UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1326

September Term, 2014

INGA FRONEBERGER

v.

KERRY E. OWENS, M.D., et al.

Meredith,
Woodward,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: February 29, 2016

This is an appeal from the denial, by the Circuit Court for Baltimore City, of two motions for reconsideration filed by Inga Froneberger, appellant, whose medical malpractice case against Dr. Kerry Owens and St. Agnes HealthCare, Inc. ("St. Agnes"), appellees, had been disposed of by the grant of appellees' motion for summary judgment. Appellant did not note an appeal within 30 days after entry of summary judgment; rather, after the passage of ten days, she filed in the circuit court a motion for reconsideration of the summary judgment ruling, as well as a motion for reconsideration of the circuit court's ruling that appellant's motion to name a substitute for her expert witness had been made moot by the grant of summary judgment in favor of appellees. After both of appellant's motions for reconsideration were denied, she filed the instant appeal.

Anticipating that appellant would endeavor to belatedly challenge the merits of the summary judgment ruling, appellees filed a motion to dismiss the appeal. In her opposition to appellees' motion to dismiss the appeal, appellant affirmed that she was not appealing the grant of the motion for summary judgment, but only the denial of the two motions for reconsideration. On October 9, 2014, this Court issued an order denying the motion to dismiss the appeal, but further ordered that the scope of appellant's appeal would be "limited to whether the circuit court abused its discretion when it denied Appellant's Motion[s] for Reconsideration. *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 723-24 (2002)."

QUESTIONS PRESENTED

Appellant presented the following questions for our review:

1. Whether the trial court abused its discretion by granting summary judgment in favor of the appellees when the appellant's expert provided an opinion that the appellee's negligence proximately caused the appellant's injury?

2. Whether the trial court abused its discretion in determining as a fact that appellant's expert's testimony did not causally relate the appellee's negligence to the appellant's injuries?

3. Whether the trial court abused its discretion by considering an unsigned affidavit by appellant's expert in support of the appellees' Motion for Reconsideration of Summary Judgment?

4. Whether the trial court abused its discretion by denying the appellant's motion to substitute expert witness when the appellant's first expert suddenly and unexpectedly refused to participate in the case?

Appellees responded in their brief with a (second) motion to dismiss the appeal, noting that the questions presented in appellant's brief were in "flagrant disregard" of this Court's order of October 7, 2014, and of Maryland law.

Although, as we shall explain, it is necessary for us to evaluate the substance of the summary judgment ruling for the limited purpose of determining whether the circuit court's refusal to reconsider its ruling was an abuse of discretion, we conclude the denial of the motion to reconsider that ruling was not an abuse of discretion. Consequently, we will deny appellees' motion to dismiss, but we will affirm the judgment of the Circuit Court for Baltimore City. We need not address the appellant's motion for reconsideration of the circuit court's ruling regarding substitution of an expert witness.

FACTS AND PROCEDURAL HISTORY

Appellant was diagnosed with an aggressive form of breast cancer in December 2008, and underwent a modified radical mastectomy of her left breast on January 9, 2009. Dr. Owens, a plastic and reconstructive surgeon, did not perform the mastectomy surgery, but was present in the operating room for the purpose of creating a "pocket" by placing an

expander under appellant's skin to facilitate the eventual placement of a gel-based implant in place of the left breast. Thereafter, appellant saw Dr. Owens regularly to monitor the expander, which would be injected with fluid that would, over time, slowly stretch the skin to accommodate the eventual implant. Appellant underwent chemotherapy, delivered via chest port, and radiation on her left chest.

Dr. Owens performed the implant surgery on August 5, 2010, at which time she placed a 350-cc smooth-surfaced gel breast implant. Approximately two-and-a-half weeks later, appellant began complaining of a painful, swollen, red left breast. She was admitted to the hospital and given IV antibiotics, but ultimately, the implant had to be removed so that the surgical "pocket" in which it had been placed could be thoroughly irrigated and cleared of infection. Dr. Owens performed the implant-removal surgery on August 25, 2010.

