Circuit Court for Baltimore City
Case No. 24-C-12-0006890

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2035

September Term, 2014

ELLIOT DACKMAN, ET AL.

v.

DAQUANTAY ROBINSON, a Minor, by his Mother and Next Friend, TIESHA ROBINSON

Woodward, C.J.,
Berger,
Arthur,

JJ.

Opinion by Woodward, C.J.

Filed: August 31, 2018

In this case, we are again confronted with the complexities of proximate causation that arise in childhood lead paint poisoning litigation. Daquantay Robinson, appellee, by and through his mother and next friend, Tiesha Robinson, filed suit against appellants, the property owners[1] of a row house located at 1642 E. 25th Street, Baltimore, Maryland, for injuries resulting from lead paint poisoning from 1997 to 2001. At the conclusion of a five-day jury trial in the Circuit Court for Baltimore City, the jury found against appellants and awarded appellee $2,088,330 in damages. The circuit court, however, granted appellants' motion for remittitur and reduced that award to $1,530,000.

On appeal, appellants present six questions for our review, which we have consolidated and rephrased as follows:[2]

[1] Elliott Dackman was sued as trustee of the Dackman Company and Jacob Dackman & Sons, LLC. Elliot Dackman was also sued individually along with the estates of Bernard Dackman and Sandra Dackman, because all of these individuals were owners and managers of Dackman Company and Jacob Dackman & Sons, LLC during the time appellant lived 1642 E. 25th Street.

[2] Appellants' questions, as stated in their brief, are as follows:

1. Was the Trial Court legally correct when it denied Appellants' Motion for Summary Judgment as to Appellee's claim for negligence?

2. Did the Trial Court err and/or abuse its discretion when it denied Appellants' Motion to Strike the untimely expert report from economist Richard Lurito, Ph.D and/or Appellants' request to postpone the trial?

3. Did the Trial Court err and/or abuse its discretion when it denied Appellants' Motion *In Limine* to Exclude the Testimony of Estelle Davis, Ph.D., C.R.C., and Richard Lurito, Ph.D., and when the Trial Court permitted Dr. Davis and Dr. Lurito to provide expert opinions at trial?

1. Did the circuit court abuse its discretion by denying appellants' motion for summary judgment as to negligence?

2. Did the circuit court abuse its discretion by denying appellants' motion *in limine* to exclude the testimony of Dr. Jacalyn Blackwell-White and allowing Dr. Blackwell-White to provide testimony concerning the source of appellee's lead exposure at trial?

3. Did the circuit court abuse its discretion by denying appellants' motion *in limine* to exclude the testimony of Estelle Davis, Ph.D., C.R.C., and Richard Lurito, Ph.D., and allowing those experts to provide testimony at trial?

4. Did the circuit court abuse its discretion by denying appellants' motion *in limine* to exclude the report and testimony of Richard Lurito, Ph.D., and by denying appellants' motion to postpone the trial?

5. Did the circuit court err or abuse its discretion by denying appellants' motion for judgment at the conclusion of appellee's case, motion for judgment at the conclusion of all evidence, motion for judgment notwithstanding the verdict, and/or motion for new trial?

6. Did the circuit court err or abuse its discretion by denying appellants' request to remit appellee's economic loss award to $0.00 pursuant to appellants' motion for remittitur?

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4. Did the Trial Court err and/or abuse its discretion when it denied Appellants' Motions *In Limine* on the opinions of Dr. Jacalyn Blackwell-White, and when the Trial Court permitted Dr. Blackwell-White to offer expert opinions at trial concerning the "source" of Appellee's lead exposure?

5. Was the Trial Court legally correct in denying Appellants' Motion for Judgment at the conclusion of Appellee's case, at the conclusion of all of the evidence, and Appellants' Motion for JNOV and/or Motion for New Trial?

6. Did the Trial Court err and/or abuse its discretion in refusing to remit Appellee's economic loss award down to $0.00, given the speculative nature of the jury's economic loss award?

For the reasons that follow, we conclude that the circuit court did not err or abuse its discretion, and thus shall affirm the judgment of that court.

BACKGROUND

Appellee was born on February 11, 1997. Shortly before his birth, appellee's mother, grandmother, and three other family members began residing in a row house located at 1625 E. 25th Street in Baltimore City, ("the Property"), a property owned and managed by appellants. Until he began attending daycare at eighteen months old, appellee stayed exclusively at the Property and did not visit any other properties. Appellee lived at the Property from his birth in 1997 until 2001, and had the following blood-lead level test results:

Date Taken	Blood-Lead Level[3]
December 3, 1997	12 µg/dL
May 13, 1998	13 µg/dL
November 11, 1998	12 µg/dL
June 11, 1999	14 µg/dL
February 18, 2000	9 µg/dL
August 30, 2000	9 µg/dL

With respect to the condition of the Property, appellee's grandmother, Sandra Moses, stated in her affidavit that "there was chipping, peeling[,] and flaking paint all over the place" when they moved in. Moses stated that there was chipping, flaking, and peeling paint on the window frames, as well as "in the basement on the ceiling, doors[,] and

