UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2066

September Term, 2015

ANNE CHRISTINE HANSON

v.

PFMD, LLC ET AL.

Eyler, Deborah S.,
Kehoe,
Shaw Geter,

JJ.

Opinion by Kehoe, J.

Filed: November 3, 2016

Plato relates the cautionary tale of Thales of Miletus, who, while walking one night and looking up at the stars, fell into a pit "because he was so eager to know what was in the sky that he could not see what was before him at his very feet." Plato *Theaetetus*, 174a-b.

We all have Thales of Miletus moments. Anne Hanson experienced one on April 6, 2013, when, after looking at a television monitor mounted on the ceiling, she stumbled on a step in the Planet Fitness exercise facility in Elkton, Maryland. Ms. Hanson was injured as a result. She filed a premises liability action in the Circuit Court for Baltimore City against PFMD, LLC and Brick Bodies Fitness Services, Inc. (collectively "Planet Fitness"), the facility's proprietors. After a trial, the jury concluded that the defendants were negligent but that Ms. Hanson was contributorily negligent and returned a verdict sheet reflecting its conclusions. The trial court entered judgment for the defendants. Ms. Hanson has appealed.[1] Her appellate contentions focus on three rulings made by the trial court:

> (1) The trial court granted Planet Fitness' *in limine* motion to exclude the testimony of Cindy Tuten and Shirley Carter. If called as witnesses, Mesdames Tuten and Carter would have testified that, prior to Ms. Hanson's accident, they had also fallen on the same step and had notified Planet Fitness' management.
>
> (2) Immediately after the trial court granted the motion *in limine*, Ms. Hanson moved for a continuance. The trial court denied the motion.
>
> (3) Later in the trial, the court directed Ms. Hanson's counsel to read one of Planet Fitness' responses to discovery request into evidence.

[1] Ms. Hanson passed away while this appeal was pending.

Ms. Hanson contends that the trial court abused its discretion in making each of these rulings. Even if we agreed with her substantive contentions— and we do not—we would still affirm the judgment. In order for an appellate court to reverse a civil judgment, an appellant must not only persuade the reviewing court that trial error occurred but must also demonstrate that the error was prejudicial. *Crane v. Dunn,* 382 Md. 83, 91 (2004). A trial court's error is prejudicial when the error probably, as opposed to possibly, affected the verdict. *Consolidated Waste v. Standard Equipment*, 421 Md. 210, 220 (2011). Our review of the evidence leads us to conclude that any hypothetical error on the trial court's part had no effect on the jury's verdict.

If called as witnesses, Tuten and Carter would have testified that, prior to Ms. Hanson's fall, they had fallen on the same step. This testimony would have been relevant to establish one of the elements of a premises liability cause of action, namely, that Planet Fitness had actual or constructive notice of the relevant hazardous condition within its premises. *See Rehn v. Westfield America*, 153 Md. App. 586, 593 (2003). However, Ms. Hanson was able to call Anthony Clemens as a witness. He had been an assistant manager at the Elkton Planet Fitness when Ms. Hanson fell. Clemens testified that, before Ms. Hanson's accident, other customers had fallen on the same step and that, as a result, he had sealed off the step with caution tape and informed the regional manager of the problem. (The tape had been removed before Ms. Hanson's accident.)

Clemens's evidence established that Planet Fitness had actual knowledge that customers had fallen on the step before Ms. Hanson fell. And, as we have related, the jury found that Planet Fitness had been negligent.

Because she prevailed on the issue without the benefit of Tuten's and Carter's testimony, Ms. Hanson was not prejudiced by the court's decision to exclude them nor, for that matter, by the court's refusal to grant Ms. Hanson's request for a postponement so that she could give timely and proper notice to Planet Fitness of her intention to call the two witnesses.

In her brief, Ms. Hanson asserts that,

> The prejudice to Appellant . . . is self-evident. The proffered witnesses were crucial to Appellant's case insofar as they would have massively substantiated Appellant's contention not only that the Appellees were negligent, but that her fall was in no way owing to any contributory negligence on her part, as other similarly situated individuals had acted in the same manner as the Appellant and were injured.

The argument presents two problems. First, this sort of conclusory and unsupported statement is not proper appellate argument. *See* Md. Rule 8-504(a)(6); *HNS Dev., LLC v. People's Counsel for Baltimore County*, 425 Md. 436, 458–59 (2012). Second, there was nothing in counsel's proffer of the proposed testimony that was relevant to the issue of Ms. Hanson's contributory negligence.

This brings us to Ms. Hanson's last contention. During the trial, she sought to discredit Planet Fitness by reading one of its responses to an interrogatory that she asserted was false. The response was inaccurate and Planet Fitness later corrected it in a response to a request for admission. To avoid possible juror confusion, the trial court

required Ms. Hanson's counsel to read both responses into the record. Assuming that this would have made her attack on the credibility of Planet Fitness and its agents less effective, there was still no prejudice because the evidence of Ms. Hanson's contributory negligence came solely from her videotaped deposition that was played to the jury. In fact, Planet Fitness presented no testimony at all in the trial.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED. APPELLANT TO PAY COSTS.