After first filing a complaint in the Health Care Alternative Dispute Resolution Office, and later filing a waiver of arbitration, appellant filed her complaint in the circuit court on June 10, 2013. Appellant's complaint was in two counts. Count 1 alleged medical malpractice on the part of Dr. Owens and vicarious liability on the part of St. Agnes as her employer. Appellant asserted in her complaint:

> 27. Dr. Owens deviated from the acceptable standard of medical care in the preparation of the area for a gel implant, by failing to have appropriate sized and shaped alternative implants available during surgery, in deciding to insert the too-large implant into the pocket that was too small for it, and in other ways.
>
> 28. As a sole, direct and proximate result of the negligence of the defendant, [t]he implant failed and became infected and had to be removed. The plaintiff suffered monetary and non-monetary damages,

> including medical expenses, pain and suffering, and she has a physical appearance that she would prefer not to have. . . .

Count 2 alleged that St. Agnes was negligent in its preparation of and equipping of the operating room, "failing to have appropriate sized and shaped alternative implants available during surgery," and in generally failing to supervise Dr. Owens. (Count 2 was eventually dismissed on summary judgment, and that decision was not appealed.)

On July 24, 2013, appellees filed an answer to the complaint. A scheduling order required appellant to designate experts by November 7, 2013; appellees to designate experts by January 16, 2014; and appellant to designate any rebuttal experts by February 14, 2014. Discovery was to close on March 17, 2014. Trial was set to begin on June 16, 2014.

Appellant designated Dr. Helen Kraus, a Florida-based, board-certified plastic and reconstructive surgeon, as her liability expert.[1]

Dr. Kraus was deposed on March 7, 2014. The deposition was later the basis for appellees' successful motion for summary judgment, in which appellees contended that Dr. Kraus failed to provide the requisite testimony regarding causation. Although Dr. Kraus initially opined that Dr. Owens "departed from the standard of care **in not having a variety of sizes and shapes of implants available** when she performed the surgery on August 5,

[1]Appellant actually designated both Dr. Kraus and Dr. Brendan Collins, the surgeon at Mercy who eventually performed the reconstruction surgery on appellant's left breast, as her expert witnesses, but Dr. Collins testified during his deposition that he was never informed that he was being designated as an expert witness by appellant, and that he did not intend to testify in that capacity.

2010," (emphasis added), Dr. Kraus clarified the limited scope of her opinion in response to the following questions:

> [BY APPELLEES' COUNSEL]: So if I am right, the only breaches in the standard of care that you are going to identify today are that Dr. Owens did not have the variety of sizes and shapes of implants that she should have on August 5, 2010?
>
> [BY DR. KRAUS]: That's correct.
>
> Q. Okay. And the implant that she implanted on August the 5th was too large or not the proper shape?
>
> A. That's correct.
>
> Q. Okay. And that that contributed to dehiscence and infection of the incision?
>
> A. That's correct.

Dr. Kraus testified that she was not critical of the initial mastectomy surgery, Dr. Owens's role in that surgery (creating the "pocket" of skin into which the implant would later be inserted), or the suitability of Dr. Owens's preparation of the implant site as of the August 5 implant surgery. Dr. Kraus testified that, "in terms of standard of care . . . my only criticism of [Dr. Owens's] care in this case is that the use of a high-profile implant pushes more stress on the overlying soft tissue, which decreases the vascular supply, which increases the risk of wound-healing problems and infection."