[3] Blood-lead levels are measured in micrograms per deciliter (µg/dL) of blood. *See Standard Surveillance Definitions and Classifications*, Center for Disease Control and Prevention, https://www.cdc.gov/nceh/lead/data/definitions.htm (last updated Nov. 18, 2016). As of 2012, the Centers for Disease Control and Prevention considers blood-lead levels greater than 5 µg/dL to be elevated. *Id.*

doorframes." As to the exterior of the house, Moses testified that there was chipping, flaking, and peeling paint "on the door, posts[,] and ceiling" of the front porch. In her deposition, appellee's mother, Tiesha Robinson ("Ms. Robinson"), similarly recalled chipping, flaking, and peeling paint on the window frames, as well as the heater in the room that she shared with appellee. There was also a hole in the wall of appellee's room that Ms. Robinson stated appellee would pick at.

In 2012, appellee, by and through his mother and next friend, Ms. Robinson, sued Elliot Dackman, individually and as trustee of the assets of Dackman Company and Jacob Dackman & Sons, LLC, (appellants or "the Dackmans"),[4] in the circuit court for alleged injuries sustained from exposure to lead-based paint at the Property. The complaint alleged claims based on appellants' negligence, violation of the Maryland Consumer Protection Act ("MCPA"), and negligent misrepresentation.

In June 2013, ARC Environmental, Inc. ("ARC") conducted lead testing at the Property. The testing detected lead-based paint on seven interior surfaces and two exterior surfaces. Specifically, lead-based paint was detected in the basement storage room on the "door surface and jam[,]" and in the basement hallway on the "door casing, threshold, [ ] headers[, and] ceiling." Lead-based paint was also detected on the front exterior on the "porch post and ceiling."

During discovery, the parties named a number of expert witnesses. Appellee

[4] As stated *supra*, appellee also sued the estates of Bernard Dackman and Sandra Dackman, because in addition to Elliot Dackman, these individuals were also owners and managers of Dackman Company and Jacob Dackman & Sons LLC during the time appellee lived at 1642 E. 25th Street.

identified pediatrician, Jacalyn Blackwell-White, M.D., as an expert witness. Dr. Blackwell-White filed a report concluding to "a reasonable degree of medical probability" that appellee had been exposed to lead at the Property. Estelle L. Davis, Ph.D., was identified as an expert in rehabilitation counseling and prepared a report assessing appellee's "employability and earning capacity given his impairments and absent his impairments." Dr. Davis opined that absent his impairments, appellee "would likely function at a higher cognitive level[;] [h]e would likely not have issues with [a]ttention and [e]xecutive [f]unctions[;]"he would likely "finish two year[s] of college or the equivalent in a technical school[;] and [he would likely] have earnings comparable to someone with that level of education." Appellee further identified Richard Lurito, Ph.D, an economist, to determine "the economic value today of the projected lost earnings of [appellee] as a result of his cognitive deficits." Based on Dr. Davis's opinion, Dr. Lurito concluded in his report that appellee "has likely suffered an income loss of $1,148,308 or $1,675,777 due to his cognitive deficits."

On July 22, 2014, appellants filed a motion for summary judgment, asserting that appellee could not meet his burden of establishing the necessary elements for negligence, violation of the MCPA, or negligent misrepresentation. After a hearing held on August 25, 2014, the court granted appellants' motion for summary judgment as to the MCPA and negligent misrepresentation claims but denied the motion as to the negligence claim. Based on the evidence that appellee presented, the court held that "the jury could find that [the Property] was the source[,]" of appellee's lead exposure.

Prior to trial, appellants filed numerous motions *in limine* seeking to exclude the reports and testimony of Drs. Blackwell-White, Davis, and Lurito. Appellants argued that Dr. Blackwell-White should not be permitted to testify that the Property was the source of appellee's lead exposure, and that Dr. Davis lacked an adequate factual basis to opine about appellee's employment capabilities absent lead exposure. Because Dr. Lurito relied on Dr. Davis's opinion, appellants argued that his report and testimony should also be excluded. In addition, appellants also filed a motion *in limine* to exclude Dr. Lurito's report and testimony because it was produced after the end of discovery in violation of the court's scheduling order. On the first day of trial, the court heard argument and subsequently denied each of appellants' above-mentioned motions.

At trial, Ms. Robinson testified that during the first eighteen months of his life, appellee stayed at the Property exclusively. During this period of exclusive residence at the Property, appellee had blood lead levels of 12 µg/dL and 13 µg/dL. Ms. Robinson stated that appellee spent "[m]ost of his time [ ] in the house[,]" in various areas including the basement and his bedroom. According to his mother, appellee also spent time outside on the porch where he would "ride his bike, or play with his toys[.]" Ms. Robinson admitted that she observed her son putting "his hands [and] toys in his mouth when he was a very young child." Appellee began attending daycare at other properties when he was approximately eighteen months old. Ms. Robinson testified that she used vouchers from the Maryland Social Services Administration to pay for appellee's daycare, and did not see chipping, peeling, or flaking paint at those facilities.

