UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1376

September Term, 2014

DAVON USHER

v.

RIGGS REALTY, ET AL.

Meredith,
Woodward,
Leahy,

JJ.

Opinion by Woodward, J.

Filed: April 5, 2017

This appeal originates from a complaint filed by Davon Usher, appellant, against several property owners, including Wendy Perlberg and Riggs Realty, appellees, for damages allegedly caused by exposure to lead-based paint while visiting or residing at properties owned by these property owners from 1992 to 2007. After a hearing on appellees' motion for summary judgment, the Circuit Court for Baltimore City granted the motion, ruling that appellant failed to adduce sufficient evidence that appellees' property located at 604 Lyndhurst Street, Baltimore, Maryland,[1] substantially contributed to appellant's elevated blood lead levels.

On appeal, appellant presents one question for our review, which we have rephrased as follows:[2]

> Did the circuit court err in granting appellees' motion for summary judgment?

We answer the question in the negative and affirm the judgment of the circuit court.

BACKGROUND

At the time of appellant's birth on August 11, 1992, appellant's mother, Evon Daniels and four other family members were living at 723 Appleton Street. While living

[1] Unless otherwise specified, all properties are located in Baltimore, Maryland.

[2] Appellant's question, as stated in his brief, is as follows:

> Did the circuit court err as a matter of fact and law in granting Appellees' Motion for Summary Judgment on the ground that Appellant failed to establish through material facts or expert testimony that Appellant's exposure to deteriorated lead-based paint at Appellees' rental property, 604 Lyndhurst Street, was a substantial causal factor of Appellant's elevated blood lead levels?

at 723 Appleton Street, Daniels would take appellant to visit his great grandparents at 725 Appleton Street "[e]very day." During the period of time when appellant was two months old until he was seven months old, appellant's great aunt, Kathleen Hill, regularly babysat him at 2130 Herbert Street. After appellant was seven months old, he visited Hill twice a month. Appellant also visited his grandmother's house in Glen Burnie, Maryland, and his mother's friend, Letanya Johnson, at her house located on Rainer Avenue once a month.

With respect to the condition of the property at 723 Appleton Street, Daniels testified that the property "had [ ] chipped paint around the walls and [ ] chipped paint around the windows" and that similar conditions were present at 725 Appleton Street. Hill testified that her property at 2130 Herbert Street had chipping and peeling paint throughout the house, and Daniels testified that she thought Hill's property was in "[s]o-so condition." As to the condition of the other properties appellant visited while living at 723 Appleton Street, the record is devoid of any testimony or documentation concerning the condition of those properties.

In the Summer of 1993, appellant, Daniels, and the same four family members moved to 3007 Harlem Avenue. Daniels testified that there was no chipping or peeling paint at this property. After the move to Harlem Avenue, appellant continued to visit his great grandparents at 725 Appleton Street, but did so once a week.

In the Summer of 1994, appellant, his mother, stepfather, and brother moved to 531 Random Road, Apartment 2. Daniels testified that she never saw any chipping paint at this property and described the property as "look[ing] new."

Around August 1995, when he was almost three years old, appellant began attending

daycare run by a family friend, Desiree Butler, located at 604 Lyndhurst Street, a property owned and managed by appellees.[3] Butler testified that Monday through Friday, Daniels would drop appellant off at Butler's home between 6:00 a.m. and 6:30 a.m. and pick him up anywhere between 3:30 p.m. and 6:00 p.m. Sometime after August 11, 1995, appellant began attending Headstart. Daniels would drop appellant off at Headstart,[4] and Butler would pick him up and go to her house around 1:30 p.m. On these days, appellant would stay with Butler until 5:30 p.m. or 6:00 p.m. Appellant would also spend the night at Butler's home on the weekdays or weekends "once every other month" and sometimes three nights in a row.

Daniels testified that Butler's property at 604 Lyndhurst Street was in "[b]ad condition[ ]" and had "[a] lot of chipped paint in the living room, dining room, kitchen, and the window sills." Butler corroborated this description in her testimony:

> The paint was all coming down off the banister and around the door. It was chipping off the doors where you could see the paint chipping off the door, around the window sills - - but I didn't allow [the children] at the window sills, but it was paint chipping off. Around the steps. On the porch. In the bathroom.

Appellant also continued to visit his great grandmother, who had moved from 725

[3] In his brief, appellant contends that there is a dispute of fact regarding when Butler began to babysit appellant. However, in appellant's opposition to appellees' motion for summary judgment, appellant conceded that "[b]eginning in approximately August of 1995, Desiree Butler moved into and began babysitting [appellant] at 604 Lyndhurst St." We, therefore, accept this concession as an undisputed fact and consider any argument to the contrary waived. *See* Md. Rule 8-131(a).