Dr. Kraus testified that Mentor — the company that manufactures the gel implant used in this case — makes four sizes of implants: moderate-classic profile, moderate-plus profile, high profile, and ultrahigh profile. The implant actually used by Dr. Owens in appellant's surgery was the high profile variety. Dr. Kraus testified that, because appellant had had

radiation and had a poor wound-healing history, the standard of care required not the high-profile implant Dr. Owens used, but the next step down — the moderate-plus profile. The difference between the implant actually used and the implant Dr. Kraus testified was required by the standard of care was about one centimeter. In that regard, Dr. Kraus testified:

> [BY APPELLEES' COUNSEL]: . . . [Y]ou're saying [Dr. Owens] didn't need to change anything other than the profile and that the standard of care in that instance required it to go from the high profile to the moderate-plus profile?
>
> [BY DR. KRAUS]: Yes.
>
> Q. Okay. Is there any literature, any textbook, even medical device literature, that would support that opinion?
>
> A. I can't say I can point to anything, but I can tell you from any surgeon who operates on patients who have radiated tissue, you have to treat that like tissue paper. It's very delicate; it can be damaged very easily, and, therefore, we try and minimize any stress to the tissue itself.

But, later in her deposition, Dr. Kraus testified that she did not hold an opinion that the implant did not fit into the pocket or was too large for it.

> [BY APPELLEES' COUNSEL]: You are not going to testify or give the opinion, and you do not hold the opinion, that the actual implant that Dr. Owens placed on August the 5th did not fit into the pocket?
>
> [BY DR. KRAUS]: Correct.
>
> Q. Or was too large for the pocket?
>
> A. Correct.

Dr. Kraus had no criticism of the care provided in the immediate post-operative period by Dr. Owens. The record reflected that appellant's surgical site appeared to be healing normally until approximately August 23, when appellant called Dr. Owens to report a

painful, red, swollen left breast. Dr. Owens admitted appellant to the hospital for a 24-hour course of intravenous antibiotics, but, when signs of infection persisted, Dr. Owens removed the implant. Dr. Kraus agreed that removal of the implant at that stage was reasonable.

With respect to Dr. Kraus's causation opinion in this case, the following colloquy is relevant:

> [BY APPELLEES' COUNSEL]: . . . Why is it that you — is it your opinion that the infection was caused by the higher profile of that implant exerting pressure on the incision?
>
> [BY DR. KRAUS]: I believe it increased the risk of developing an infection, yes.
>
> Q. Well, that's where I thought you would go with that. Okay. So in your opinion, based on your practice and your training and experience, you believe that the higher profile — the fact that it's a high-profile implant increased the risk that it — increased the risk of infection?
>
> A. Yes.
>
> **Q. You are not saying, though, today, that with a reasonable degree of medical certainty, the profile of the implant or the implant itself was the cause of Ms. Froneberger's infection?**
>
> **A. No. It couldn't.**
>
> Q. And —
>
> * * *
>
> Q. . . . But you are not going to say — I don't believe you can — that the higher profile of that implant, with a reasonable degree of medical certainty, was a cause of that infection?
>
> A. No, because it couldn't. It's not a bacteria.
>
> [BY APPELLANT'S COUNSEL]: Was the question whether or not it was the cause or a cause?

[BY APPELLEES' COUNSEL]: I said, a cause.

[BY DR. KRAUS]: Well, it increased the risk of infection.

[BY APPELLEES' COUNSEL]: Right.

[BY DR. KRAUS]: Because it put more stress on the overlying soft tissue, which decreased the vascular supply, which increases the risk of infection.

Q. Okay. Can you say where the bacteria came from?

A. Probably skin contaminants.

Q. **Is there anything in the medical record or any evidence that you see in the case, any facts in the case, that you see that allows you to say with a reasonable degree of medical certainty what — where the bacteria came from or what was the cause of the infection in Ms. Froneberger's case?**

A. **I don't think anybody could say that.**

(Emphasis added.)