Both Ms. Robinson and Moses testified concerning the condition of the Property.

When Ms. Robinson brought appellee home from the hospital to the Property, she said that there was chipping and peeling paint in multiple areas of the house including, "[t]he window frames, the heaters, [and the] wall" in the bedroom that Ms. Robinson shared with appellee. Consistent with her deposition testimony, Ms. Robinson recounted that there was a hole in the wall of the bedroom that appellee would often pick at. Ms. Robinson further stated that appellee spent "everyday" with his great-grandfather in the basement of the house. Moses testified that there was chipping, flaking, and peeling paint throughout the house, including on the "basement door and on the walls[,]" as well as on the front door, baseboards, windows, and front porch.

A number of experts testified on behalf of appellee as to the condition of the Property. Appellee called Edward Rush Barnett, "an expert in lead risk assessment and lead paint inspection." Barnett testified that it was his opinion, "to a reasonable degree of [professional] probability[,]" "that there were lead-based paint hazards in the [P]roperty" at the time that appellee lived there. Barnett's opinion was based on "the identified conditions of paint in the [P]roperty. . . . the elevated blood lead [levels] of the child who lived in the property[,]" his "knowledge of old housing in Baltimore City[,]" his "knowledge of the presence of lead-based paint confirmed in the property, as well as the age of the property." Christopher White of ARC also testified as an expert in lead risk assessment. Based on (1) the 2013 ARC Report, which identified lead-based paint in a number of areas in the interior and exterior of the Property, and (2) his knowledge that houses built before the 1966 ban on lead-based paint in Baltimore City would have

contained lead-based paint, White opined that it was "more likely than not" that the Property contained lead-based paint while appellee was living there.

Dr. Blackwell-White was accepted "as an expert on the subject of pediatrics and childhood lead poisoning." Based on her experience and training in the field of pediatrics, Dr. Blackwell-White explained that, in general, deteriorating paint in old houses is the primary source of lead exposure for children in urban areas, such as Baltimore City. Over appellants' objection, Dr. Blackwell-White testified that it was her opinion to a "reasonable degree of medical probability[,]" that the Property was the source of appellee's lead exposure. During her testimony, Dr. Blackwell-White explained that her opinion was based on, among other things: the 2013 ARC Report, the age of the house, appellee's elevated blood-lead levels, appellee's age at the time of his blood-lead leads, and testimony that there was lead dust and peeling, chipping, and flaking paint accessible to appellee while he was living at the Property.

Concerning the damage appellee allegedly suffered because of lead exposure, Dr. Blackwell-White testified that appellee suffered an "IQ [ ] loss [ ] in the range of four to five points[,]" and she based her opinion on a study

> that as blood lead level rises, IQ points are lost. . . . Specifically, . . . that from rising blood lead level from, I believe, two to 10, there is a loss of 3.9 IQ points. For a blood lead level rise from 10 to 20, there's an additional IQ point loss of 1.9 points. And for blood lead level rise from 20 to 30, there is - - micrograms per deciliter - - there is an additional IQ point loss of .9 points.

For support, Dr. Blackwell-White pointed to the testimony of appellee's expert in neuropsychology, Barry Hurwitz, Ph.D, who testified that appellee suffered from brain

impairment, specifically, "problems with attention, concentration, problem solving, [and] switching attention." Dr. Blackwell-White testified that the cognitive impairments Dr. Hurwitz identified were also a symptom of lead exposure.

Dr. Davis testified as to appellee's future employability and earning capacity given his deficits and absent his deficits. Based on her vocational assessment of appellee, Dr. Davis opined, "to a reasonable degree of vocational probability[,]" that appellee would not "have the academic and intellectual competency of someone with a high school diploma[,]" and "will be in unskilled or low-level semi-skilled jobs." Dr. Davis further testified that absent his impairments, appellee would have likely completed "some schooling beyond the high school level." Using Dr. Davis's opinion of appellee's employability, Dr. Lurtio testified that appellee suffered a loss of earning capacity of $1,073,042 due to his injuries.

At the conclusion of appellee's case-in-chief, appellants made a motion for judgment, which was denied by the court. Appellants then proceeded to present their case. Appellants called experts who (1) questioned the scientific validity of the study used by appellee's experts to conclude that lead-based paint caused IQ loss, and (2) opined that there are other sources of lead exposure that children often encounter, such as toys, dirt, smoke, and water.

At the close of appellants' case and appellee's election not to offer any rebuttal evidence, appellants renewed their motion for judgment, which the court again denied. On September 19, 2014, the jury returned a verdict in favor of appellee, awarding $1,270,000 in economic damages and $818,330 in non-economic damages.

Thereafter, appellants filed a motion for remittitur, a motion for judgment

notwithstanding the verdict, and a motion for a new trial. Appellants argued, *inter alia,* that appellee had failed to establish a *prima facie* case of negligence and to sufficiently establish economic damages. After appellee filed his responses, the trial court held a hearing and denied appellants' motion for judgment notwithstanding the verdict and motion for new trial. The court partially granted appellants' motion for remittitur by reducing the economic damages award to $1,000,000 and the non-economic damages award to $530,000, pursuant to Maryland's cap on non-economic damages. The court denied appellants' request to reduce the economic damages to $0.00.