[4] On the record before us, the condition of the building or buildings where appellant attended Headstart are unknown.

Appleton Street to Dogwood Road, Woodlawn, Maryland,[5] once every two months.

In the Summer of 1996, appellant and his immediate family moved to 2238 Wilkens Avenue. Daniels testified that, when she and her family moved into 2238 Wilkens Avenue, there was chipping and peeling paint throughout the house. Sometime after August 11, 1997, appellant stopped attending daycare at 604 Lyndhurst Street, but appellant still visited his great grandmother every two months at Dogwood Road. Appellant continued to reside at 2238 Wilkens Avenue until approximately 2007.

During his childhood, appellant had several blood tests that revealed elevated blood lead levels. The following chart illustrates these test results along with the associated residences appellant resided in or visited:

Test Date	Micrograms per deciliter ("µg/dL")	Residence	Visiting
05/17/1993	8 µg/dL	723 Appleton St.	725 Appleton St. 2130 Herbert St. Glen Burnie Rainer Ave.
02/22/1994	11 µg/dL	3007 Harlem Ave.	725 Appleton St.
05/23/1994	13 µg/dL	3007 Harlem Ave.	725 Appleton St.
08/22/1994	12 µg/dL	531 Random Rd.	725 Appleton St.
02/27/1995	7 µg/dL	531 Random Rd.	725 Appleton St.
08/08/1995	**8 µg/dL**	531 Random Rd.	**604 Lyndhurst St.** Dogwood Rd.
07/22/1997	**9 µg/dL**	**2238 Wilkens Ave.**	**604 Lyndhurst St.** Dogwood Rd. Headstart
06/20/2003	3 µg/dL	2238 Wilkens Ave.	Dogwood Rd.

On September 25, 2012, appellant initiated a lead poisoning lawsuit against

[5] The record is devoid of evidence concerning the condition of appellant's great grandmother's home on Dogwood Road.

appellees, as well as several other property owners, for negligence and violations of the Maryland Consumer Protection Act. Appellant filed multiple amendments to his original complaint with the last being his fourth amended complaint filed on July 11, 2013.

During discovery, Arc Environmental, Inc., hired by appellant, tested and found lead-based paint at 723 Appleton Street, 2130 Herbert Street, and 604 Lyndhurst Street. The test of the interior of 604 Lyndhurst Street detected lead-based paint in the front bathroom, rear bathroom, pantry, dining room, and living room. The test of the exterior of 604 Lyndhurst Street was positive for lead-based paint in portions of the front exterior, right exterior, and rear exterior. Appellant, however, did not have 2238 Wilkens Avenue, or any other properties, tested for lead-based paint.

Appellant identified Dr. Jacalyn Blackwell-White as an expert, who testified that she would not be offering any opinions as to the source of appellant's exposure to lead. Appellant's counsel also advised the trial court that "there will not be an expert testifying that property A was a substantial contributing factor or that property B was a substantial contributing factor." Dr. Blackwell-White did opine that appellant was "exposed to lead-based paint over a prolonged period of time . . . [and] that he did suffer injur[ies as a result]." She further testified that appellant's blood lead levels after February 1995 were sufficient on their own to cause his injuries, but she stated that she could not apportion how much harm was caused between any specific dates.

On April 1, 2014, appellees filed a motion for summary judgment, and the parties filed a corresponding opposition and reply. The circuit court held a hearing on appellees' motion for summary judgment on May 19, 2014, and made the following oral ruling:

I think we are focusing particularly on the second step identified in the Ross case. I assume here, because [appellees] have not argued otherwise, that without expert testimony [appellant] in this case could establish the first step, that is that there was exposure at the property based on the Arc test that is not disputed that shows that there was lead paint in the interior of the property, testimony that there was peeling paint in the interior of the property and that [appellant] did childcare, did daycare, at that property[.]

It may be that the third level also could be established through Dr. Blackwell-White's testimony in this case which I understand would be that without even not [sic] considering levels at an earlier time that the levels of eight or nine that [appellant] had post '95 would be sufficient to cause the ultimate injury that he claims.

So the critical step becomes whether any lead exposure at this property can be causally linked in a substantial way to creating those levels of eight or nine that were present at that time.