Based upon Dr. Kraus's admissions about the limited scope of her opinion, appellees filed a motion for summary judgment on May 15, 2014, arguing that appellant "lacks the necessary expert causation testimony to proceed." Appellant filed a response on June 6, 2014, urging the court to deny the motion because, under the substantial-factor causation test, appellant had "produced legally sufficient evidence of causation." Appellant asserted that Dr. Owens's "decision to insert a too[-]large implant resulted in predictable medical problems," despite the fact that appellant's expert, Dr. Kraus, specifically disavowed holding the opinion that the implant used was, in fact, too large for the pocket.

On June 9, 2014, the court held a hearing on the motion for summary judgment, at which appellees argued that Dr. Kraus's testimony was insufficient to "establish a causal

nexus between the alleged negligent act and the injury or that any causal link was probable, not just possible." Appellant, in response, argued that Dr. Kraus's testimony was sufficient to survive summary judgment. The motion court expressed skepticism, but held the motion *sub curia* to permit it to read the entire Kraus deposition. On June 13, 2014, the court filed an order *denying* appellees' motion for summary judgment.

On June 19, 2014, appellees filed a motion for reconsideration. In addition to restating the legal reasons that they were entitled to summary judgment — namely, the insufficiency of Dr. Kraus's causation opinion — appellees attached to the motion for reconsideration several exhibits, including documents received from appellant's counsel subsequent to the hearing. These exhibits reflected, *inter alia*, that, on the evening of June 9, appellant's counsel e-mailed Dr. Kraus to inform her that "[t]he court held a hearing on [appellees'] motion for summary judgment today and the judge indicated that she was likely going to dismiss our case based on the fact that your testimony seemed to take back your opinions in your report. [The judge] **is going to make a ruling tomorrow morning**." (Emphasis in original.) Attached to the e-mail was a draft affidavit, prepared by appellant's counsel for Dr. Kraus's signature. The draft affidavit presumably was intended to supplement the deposition testimony that the court had told appellant at the hearing it found problematic. It does not appear from the record that Dr. Kraus responded to counsel's June 9 e-mail.

On June 10, 2014, appellant's counsel e-mailed Dr. Kraus to inform her: "The judge has denied the defendant's motion for summary judgment. You can therefore disregard the

request below. In addition, this case is proceeding to trial, so your appearance is still necessary."

On June 11, 2014, Dr. Kraus notified appellant's counsel via e-mail that she was withdrawing from the case: "Due to a family emergency I have had minimal access to email/voicemail. I have received your messages now but due to my personal issues I am unable to continue to work on this case." Counsel responded via e-mail:

> I am very sorry to hear that you have had a family emergency. Because trial is Monday and we were expecting to meet with you Tuesday and have you testify on Wednesday per our previous arrangement, are there any details that you can share with us so that we can explain to the court when we request a continuance? Can you also let us know when, or if, you would be able to appear in the event of a continuance?

Dr. Kraus replied on the evening of June 12: "Due to personal circumstances I will not be able to continue to work on this case."

One of the exhibits attached to appellees' motion for reconsideration was a May 27, 2014, e-mail from appellant's counsel's office to Dr. Kraus, notifying Dr. Kraus that the case "is still proceeding and looks like it may be headed for trial. Therefore, [lead counsel] wanted to find out your availability for trial. The trial is currently set to start on June 16 in Baltimore City. It will probably take place over a couple days to a week. Please advise us of your availability." Dr. Kraus responded to that e-mail within a matter of hours: "The lack of earlier knowledge of the trial dates is disturbing to me; I am used to be [sic] told of trial dates months in advance so I can plan my office schedule." (The June 16 trial date in this case was set in a pretrial scheduling order issued to the parties on September 11, 2013. As noted, Dr. Kraus was deposed on March 7, 2014.)

Appellees' motion for reconsideration of the denial of their summary judgment motion emphasized that, even with Dr. Kraus in the case, her testimony was not sufficient as a matter of law to provide a causal link between the alleged act of negligence and appellant's injury, and summary judgment was therefore warranted in favor of the appellees. With Dr. Kraus out of the case, appellant had no expert witness, and appellees argued that was an additional reason to grant summary judgment in favor of the appellees.