Appellants timely filed a notice of appeal. Additional facts will be included as necessary to the resolution of the questions presented in this appeal.

DISCUSSION

I. Motion for Summary Judgment

Appellants challenge the circuit court's denial of their motion for summary judgment as to appellee's negligence claim. As previously stated, the court granted appellants' motion for summary judgment as to the MCPA and negligent misrepresentation claims but denied summary judgment as to the negligence claim.

Unlike a *grant* of summary judgment, a circuit court's *denial* of a motion for summary judgment is reviewed for abuse of discretion. *Hous. Auth. of Baltimore City v. Woodland*, 438 Md. 415, 426 (2014). "This is especially so in cases that 'involve[] not only pure legal questions but also an exercise of discretion as to whether the decision should be postponed until it can be supported by a complete factual record[.]'" *Id.* (alterations in original) (quoting *Metro. Mortg. Fund, Inc. v. Basiliko*, 288 Md. 25, 29

(1980)). The Court of Appeals has explained that, when presented with a motion for summary judgment, a court has discretion to "'affirmatively. . . deny . . . a summary judgment request in favor of a full hearing on the merits; and this discretion exists even though the technical requirements for the entry of such a judgment have been met.'" *Id.* (quoting *Basiliko*, 288 Md. at 28). In the absence of clear abuse, the decision of the trial judge "will not be disturbed." *Basiliko*, 288 Md. at 28. Moreover, the Court has stated that

> "an appellate court should be loath indeed to overturn, on a very narrow procedural ground, a final judgment on the merits entered in favor of the party resisting the summary judgment motion . . . . To turn the tables in this manner would be nothing short of substituting a known unjust result for a known just one."

Woodland, 438 Md. at 427 (quoting *Basiliko*, 288 Md. at 28-29); *see also Mathis v. Hargrove*, 166 Md. App. 286, 305 (2005) (holding that only in rare circumstances should an appellate court reverse a trial court's denial of a summary judgment motion after there has been a full trial on the merits).

Under Maryland Rule 2-501, a motion for summary judgment may be granted "if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f) (2018) (recodifying Md. Rule 2-501(e) (2014)). Where there is no genuine dispute as to any material fact, the non-moving party can still defeat a motion for summary judgment if such party can show that the moving party is not entitled to a judgment as a matter of law. *See Haas v. Lockheed Martin Corp.*, 396 Md. 469, 478 (2007) ("[E]ven where the underlying facts are undisputed, if those facts are susceptible to more than one permissible inference, the choice between those inferences should not be made as

a matter of law, but should be submitted to the trier of fact." (alteration in original) (internal quotation marks omitted)). Otherwise stated, the non-moving party can defeat a motion for summary judgment by showing that it has proffered enough evidence to make out a *prima facie* case to send the case to the jury.

Appellants argue that they were entitled to summary judgment because at the time of their motion, there "was no evidence that appellee had been exposed to any lead-based paint 'hazards'" while residing at the Property." Appellants assert that, despite appellee's mother's statements that there was chipping paint in the interior of the Property, none of these locations tested positive for lead-based paint in the 2013 ARC Report. Moreover, appellants contend that, although the basement and front porch tested positive for lead-based paint in the ARC Report, "no lead-paint '*hazards*' were identified."

Appellee counters that he provided ample evidence of chipping, peeling, and flaking lead-based paint at the relevant time to overcome appellants' motion for summary judgment. Contrary to appellants' argument, appellee claims that "the absence of a [lead] hazard at the time of the litigation does not mean that one did not exist in 1997-2001[,]" and that according to Barnett, appellee's lead risk assessor, "there were lead based paint hazards" at that earlier time. Appellee concludes that "the undisputed testimony of peeling, flaking and chipping paint at the relevant time, coupled with ARC's verification of lead in the precise areas where [appellee] stayed, coupled with his elevated blood [lead] levels at the time," proves that the lead-paint hazard existed in 1997-2001.

When a plaintiff alleges negligence based on a violation of a lead paint statute or ordinance, the plaintiff has the burden to present sufficient facts to demonstrate that "(a)

the violation of a statute or ordinance designed to protect a specific class of persons which 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) of *Brooks* 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." 378 Md. at 81 (internal quotation marks and citation omitted). To be a violation of the City Housing Code, "all that must be shown is that there was flaking, loose[,] or peeling paint." *Kirson*, 439 Md. at 525 (internal quotation marks and citation omitted). Where a plaintiff has produced evidence of peeling, chipping, or flaking paint, "such a Code violation permits merely an inference of *prima facie* negligence on the part of the homeowner or landlord." *Id.* at 525-26. As the Court of Appeals explained in *Kirson*, "[s]uch an inference, however, **does not eliminate the requirement** that the plaintiff prove that the landlord's negligence *caused proximately* the injury." *Id.* at 526 (italic emphasis in original) (bold emphasis added).