I think this case is distinguished in important ways from the Ross case. Most notably, the fact that the levels here were relatively low, during this time period, were relatively low and not increasing significantly and **most importantly the fact that there were multiple properties that [appellant] was exposed to which could therefore be multiple sources of lead exposure.**

In this respect, I think it's critical that the burden to prove substantial contributing causation remains on [appellant] throughout. It is not the burden of [appellees] to prove alternative sources that might, themselves, be substantial causes during that period. And the fact that the Lyndhurst property has positive testing and the four other potential candidate properties during this period do not, is a fortuity of the litigation preparation, not something that would result in a failure of [appellees] to be able to prove an affirmative defense.

In these particular circumstances **I think the jury would have to speculate to say that the Lyndhurst property or perhaps any one of the five properties would be a substantial contributing factor in causing the lead levels of eight or nine that were occurring during this period. And therefore I think [appellant]**

> **is not able to provide sufficient evidence to be the basis of a verdict that would not otherwise be the result of speculation.**

After the remaining defendants were dismissed, appellant filed this timely appeal.

STANDARD OF REVIEW

The Court of Appeals has explained appellate review of a grant of summary judgment as follows:

> "[I]n reviewing a grant of summary judgment, [the appellate court] review[s] independently the record to determine whether the parties generated a [genuine] dispute of material fact[,] and, if not, whether the moving party was entitled to judgment as a matter of law. [The appellate court] review[s] the record in the light most favorable to the non-moving party[,] and construe[s] any reasonable inferences that may be drawn from the well-plead facts against the moving party."

Rowhouses, Inc. v. Smith, 446 Md. 611, 631 (2016) (alterations in original) (quoting *Hamilton v. Kirson*, 439 Md. 501, 522 (2014)).

DISCUSSION

Appellant argues that when viewing the evidence in the light most favorable to appellant, there was

> sufficient evidence to permit [a] trier of fact to conclude that [appellees'] negligent act, in allowing deteriorated lead paint to remain at 604 Lyndhurst Street in violation of the Baltimore City Housing Code, was a proximate cause of [appellant's] exposure to lead paint, elevated blood lead levels[,] and resulting injuries.

Appellant contends that, although he is "not required to exclude every other *possible* cause of the injury[,]" the evidence presented demonstrated that the other properties were not the source of his elevated blood lead levels. (Emphasis in original). In particular, appellant asserts that, while he continued to reside at 2238 Wilkens Avenue, his blood lead levels

decreased after he stopped visiting 604 Lyndhurst Street, thus allowing the reasonable inference that 604 Lyndhurst Street caused the increased blood lead levels, not 2238 Wilkens Avenue.

Appellees respond that appellant failed to produce sufficient evidence to establish a link between 604 Lyndhurst Street and appellant's elevated blood lead levels, because appellant did not present "expert testimony to establish that 604 Lyndhurst Street contributed to [a]ppellant's [elevated] blood lead levels." Appellees contend that expert testimony is required in this case, because a jury cannot determine the source of elevated blood lead levels when there is more than one reasonable probable source of lead exposure. Further, according to appellees, even if expert testimony is not required, appellant's circumstantial evidence is not sufficient to establish that 604 Lyndhurst Street contributed to appellant's blood lead levels, because (1) 2238 Wilkens Avenue was a "reasonably probable source of lead exposure during [appellant's] visitation at 604 Lyndhurst Street[,]" and (2) appellant "made no attempt to rule in, rule out, or even consider, the effect that 2238 Wilkens Avenue and 604 Lyndhurst Street had upon [a]ppellant's lead levels and resulting injuries."[6]

When a plaintiff alleges negligence based on a violation of a lead-based paint statute or ordinance, the plaintiff has the burden to present sufficient facts to demonstrate "(a) the violation of a statute or ordinance designed to protect a specific class of persons which

[6] Appellees also argue that the trial court erred when it determined that appellant satisfied the third causal link. Because we affirm on the grounds relied on by the trial court, we need not address any alternative grounds relied on by the trial court in granting summary judgment. *See Washington Mut. Bank v. Homan*, 186 Md. App. 372, 388 (2009).

