Beach Road functioned as a through highway, did not justify the instruction because Transp. § 21-101(x) makes clear that there must be a traffic control device for a road to the considered a through highway. *See also Dennard v. Green*, 95 Md. App. at 660.

Ms. McKenzie asserts that her ability to present the jury with the theory that her conduct was reasonable in light of the absence of the stop sign was limited.[8] We do not agree.

We begin with the Heeding Instruction. As Ms. McKenzie acknowledges, the Heeding Presumption arises in product liability cases. The issue in this case is whether the County was negligent in failing to maintain a stop sign at the Sunset Court/Arundel Beach Road intersection, and whether that failure was the proximate cause of Ms. McKenzie's injuries. That inquiry leads to consideration of whether Ms. McKenzie was exercising due care when she exited onto Arundel Beach Road. Because Ms. McKenzie's claims arise out of the law of negligence, we see no basis upon which to conclude that the court erred in refusing to instruct the jury on a doctrine derived from products liability.

[8]The County asserts that Ms. McKenzie waived her right to appeal the court's refusal to instruct the jury on her non-pattern jury instructions. The County contends that Ms. McKenzie failed to comply with Md. Rule 2-520(e) because she did not object to the court's jury instructions with specificity. Ms. McKenzie's counsel submitted a written request for jury instructions at the outset of the trial, inquired as to whether the court would be instructing the jury on the proposed non-pattern jury instructions during the discussion between the court and counsel on the instructions, and objected after the court instructed the jury. The court was aware of Ms. McKenzie's objections, and had ample opportunity to alter the instructions. *See Houghton v. Forest*, 183 Md. App. 15, 31 (2008), *aff'd in part, rev'd in part, on other grounds*, 412 Md. 578 (2010), (explaining that substantial compliance with Md. Rule 2-520(e) is sufficient for preservation of jury instructions where the ground for objection is apparent from the record and renewal of the objection would be futile (internal citation and quotation marks omitted)). We are not entirely sure what else the County would have Ms. McKenzie do to preserve the issue for appellate review.

With regard to Ms. McKenzie's instruction on the right to assume proper conduct on the part of others, we acknowledge that it was a correct statement of the law, but conclude that it was covered by the court's general negligence instruction. Accordingly, it was within the court's discretion to refuse to give the instruction.

E. Transp. § 21-801(c)

Ms. McKenzie's final contention is that the trial court erred in instructing the jury on Transp. § 21-801(c). Transp. § 21-801(c) provides that "the driver of a vehicle shall drive at an appropriate, reduced speed when approaching and crossing an intersection at which cross traffic is not required to stop by a traffic control device." Ms. McKenzie asserts that the instruction on Transp. § 21-801(c) was only included to enable the County to argue that she was contributorily negligent, and that the only evidence presented as to Ms. McKenzie's speed was introduced by a plaintiff's witness. The County counters that its entire theory of the case was that Ms. McKenzie was contributorily negligent when she entered the intersection without slowing or stopping. Further, the County contends that the instruction was appropriate because no evidence was presented to suggest that Ms. McKenzie reduced her speed before entering the intersection.[9]

[9]The County again asserts that Ms. McKenzie waived her appellate contention that the court erred in instructing the jury on Transp. § 21-801(c) because she failed to object with specificity to the court's instructions, as required by Md. Rule 2-520(e). After (continued...)

The threshold that must be satisfied for a jury instruction to be given is moderately low, only requiring the introduction of "some evidence." *See Arthur v. State*, 420 Md. 512, 526 (2011). Chad Richhart, the only witness to the collision, testified that Ms. McKenzie did not stop before entering the intersection, and on cross-examination he testified to the speed at which Ms. McKenzie's vehicle was traveling. In response to the County's inquiry as to how fast Ms. McKenzie was driving, Mr. Richhart said "Not fast. It's a tiny little cul-de-sac it was coming out of, so you couldn't get any type of momentum or speed. Faster than maybe perhaps like coasting, but not 10, 15 miles per hour, tops, 10 miles per hour." That Mr. Richhart was Ms. McKenzie's witness is of no significance. There is no dispute as to the County's burden to prove contributory negligence, and the jury was instructed accordingly. Moreover, Ms. McKenzie fails to

[9](...continued)
reviewing the record, we again conclude that the County's contention is misplaced. The transcript plainly reveals that counsel for Ms. McKenzie requested that the court reconsider giving 21-801(c), while the court was addressing the instructions on which to advise the jury, that the County advocated for the inclusion of the instruction, and that counsel for Ms. McKenzie objected to the instruction after the court instructed the jury. The court was aware of counsel's objection, and had ample opportunity to address it – the issue is preserved for appellate review.

make any argument as to how the instruction was prejudicial. The trial court committed no error in instructing the jury on Transp. § 21-801(c).

THE JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IS REVERSED AND THIS CASE IS REMANDED TO IT FOR A NEW TRIAL OR OTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.