Part (b) of *Brooks* requires that the plaintiff present either direct or circumstantial evidence that establishes "a series of links: "(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. Hous. Auth. of Baltimore 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 [the plaintiff'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 [his] injuries." *Id.* "To defeat a motion for summary judgment, a plaintiff must demonstrate only a *reasonable probability* as to each of these links—he is not required to conclusively establish them." *Rogers v. Home Equity USA, Inc.*, 453 Md. 251, 265 (2017) (emphasis added). The Court of Appeals explained that "for purposes of causation in lead-based paint cases at the summary judgment phase, a *reasonable probability* requires a showing that is less than 'more likely than not,' but more than a mere 'possibility.'" *Rowhouses, Inc. v. Smith*, 446 Md. 611, 655 (2016) (emphasis added). Otherwise stated, "there are degrees of probability, with more likely than not having the highest degree of probability, followed by reasonable probability, followed by mere possibility." *Id.*

Appellants' challenge to the denial of their motion for summary judgment focuses on the first link: whether or not appellee met his burden of establishing that the Property was a reasonably probable source of appellee's lead exposure. In *Rowhouses Inc. v. Smith*, the Court of Appeals examined the definition of "reasonable probability" in order to further clarify a plaintiff's burden of establishing a reasonably probable source of lead exposure. 446 Md. at 657. Considering the definitions of "reasonable" and "probable" together, the Court concluded that "a 'reasonable probability' is a fair likelihood that something is true." *Id.* The Court went on to explain that this definition, "[i]n the context of lead-based paint

cases, [ ] means that the subject property is a reasonably probable source of a plaintiff's lead exposure where there is a fair likelihood that the subject property contained lead-based paint and was a source of the lead exposure." *Id.*

The Court of Appeals has recognized two ways in which a lead paint plaintiff can establish the subject property as a reasonably probable source of his lead exposure. *Home Equity*, 453 Md. at 265-66 ("Maryland appellate courts have recognized two ways in which a lead paint plaintiff can establish the subject property as a reasonably probable source of his lead exposure and resulting elevated blood lead levels."). First, under the *Dow* theory of causation, "a plaintiff can defeat a motion for summary judgment by presenting evidence that the subject property is the only possible source of the plaintiff's lead exposure." *Id.* at 265 (citing *Dow v. L & R Properties, Inc.*, 144 Md. App. 67, 75-76 (2002)). "In other words, the plaintiff can present sufficient evidence of source . . . through the process of elimination." *Id.* at 266. The Court explained in *Rowhouses*, that "under a *Dow* causation theory, circumstantial evidence, such as testimony that prior residences did not contain flaking paint, is enough to rule out other possible sources of lead exposure." *Id.* (citing *Rowhouses*, 446 Md. 611, 661-62).

Second, "a plaintiff can survive summary judgment . . . by presenting evidence related *solely* to the subject property. . . . [t]he plaintiff can 'rule in' the subject property as a reasonably probable source through either direct or circumstantial evidence." *Id.* (citing *Kirson*, 439 Md. at 527-28). Under the *Kirson* theory of causation, "the plaintiff is not required to eliminate all other possible sources of lead exposure." *Id.* The plaintiff's burden

of proof, however, does not change—"he is still only required to show that the subject property was a reasonably probable source of his injury-causing exposure." *Id.*

In the instant case, appellee presented to the trial court the following evidence in support of his claim that he was exposed to lead-based paint at the Property: (1) the year that the Property was built—1920; (2) appellee's six blood tests, which show elevated blood-lead levels between 9-14 µg/dL while he resided at the Property;[5] (3) deposition testimony from Ms. Robinson that she moved into the Property when she was eight months pregnant with appellee and continued to live there until 2001, that the Property had chipping and peeling paint on the windows and radiator in her bedroom, that there was also a hole in the bedroom wall that appellee picked at, and that appellee spent "most of the time" in the basement with his great-grandfather; (4) Ms. Robinson's affidavit stating that appellee "did not visit any other properties until [she] put him in day care in the summer of 1998" and that she and her mother saw appellee with "paint chips on his hands and mouth[;]" (5) an affidavit by Moses, who was a tenant of the Property at the relevant time, stating that there was chipping, peeling, and flaking paint "all over the place[;]" (6) a 2013 ARC report documenting lead-based paint on the basement doors, door frames, ceiling,

[5] The blood lead level from the six tests, as discussed *supra*, are as follows:

Date Taken	Blood-Lead Level
December 3, 1997	12 µg/dL
May 13, 1998	13 µg/dL
November 11, 1998	12 µg/dL
June 11, 1999	14 µg/dL
February 18, 2000	9 µg/dL
August 30, 2000	9 µg/dL

and front porch; (7) Barnett's report concluding that appellee was exposed to lead-based hazards while living at the Property and that the deteriorated lead-based paint was a "substantial contributing source of lead exposure for [appellee] when residing at [the Property;]" and (8) Dr. Blackwell-White's report concluding that the Property was the only source of appellee's lead paint exposure, that lead paint at the Property was a substantial contributor to appellee's elevated blood-lead level, and that appellee suffered deficits "as a result of his sustained exposure to lead based paint." Appellee argues that this evidence, viewed in a light most favorable to him, establishes the Property as a reasonably probable source of appellee's lead exposure.