On June 25, 2014, appellant filed a motion to permit substitution of her expert witness, in which she represented that "Dr. Kraus's announcement that she was withdrawing from the case was a complete surprise" to appellant, and that Dr. Kraus had not given any indication "that [she] would become unavailable or difficult to work with prior to June 11, 2014." The motion noted that appellant's "counsel and Dr. Kraus discussed the trial date prior to her deposition and there was no mention by her that she may not be able to attend." On June 26, 2014, appellant filed an opposition to appellees' motion for reconsideration of the denial of summary judgment.

On June 30, 2014, the court held a hearing on appellees' motion for reconsideration. At the conclusion, the court explained that, upon reconsideration, the judge was persuaded that she should have granted appellees' motion for summary judgment. The court's oral ruling explained:

> THE COURT: The opinion of Dr. Kraus that the higher profile implant led to an increased risk of infection is no more than an opinion stating a presumption, an assumption without, at the same time, offering any of the factual underpinnings in the chain of causation as you've identified.

> And I — simply receiving the Kraus opinion and labeling it as an expert opinion doesn't make it a viable conclusion of causation. And I am — I cannot refer to or rely on the Kraus testimony and/or the report to see anything that resembles a reasonable probability — possibility, but not a probability. And that's not enough to get the plaintiffs where they — get the plaintiff where she needs to be.
>
> The circumstantial evidence, the speculation inherent in her conjecture about the likelihood of an infection weeks away, without being able to rule in or rule out any other contributing factors along this path during those number of weeks compels me to — to agree that there can't be a dispute of material facts. There is not a dispute of material fact that should prevent summary judgment at this time.
>
> So my determination, for reasons that appear primarily in the Court's record of its decision and the reasons for its decision making on June the 9th, 2014, and my consideration of the deposition testimony and the arguments today here by counsel, I am — I am going to grant the motion for reconsideration [and enter summary judgment in favor of the appellees].

On July 1, 2014, the court issued an order vacating its earlier denial of the motion for summary judgment, and granting appellees' motion for reconsideration of that decision. The July 1 order granted summary judgment in favor of Dr. Owens and St. Agnes and closed the case. That order was entered on the docket on July 8, 2014. The court also ordered that appellant's motion for substitution of expert witness was moot.

On July 30, 2014, appellant filed a motion for reconsideration of the motion for substitution of her expert witness, to which she attached a CV and report of a "new" expert. Also on July 30, 2014, appellant filed a motion for reconsideration "pursuant to Rule 2-535," and requested a hearing. On August 18, 2014, appellees filed oppositions to both of appellant's motions for reconsideration. On August 22, 2014, the court entered an order

denying both motions. On August 28, 2014, appellant noted the present appeal of the denial of her motions for reconsideration.

As noted at the beginning of this opinion, appellees filed a motion to dismiss the appeal on September 26, 2014, arguing that appellant was not entitled to full-blown appellate review of the grant of summary judgment in favor of appellees, or of the ruling that appellant's motion to substitute her expert was moot, because appellant had not timely appealed those decisions within 30 days. Rather, appellees argued that the appeal was timely only as to the denial of appellant's motions for reconsideration. On October 2, 2014, appellant filed a response, agreeing that she was seeking review of only the denial of the motions for reconsideration "and not the order granting summary judgment[.]" On October 9, 2014, this Court issued the order denying the motion to dismiss. Appellees renewed the motion to dismiss in their brief. We shall again deny the motion.