includes the plaintiff, and (b) that the violation proximately caused the injury complained of." *Brooks v. Lewin Realty III, Inc.*, 378 Md. 70, 79 (2003); *see also Hamilton v. Kirson*, 439 Md. 501, 527 (2014) ("It is fundamental that in a negligence action the plaintiff has the burden of proving all the facts essential to constitute the cause of action." (internal quotation marks and citation omitted)). Part (a) may be satisfied by showing that a defendant violated Sections 702 and 703 of the Baltimore City Housing Code, which were enacted to "protect children from lead paint poisoning by putting landlords on notice of conditions which could enhance the risk of such injuries." *Brooks*, 378 Md. at 81 (internal quotation marks and citation omitted). Part (b) requires that the plaintiff present either direct or circumstantial evidence that establishes "(1) the link between the defendant's property and the plaintiff's exposure to lead; (2) the link between specific exposure to lead and the elevated blood lead levels; and (3) the link between those blood lead levels and the injuries allegedly suffered by the plaintiff." *Ross v. Housing Authority of Balt. City*, 430 Md. 648, 668 (2014). In other words, the evidence must show that the property at issue "[1] must have been a source of [appellant's] exposure to lead, [2] that exposure must have contributed to the elevated blood lead levels, and [3] the associated increase in blood lead levels must have been substantial enough to contribute to [appellant's] injuries." *Id.* In this appeal, we focus on the second link of causation, which requires appellant to prove that his lead exposure at 604 Lyndhurst Street contributed to his elevated blood lead levels.

Appellant conceded to the trial court that his causation expert would not offer expert testimony on the second link of causation in the instant case, namely, whether appellant's lead exposure at 604 Lyndhurst Street contributed to his elevated blood lead levels. As we

read appellant's brief, appellant is arguing that the second link has been established through the *Dow* theory,[7] because appellant asserts that "the other properties that the trial court erroneously referenced as multiple additional sources of lead exposure are easily ruled out as probable contributing factors to [appellant's] lead exposure during the relevant time frame." *See Hamilton*, 439 Md. at 538 ("Where a plaintiff who does not produce evidence to support another theory of causation and, instead, relies on a causation theory similar to that espoused in *Dow*, the validity of the necessary inference is limited to those circumstances where the plaintiff is able also to exclude other reasonably probable sources of lead exposure.")

Under a *Dow* theory of causation, the plaintiff has the burden to present direct or circumstantial evidence to "rule out other reasonably probable sources" and rule in the subject property as a reasonable probable source of the plaintiff's elevated blood lead levels. *Rowhouses, Inc.*, 446 Md. at 659, 664 n.15. The plaintiff, however, "is not required to rule out all *possible sources* of lead (*i.e.*, sources of lead that do not rise to the level of reasonably probable sources)." *Id.* at 664 n.15 (emphasis added). The difference between possible sources and reasonably probable sources has been explained by the Court of

[7] *See Dow v. L & R Props. Inc.*, 144 Md. App. 67, 76 (2002) ("If believed, the evidence offered by appellants in opposition to the motion for summary judgment could establish that the chipping and peeling paint inside [subject property] was the only possible source of [appellant's] lead poisoning."); *but see Rowhouses, Inc. v. Smith*, 446 Md. 611, 659, 662 (2016) ("Indeed, the standard that we announce today is simply that, where a plaintiff proceeds under a *Dow* theory of causation, a plaintiff need only produce circumstantial evidence that, if believed, would rule out *other reasonably probable sources* of lead exposure." (emphasis added)).

Appeals as follows:

> In the context of lead-based paint cases, any property in which a plaintiff has resided or visited could be a possible source of the plaintiff's lead exposure. However, a possible source does not become a reasonable probable source without additional evidence that elevates the mere chance that the property contained lead-based paint and was a source of lead exposure to the fair likelihood that the property contained lead-based paint and was a source of lead exposure.

Id. at 659.

Returning to the case at hand, we again reference the relevant portions of the previously mentioned chart showing the properties that appellant resided in or visited after beginning day care at 604 Lyndhurst Street, along with appellant's associated blood lead levels:

Test Date	Micrograms per deciliter ("µg/dL")	Residence	Visiting
08/08/1995	**8 µg/dL**	**531 Random Rd.**	**604 Lyndhurst St. Dogwood Rd.**
07/22/1997	**9 µg/dL**	**2238 Wilkens Ave.**	**604 Lyndhurst St. Dogwood Rd. Headstart**
06/20/2003	3 µg/dL	2238 Wilkens Ave.	Dogwood Rd.

From our review of the record, we need not look further than 2238 Wilkens Avenue for a property that was a reasonable probable source of appellant's lead exposure. Daniels testified:

> [OTHER PROPERTY OWNER'S COUNSEL:] Did you look at the home on Wilkins [sic] Avenue before you moved into it?
>
> [DANIELS:] Yes.