In its oral opinion denying appellants' motion for summary judgment on the negligence claim the circuit court stated:

> The [c]ourt disagrees with [appellants] on several places. One, there's the argument that the property was tested and found to not have lead. The property was tested in 2013. The child was born and lived in the house, I think in 1997 and it is the first ten [m]onths of the child's life where in the child had elevated blood levels and there is no evidence, at this point; that the child went anywhere other than the arguable evidence that he was outside, but he spent a significant amount of time anywhere else but in his home and then the child went to daycare and the mother has guesstimated around eighteen [m]onths, but certainly not at eight or ten [m]onths or ten [m]onths when he was initially tested with these levels and then [appellants], of course, argue[] that's possible sources, because after roughly [the] first eighteen [m]onths, he went on to spend significant amounts of time presumably with the baby sitting and the daycare in other homes. However, I don't know that those other homes are other possible sources, I don't know, there's never been any evidence of the condition of those homes, for them to even be considered. Nonetheless, that doesn't take us out of the situation of the evidence that presented, at least for the first ten [m]onths of his life.
>
> The Court of Appeals ha[s] gone to great length to, this year, to help us understand that which is not Dow and I think in doing that,

> they have helped us understand that which is Dow and I think in this particular case that is exactly what we have, a jury can very much find that the testing from 2013 is insignificant because the blood levels were tested in 1997 or 1998 and that is w[h]ere the child spent all of his time and so the jury could find that that was the source. That being said, the motion for summary judgment is also denied.

The Court of Appeals' recent decision in *Rogers v. Home Equity* is instructive. 453 Md. at 251. In that case, Home Equity claimed that it was entitled to summary judgment because Rogers had not produced enough evidence to establish the subject property as a reasonably probable source of lead exposure. *Id.* at 270. In support of his claim that he was exposed to lead-based paint at the subject property, Rogers produced the following evidence: (1) a 1976 Health Department report documenting lead paint on nineteen interior surfaces; (2) "building permits that show[ed] construction at [the subject property] between 1976 and 1996, but d[id] not indicate a gut rehabilitation that would have fully abated the lead-based paint;" (3) "a 2007 MDE Lead Paint Risk Reduction Inspection Certificate that did not certify the [subject property] as lead free;" (4) Rogers' blood tests, which indicated elevated blood-lead levels while residing at the subject property; and (5) "a 2014 Arc report documenting lead-based paint on the exterior of [the subject property]." *Id.* at 267.

The Court of Appeals disagreed with Home Equity, concluding that Rogers "presented enough evidence to advance [the subject property] across the line from a mere possible source of lead exposure to a reasonably probable source of lead exposure." *Id.* at 271. Although not explicit, the Court applied a *Kirson* theory of causation,[6] in which, as

[6] Concurring in *Home Equity*, Judge Watts clarified that although not explicit, the majority's conclusion was premised on a *Kirson* theory of causation. 453 Md. at 278 (2017) (Watts, J., concurring).

explained above, a plaintiff can establish source and source causation "by presenting evidence related solely to the subject property[,]" and is "not required to eliminate all other possible sources of lead exposure." *Id.* at 266. Applying *Kirson*, the Court explained that "[t]he 1976 interior lead testing, paired with the lack of evidence showing full lead abatement, gives rise to a reasonable inference that [the subject property's] interior still contained lead-based paint when Rogers lived there." *Id.* at 271. The Court was further persuaded by the "the 2014 exterior testing reveal[ing] lead-based paint on four surfaces, including the porch where Rogers often played[.]" *Id.*

According to the Court, "the quality and quantity of circumstantial evidence in the record" distinguished Rogers' case from *Hamilton v. Dackman*, where this Court concluded that evidence of lead-based paint on "only one, out-of-reach" exterior surface was insufficient to establish the subject property as a reasonably probable source of lead exposure. *Id.* at 270-71. Unlike *Hamilton*, Rogers presented evidence that the exterior *and the interior* of the subject property contained lead-based paint. *See id.* at 271. The Court concluded that Home Equity was not entitled to summary judgment because Rogers "presented sufficient circumstantial evidence to such a degree that a jury could reasonably infer that the subject property contained lead-based paint and was a reasonable probable source of his lead exposure." *Id.* at 283 (Watts, J., concurring) (summarizing the majority's ruling).

Applying a *Kirson* theory of causation to appellee's case, we hold that the evidence presented was sufficient to "advance [the Property] across the line from a mere probable source of lead exposure to a reasonably probable source of lead exposure." *See id.* at 271.