STANDARD OF REVIEW

We discussed the scope of appellate review of the denial of a motion for reconsideration in *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 723-24 (2002), the case we cited in our order of October 9, 2014. In *Hossainkhail*, as in the instant case, the motion for reconsideration was filed more than 10 days after judgment was entered. We said:

> The "motion for reconsideration" was not filed within ten days of the order of dismissal; thus, the time within which to note an appeal was not extended. Appellant recognizes, therefore, that the propriety of the underlying judgment is not before us. *See* Md. Rule 8–202. A trial court has revisory power and control over a judgment upon motion of a party filed within thirty days after entry of such judgment. Md. Rule 2–535(a). **The issue before us is whether denial of appellant's motion for reconsideration was an abuse of discretion.** *See Wormwood v. Batching Sys*., 124 Md. App. 695, 700–01, 723

> A.2d 568 (1999). **"We consider the facts and the law solely to review the validity of the conclusion [the hearing judge] reached on the point."** *New Freedom Corp. v. Brown*, 260 Md. 383, 386, 272 A.2d 401 (1971). We will not reverse the judgment of the hearing judge unless there is grave reason for doing so. *Northwestern Nat. Ins. Co. v. Samuel R. Rosoff, Ltd.*, 195 Md. 421, 434, 73 A.2d 461 (1950). Our focus is on whether justice has not been done. *Clarke Baridon v. Union Asbestos & Rubber Co.*, 218 Md. 480, 483, 147 A.2d 221 (1958); *Wormwood*, 124 Md. App. at 700, 723 A.2d 568; *B & K Rentals & Sales Co. v. Universal Leaf Tobacco Co.*, 73 Md. App. 530, 537, 535 A.2d 492 (1988) (citations omitted), *rev'd on other grounds*, 324 Md. 147, 596 A.2d 640 (1990).

(Emphasis added.)

"[A] post-trial motion to reconsider is not a time machine in which to travel back to a recently concluded trial in order to try the case better with hindsight." *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). As we said in *Steinhoff*:

> Appellate consideration of a denial of a motion to reconsider, or some similar post-trial revisiting of already decided issues, does not subsume the merits of a timely motion made during the trial. . . . A decision on the merits, for instance, might be clearly right or wrong. A decision not to revisit the merits is broadly discretionary. The appellant's burden in the latter case is overlaid with an additional layer of persuasion. **Above and beyond arguing the intrinsic merits of an issue, he must also make a strong case for why a judge, having once decided the merits, should in his broad discretion deign to revisit them.**

Id. at 484-85 (emphasis added).

DISCUSSION

Citing statements that have been made by Maryland appellate courts in several cases addressing appeals from motions for reconsideration, appellees argue strenuously that the merits of the decision to grant their motion for summary judgment is beyond any consideration by us in this appeal. Indeed, as far back as 1978, in the case in which the Court

of Appeals considered for the first time the scope of review of an appeal from a motion for reconsideration, Judge Dudley Digges wrote for the Court of Appeals:

> In the somewhat unusual posture in which the case is before us for review, it becomes desirable that we first determine just what adjudication by the trial court is now here for resolution. . . . [I]t is clear under our prior decisions that when the judgment by default was entered on January 20, 1977, against the only defendant (Larry Metts) over whom the trial court had obtained jurisdiction, all claims were finally adjudicated so as to start the running of both the appeal and the preenrollment revisory power periods. Here, young Keith did not seek appellate review within the thirty-day period for appeal from the primary final judgment; instead, he elected only to seek, through a motion filed on February 22, 1977, reconsideration and striking by the trial court of its July 10, 1975, order. However, such a motion, absent an order staying the effect of the final judgment, does not toll the running of the period for appeal. Consequently, by the appeal noted on March 24, 1977, *the sole issue properly before us for determination is the correctness of the March 17th refusal by the trial court to strike its previous order of July 10, 1975*, dismissing the appellant as a plaintiff.
>
> After a judgment which is final for appeal purposes is entered, the question whether it should or should not be vacated in whole or in part by the trial court under Rule 625(a) rests for the next thirty days in the discretion of that court. And the exercise of this discretion will not be disturbed unless clearly shown to have been abused. This is particularly true where, as here, the dispute between the infant appellant and the decedent's widow was decided by the trial court on the merits rather than being terminated through the entry of a judgment by default for want of an appearance by the defendant. ***Although this Court has not before had occasion to state the principle in this context*, we now hold that when the trial court denies a Rule 625(a) preenrollment request to revise a final judgment rendered on the merits, if that judgment was based solely on a question of law an appellate court will not ordinarily disturb the trial court's discretionary decision not to reopen the matter; an appeal from the primary judgment itself is the proper method for testing in an appellate court the correctness of such a legal ruling.** To reach any other conclusion would have the effect of permitting, if not two appeals, a delayed appeal of the original legal issue decided by the trial court, a result both undesirable and unintended by the rule. Appellant took no appeal from the primary judgment which was entered and it cannot (now) obtain a review of it under the guise of seeking a review of the exercise of judicial discretion in refusing to set it aside.