> [OTHER PROPERTY OWNER'S COUNSEL:] Did you see any problems with the home at that time?
>
> [DANIELS:] Yes.
>
> [OTHER PROPERTY OWNER'S COUNSEL:] What were the problems?
>
> [DANIELS:] **The paint was old. Little minor adjustments had to be done. Like in the kitchen, a used stove. The windows was old, dry-rotted.**
>
> [OTHER PROPERTY OWNER'S COUNSEL:] **And when you say the paint was old, was the paint in that home chipping and peeling, also?**
>
> [DANIELS:] **Yes.**
>
> * * *
>
> [OTHER PROPERTY OWNER'S COUNSEL:] And the problems that you told me about, the paint at Wilkins [sic] Avenue, was it like that the entire time that you lived there?
>
> [DANIELS:] Yes.

(Emphasis added). Dr. Blackwell-White's report states that 2238 Wilkens Avenue's "deed information dated back to 1942." Moreover, appellant's blood lead level rose from 8 µg/dL to 9 µg/dL during the first year that he resided at 2238 Wilkens Avenue. In our view, this evidence demonstrates that 2238 Wilkens Avenue was a reasonable probable source of appellant's exposure to lead.

Under the *Dow* theory of causation, the plaintiff has the burden of producing "circumstantial evidence that, if believed, would rule out other reasonably probable sources of lead." *Rowhouses, Inc.*, 446 Md. at 661. The Court of Appeals explained in *Rowhouses, Inc.*:

> **[C]ircumstantial evidence that rules out other reasonably probable sources may take the form of a lay witness's testimony at a deposition or averment in an affidavit that a property other than the subject property did not contain deteriorated, chipping, or flaking paint and was in good condition.** In essence, in that situation, the witness's testimony or affidavit is circumstantial evidence that the other property did not contain a lead-based paint hazard. A lay witness's testimony or affidavit may also rule out other reasonably probable sources of lead, including environmental sources such as soil or items such as painted toys, by stating that the plaintiff did not have any contact with such sources. In sum, a lay witness's testimony or affidavit may serve as circumstantial evidence that, if believed, rules out other reasonably probable sources of lead exposure. We hasten to add that, at the summary judgment stage, a trial court cannot weigh the credibility of a witness and determine that the witness is not credible, and accordingly grant summary judgment against a plaintiff in a lead-based paint case on that basis. *See Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 93, 756 A.2d 963, 972 (2000) ("Evidentiary matters, credibility issues, and material facts [that] are in dispute cannot properly be disposed of by summary judgment." (Citations omitted)). Rather, any issue as to a witness's credibility is to be decided by the trier of fact, which is a jury in most, if not all, lead-based paint cases. **Indeed, the standard that we announce today is simply that, where a plaintiff proceeds under a *Dow* theory of causation, a plaintiff need only produce circumstantial evidence that, if believed, would rule out other reasonably probable sources of lead exposure.**

Id. at 661-62 (emphasis added) (footnote omitted).

In the instant case, appellant attempts to rule out 2238 Wilkens Avenue as a reasonable probable source of lead exposure by claiming that, because his blood lead level "appreciably declined" when he stopped visiting 604 Lyndhurst Street and continued to reside at 2238 Wilkens Avenue, a "reasonable inference" could be drawn by the trier of fact "that exposure from 604 Lyndhurst Street and not 2238 Wilkens Avenue caused his blood lead levels to remain significantly elevated throughout his entire stay at 604

Lyndhurst Street." In our view, such an inference sought by appellant is not reasonable; it is speculative.

The Court of Appeals has stated:

> Certain sets of facts may make an inference less valid than other sets of facts. *See, e.g., id.*, 258 Md. at 21, 264 A.2d at 857 (concluding that the passage of time between the negligent act and the injury rendered the inference of causation illogical and thus concluded that the trial court's granting of summary judgment was proper). The conclusion that an inference is not valid due to a lack of supporting facts or an articulable logical relationship does not mean that we place greater weight on direct evidence than on circumstantial evidence. Rather, it means that we require inferences to be sound logically, and we refuse to allow a jury of laymen to engage in "'guesswork, speculation and conjecture.'" *Id.*, 258 Md. at 21, 264 A.2d at 857 (quoting *Wilhelm v. State Traffic Safety Comm.*, 230 Md. 91, 101, 185 A.2d 715, 719 (1962)).

Hamilton, 439 Md. at 582.