Here, appellee presented evidence that there was chipping, peeling, and flaking paint throughout the Property, which was built in 1920, and that in 2013 the exterior and the interior of the Property contained lead-based paint. The 2013 ARC Report detected lead-based paint in areas of the Property where appellee's mother and grandmother testified appellee spent much of his time. Appellee included the expert opinions of Barnett and Dr. Blackwell-White, both of whom opined that the Property contained lead-based paint during appellee's residency. Most importantly, appellee's first two elevated blood-lead levels were recorded at a time when appellee was not visiting any other properties. Based on this evidence, appellee established that there was a "fair likelihood" that the Property contained lead at the time of his residency and was the source of his injury-causing lead exposure. The circumstantial evidence appellee presented was sufficient "to such a degree that a jury could reasonably infer that [the Property] contained lead-based paint and was a reasonable probable source of his lead exposure." *See id.* at 283 (Watts, J., concurring).

Nevertheless, appellants argue that the circuit court "erred"[7] in denying their motion for summary judgment because appellee "failed to rule out other potential reasonably probable sources of lead." Specifically, appellants challenge appellee's use of circumstantial evidence to prove that there was lead at the Property. Citing to *Dow*, appellants claim that in order to make out a *prima facie* case of negligence using circumstantial evidence, appellee was required to rule out other reasonably probable

[7] Appellant misstates the standard of review for a denial of a motion for summary judgment. Whether the trial court was legally correct is the standard for a *grant* of summary judgment. As explained above, the denial of a motion to summary judgment is reviewed under an abuse of discretion standard. *See Woodland*, 438 Md. at 426.

sources of lead. Because appellee did not rule out other probable sources, appellants claim that appellee's case should have failed.

In *Home Equity*, the Court of Appeals expressly rejected an argument similar to that of appellants.[8] *See* 453 Md. at 268. The Court explained that, under the *Kirson* theory of causation, a plaintiff can make out a *prima facie* case using circumstantial evidence "by presenting evidence related *solely* to the subject property." *Id.* at 266 (emphasis added). In other words, "a plaintiff can rule in" the subject property by presenting sufficient evidence, circumstantial, direct, or both, "to show that the subject property was a reasonably probable source of [the plaintiff's] injury-causing exposure." *Id.* Because Rogers proceeded under a *Kirson* theory of causation, instead of *Dow*, the Court held that "Rogers' use of circumstantial evidence [did] not require him to eliminate all other possible sources to survive summary judgment." *Id.* at 268.

Similarly, in the instant case, appellee was not required to eliminate all other possible sources of lead to survive summary judgment, because he was proceeding under a *Kirson* theory of causation. As indicated above, appellee presented sufficient evidence "from which a jury could infer reasonably that the [Property] contained lead-based paint—without having to exclude all other sources of potential exposure to lead-paint poisoning." *See Kirson*, 439 Md. at 538.

Finally, this is not one of those "rare" circumstances in which this Court will reverse a trial court's denial of a motion for summary judgment after there has been a full trial on

[8] We recognize that appellants did not have the luxury of having *Home Equity* at the time of briefing.

the merits. The circuit court's denial of appellants' motion for summary judgment "did not preclude appellants from defending their case on the merits, nor [did it] prevent [ ] [appellants] from placing the evidence offered in support of their motion before the jury." *See Mathis*, 166 Md. App. at 306. A trial on the merits was held in this case, and a jury determined the outcome in favor of appellee. Accordingly, we hold that the circuit court did not abuse its discretion in denying appellants' motion for summary judgment.

II. Expert Testimony

Appellants argue that the court abused its discretion by permitting three of appellee's expert witnesses to testify at trial because they lacked qualifications and sufficient factual bases for their opinions. *First*, appellants contend that as a pediatrician, Dr. Blackwell-White lacked the qualifications and factual basis to testify as to the source of appellee's lead exposure and the resulting elevated blood-lead levels. *Second*, appellants challenge the testimony of vocational expert, Dr. Davis, because she lacked the qualifications and factual basis to offer an opinion on what appellee's vocational abilities would have been absent lead exposure. *Third*, appellants argue that Dr. Lurito's economic opinion as to pre-injury and employment prospects lacked a sufficient factual basis because of his reliance on Dr. Davis's testimony.

"It is often said that decisions to admit or exclude expert testimony fall squarely within the discretion of the trial court." *Levitas v. Christian*, 454 Md. 233, 245 (2017). Appellate courts review evidentiary rulings "pursuant to the abuse of discretion standard, reversing only when the court exercised discretion in an arbitrary and capricious manner

or . . . acted beyond the letter or reason of the law." *Taylor v. Fishkind*, 207 Md. App. 121, 137 (2012) (alterations omitted) (internal quotation marks and citation omitted).

Expert testimony is intended to help "the jury in resolving an issue outside the average person's realm of knowledge." *Levitas*, 454 Md. at 245 (citing *Roy v. Dackman*, 445 Md. 23, 41 (2015). Under Maryland Rule 5-702, "[e]xpert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." The trial court makes this determination based on three factors: "(1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education[;] (2) the appropriateness of the expert testimony on the particular subject[;] and (3) whether a sufficient factual basis exists to support the expert testimony." Md. Rule 5-702; *see also Levitas*, 454 Md. at 245.