Hardy v. Metts, 282 Md. 1, 4-6 (1978) (citations and quotation marks omitted) (emphasis added).

Similar statements regarding the limited scope of issues to be considered upon appeal from a motion for reconsideration abound. *E.g.*, *Wormwood v. Batching Sys*., 124 Md. App. 695, 700 (1999) ("An appeal from a denial of a motion to revise or 'motion for reconsideration,' pursuant to Rule 2-535(a), does not serve as an appeal from the underlying judgment, and the applicable standard is whether the court abused its discretion."); *Stuples v. Baltimore City Police Dep't*, 119 Md. App. 221, 240 (1998) ("A motion to revise [a] ruling under Maryland Rule 2-535(a) is not the proper vehicle to attack the legality of the underlying ruling itself."). These statements, however, are constrained by the generally-accepted principle that a circuit court judge does *not* have the discretion to ignore the law. Moreover, there are sound public policy reasons for the appellate courts to encourage (rather than discourage) trial court judges to correct any obvious error without requiring the parties to incur the significant delay and expense of an appeal. Appeals clearly consume far more judicial resources than a circuit court would consume to correct its own error.

We find instructive guidance in *Wilson–X v. Department of Human Resources*, 403 Md. 667 (2008), a case in which the notice of appeal was timely only as to the circuit court's denial of a motion for reconsideration pursuant to Maryland Rule 2-535(a). The Court noted: "The only issue properly before us is whether Judge Doory abused his discretion in refusing to vacate the $50 child support order." *Id*. at 676. The Court observed: "The question facing

Judge Doory [in ruling upon the motion for reconsideration] was not whether he would have reached the same conclusion as Judge Pierson [had reached in making the original ruling], but only whether that conclusion was so manifestly wrong and unjust that failure on his part to vacate the award would constitute an abuse of the wide discretion that attaches to rulings denying motions to vacate existing judgments, even those not yet enrolled." *Id*. at 677. The Court further pointed out that the arguments presented in support of the motion for reconsideration did not present any new information for the court to consider: "Neither the motion for reconsideration nor counsel's written or oral argument in support of it alleged any new or changed circumstance, not considered by Judge Pierson, that would warrant a reduction in child support, but [asserted] only that the court had erred in establishing the $50 amount." *Id*. at 673-74. The Court of Appeals concluded that the evidence before Judge Pierson supported a conclusion that his ruling was not so clearly wrong that Judge Doory abused his discretion in refusing to alter the ruling. *Id*. at 677.

But, in the course of describing various definitions that have been given to the phrase "abuse of discretion," the *Wilson-X* Court recognized that "abuse [of discretion] occurs when the judge '. . . acts beyond the letter or reason of the law.'" *Id*. at 677 (quoting *Jenkins v. State*, 375 Md. 284, 295–96 (2003)). Expanding upon its observations regarding this mode of abuse of judicial discretion, the *Wilson-X* Court explained:

> This Court has recognized that **trial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature**. In *Pasteur v. Skevofilax*, 396 Md. 405, 433, 914 A.2d 113, 130 (2007), we confirmed that "**a failure to consider the proper legal standard in reaching a decision constitutes an abuse of discretion**." *See also Ehrlich v. Perez*, 394 Md. 691, 708, 908 A.2d 1220,

> 1230 (2006), citing *LeJeune v. Coin Acceptors, Inc*., 381 Md. 288, 301, 849 A.2d 451, 459 (2004) and *Alston v. Alston*, 331 Md. 496, 504, 629 A.2d 70, 74 (1993) for the proposition that "**even with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards**." The standard of review remains abuse of discretion. The relevance of an asserted legal error, of substantive law, procedural requirements, or fact-finding unsupported by substantial evidence, lies in whether there has been such an abuse.

Id. at 675-76 (emphasis added).

Applying this guidance to the present appeal, we conclude that appellees are incorrect in arguing that the merits of the summary judgment ruling are totally beyond the purview of our review, even though it is correct to say that the scope of our review is limited to whether it was an abuse of discretion for the circuit court judge to refuse to revise her summary judgment ruling based upon the information brought to her attention in the appellant's motion for reconsideration. The critical question at this juncture is not whether Judge White committed any conceivable error of law in granting the motion for summary judgment, but whether appellant's motion for reconsideration brought to Judge White's attention a clear error that cried out for correction, *i.e.*, an error so clear that no reasonable judge would refuse to correct the previous ruling. When we review the arguments presented to Judge White in appellant's motion for reconsideration, we perceive no such clear error that demanded a reversal of the grant of summary judgment, and therefore, we perceive no abuse of discretion in Judge White's denial of appellant's motion for reconsideration of the order granting summary judgment in favor of appellees.

The focus of appellant's motion for reconsideration of the summary judgment ruling was that the court had erred in concluding that the plaintiff's expert witness had not

expressed adequate opinions as to causation to take the case to the jury. This is the same issue that had been the main topic of two previous hearings. In the final analysis, the court could not see a way for appellant to overcome the fact that Dr. Kraus testified (1) that the source of the infection was "probably skin contaminants," and (2) that she did not think "anybody could say," to a reasonable degree of medical certainty, "what was the cause of the infection" in this case. In light of that, the court concluded: "I cannot refer to or rely on the Kraus testimony and/or the report to see anything that resembles a reasonable probability — possibility, but not a probability. And that's not enough to get the plaintiffs where they — get the plaintiff where she needs to be."

The motion for reconsideration brought to the court's attention no clear error that required reversal of the summary judgment ruling. Similar to the Court of Appeals's conclusion in *Wilson-X*, we are not persuaded that it was an abuse of discretion for the judge ruling upon a motion for reconsideration in this case to refuse to alter the summary judgment ruling.

Appellant contends that it was error for the circuit court to consider an unsigned affidavit appellant's attorney had asked Dr. Kraus to sign in connection with the appellees' motion for reconsideration. Our review of the transcript of the hearing on appellees' motion for reconsideration persuades us that the existence of the proposed-but-never-signed affidavit was not a substantial factor in the court's grant of the appellees' motion for reconsideration. When appellant's counsel asked the court if she was "reading from the [unsigned] affidavit" at the time of announcing summary judgment in favor of appellees,

Judge White responded that she understood that that document was not admissible evidence, and explained that, aside from the unsigned affidavit, "I identified fully a dozen, more than a dozen passages in [Dr. Kraus's] deposition testimony" that were significant to the court's analysis. The court repeated: "I understand that it [the affidavit] was never actually submitted." In light of the court's representations that the judge understood that the affidavit had not been submitted as evidentiary support for the appellees' motion for summary judgment, we are not persuaded that it was a basis for the court's grant of appellees' motion.

Finally, because we are upholding the circuit court's refusal to reconsider its grant of summary judgment, we need not address appellant's final argument regarding the request to name a new expert.

APPELLEES' MOTION TO DISMISS IS DENIED.
JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.