Here, when appellant was almost five years old, his blood test showed 9 micrograms of lead per deciliter on July 22, 1997. At that time, appellant was residing at 2238 Wilkens Avenue and attending daycare at 604 Lyndhurst Street. On June 20, 2003, when appellant was less than two months shy of his eleventh birthday, his blood test showed 3 micrograms of lead per deciliter. At that time, appellant still resided at 2238 Wilkens Avenue, but had not been to day care at 604 Lyndhurst Street since August of 1997. In sum, the blood test that appellant relies upon for the "reasonable inference" was taken almost six years after the previous test and when appellant was no longer a three to five year old toddler putting lead-based paint chips in his mouth. *See Rowhouses, Inc.*, 446 Md. at 666-67 (circumstantial evidence ruling in Oliver Street Property as a reasonable probable source of the child's lead exposure included "while residing at the Oliver Street Property, [the

child] began to walk[,] . . . spent time in areas [of] the house near deteriorated paint[,]" and was observed "put[ing] her hands in her mouth"); *see also* Ctrs. for Disease Control and Prevention, *What Do Parents Need to Know to Protect Their Children?*, https://www.cdc.gov/nceh/lead/acclpp/blood_lead_levels.htm (last updated Jan. 30, 2017) ("Experts now use a reference level of 5 micrograms per deciliter to identity children with blood lead levels that are much higher than most children's levels. *This new level is based on the U.S. population of children ages 1-5 years . . . .*" (emphasis added)). Given this substantial time gap between appellant's blood tests and appellant's pre-teen age at the second test renders any inference speculative.

Nevertheless, appellant claims support for his position by pointing to the testimony of his causation expert, Dr. Blackwell-White. In relevant part, Dr. Blackwell-White testified:

> [APPELLEES' COUNSEL:] . . . In [appellant's] case, do you opine that he had a chronic exposure to lead?
>
> [DR. BLACKWELL-WHITE:] By definition he had elevated blood lead levels from 1993 to essentially 2003.
>
> [APPELLEES' COUNSEL:] Okay. And how -- well, **looking at the June, 2003, [appellant] has a blood lead level of a three. Is that new exposure?**
>
> [DR. BLACKWELL-WHITE:] **I would think not. I would think that is representative of him having left the environment and his level gradually declining.**
>
> [APPELLEES' COUNSEL:] Okay. And at what point in time do you determine that one has new exposure versus it's just leaching out of their body?

> [DR. BLACKWELL-WHITE:] Significant decline such as that decline between ’97 and ’03.

(Emphasis added).

Appellant argues that the decline in his blood lead level after no longer spending time at 604 Lyndhurst Street and continuing to live at 2238 Wilkens Avenue, coupled with the above testimony of Dr. Blackwell-White, permits “a finder of fact [to] reasonably conclude that the only reasonably probable source of [appellant’s] lead exposure and elevated blood lead levels during this time frame from 1995 to 1997 was exposure to deteriorated lead-based paint at 604 Lyndhurst Street.” Dr. Blackwell-White’s testimony on this subject, however, lacks a necessary factual foundation. Dr. Blackwell-White was not offered as an expert on the source of appellant’s lead exposure, nor did she render any opinion on the reasonably probable sources of lead exposure. Specifically, Dr. Blackwell-White did not rule in, or rule out, either 604 Lyndhurst Street or 2238 Wilkens Avenue as a reasonable probable source. Therefore, Dr. Blackwell-White could not identify the “environment” from which appellant allegedly “left.” Moreover, Dr. Blackwell-White did not provide any facts supporting her assertion that appellant “left the environment” and did not give any reasons why leaving the environment was apparently the only cause of the decline in appellant’s blood lead level from 1997 to 2003. *See* Md. Rule 5-702 (stating that for expert testimony to be admissible, the court shall determine, among other things, “whether a sufficient factual basis exists to support the expert testimony”); *see also Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 741 (1993) (“reject[ing] the argument that the adequacy of the basis for the opinion of an expert goes only to the weight to be given to

the expert's testimony, and not to its admissibility as evidence").

For the foregoing reasons, we conclude that appellant did not adduce sufficient circumstantial evidence, under the *Dow* theory of causation, to rule out 2238 Wilkens Avenue as a reasonable probable source of appellant's lead exposure. With two reasonably probable sources of lead exposure, 604 Lyndhurst Street and 2238 Wilkens Avenue, the trial court correctly concluded that a "jury would have to speculate to say that" one property or the other, or both, contributed to appellant's elevated blood lead levels. Therefore, appellant failed to sustain his burden to show the second link of causation under *Ross*, and accordingly, the trial court did not err in entering summary judgment on behalf of appellees.

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