The Court of Appeals has explained that under the first factor, "an expert may be qualified to testify if he 'is reasonably familiar with the subject under investigation.'" *Levitas*, 454 Md. at 245 (quoting *Roy*, 445 Md. at 41). An expert's familiarity can come from "professional training, observation, actual experience, or any combination of these factors." *Id.* (internal quotation marks and citation omitted). Moreover, an expert's testimony is appropriate if he possesses "special knowledge derived not only from his own experience, but also from the [experience] and reasoning of others, communicated by personal association or through books or other sources." *Id.* at 245-46 (internal quotation marks and citation omitted). As a result, an expert "does not need to have hands-on experience with the subject about which he proposes to testify." *Id.* at 245. "'It is sufficient if the court is satisfied that the expert has in some way gained such experience in the matter

as would entitle his evidence to credit.'" *Id.* at 246 (quoting *Radman v. Harold*, 279 Md. 167, 169 (1977)).

Regarding the third factor of Rule 5-702, expert testimony must have an adequate factual basis so that it is "'more than mere speculation or conjecture.'" *Id.* (quoting *Exxon Mobil Corp. v. Ford*, 433 Md. 426, 478, *as supplemented on denial of reconsideration*, 433 Md. 493, 71 A.3d 144 (2013)). Without an adequate factual basis, an expert's opinion "has no probative force." *Id.* The Court of Appeals has explained that "[t]he probative value of an expert's testimony is directly related to the 'soundness of [the] reasons given' for his conclusions." *Id.* (alterations in original) (quoting *Beatty v. Trailmaster Prod., Inc.*, 330 Md. 726, 741 (1993)). Accordingly, the Court has determined that "[a]n adequate factual basis requires: "(1) an adequate supply of data; and (2) a reliable methodology for analyzing the data." *Id.* When the facts or data relied on by an expert are "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, they need not be independently admissible at trial." *Id.* (internal quotation marks and citation omitted).

In evaluating "the expert witness factors, the trial court is only concerned with whether the expert's testimony is admissible." *Id.* According to the Court of Appeals, objections "attacking an expert's training, expertise or basis of knowledge go to the weight of the evidence and not its admissibility." *Id.* An expert's qualifications and methods may be scrutinized during cross-examination. *Id.* Because the fact-finder need not accept an expert's opinion, the jury may assess how much weight to give an expert's testimony. *Id.*

a. Dr. Blackwell-White

Appellants contend that Dr. Blackwell-White's testimony that the Property was the source of appellee's lead exposure and resulting elevated blood-lead levels should have been excluded, because she lacked the qualifications and factual basis to provide such testimony for the same reasons that her opinion was excluded in *Ross v. Housing Authority of Baltimore City*, 430 Md. 648 (2013). Appellee counters that unlike *Ross*, markedly more facts underlie Dr. Blackwell-White's opinion than were present in that case, including the opinion of appellee's lead risk assessor Barnett that the Property contained lead-based paint at the time that appellee resided there and was a source of his lead exposure. Accordingly, appellee argues that, as a doctor with years of experience treating lead poisoned patients, Dr. Blackwell-White had a sufficient factual basis and the qualifications to opine that the Property was the source of appellee's lead exposure and resulting elevated-blood levels.

In *Ross*, Dr. Blackwell-White was offered as an expert to opine that a house owned by the Housing Authority of Baltimore City was the source of the plaintiff's lead exposure and resulting elevated blood-lead levels (the first and second links of causation under *Ross*). 430 Md. at 651, 656. As to the first link, Dr. Blackwell-White testified that, "when a child has an elevated lead level, the most likely source of that lead is the property where the child resides: 'If there's peeling, flaking paint in an old house, that is the most likely source of exposure for a child with elevated lead levels.'" *Id.* at 657-58. When asked what type of factors she takes into account when rendering an opinion as to the source of lead exposure for a child, Dr. Blackwell-White stated that she considers the age and lead levels of the child, the age of the house, the condition of the house, and whether the child visited

other places. *Id.* at 658-59. Regarding the second link, Dr. Blackwell-White stated that it was her opinion that the subject property "was 'the source' of the elevated blood lead levels of [the plaintiff] during the period from March 1992 through 1994." *Id.* at 659. She based her opinion on the following factors:

> (1) the increase in [plaintiff's] elevated blood lead levels when she moved from the previous address to the [property]; (2) the age and condition of the property as well as the lead inspection tests from the [subject property], which Dr. Blackwell–White described as indicating the presence of lead (although she conceded that some of the test levels on which she relied did not meet HUD thresholds for lead hazard); (3) the access [plaintiff] had, as a child, to the areas suspected to contain lead paint dust inside the house; (4) the possibility that lead dust would escape into the living area (a) from the exterior window frame through the open window and (b) from the plaster walls suspected to contain lead paint through cracks in the sheetrock; and (5) the lack of other likely sources of lead exposure during the time [plaintiff] was living at the [subject property].

Id. at 659.

On cross-examination, Dr. Blackwell-White was asked if in her opinion the presence of lead-based paint inside a house was automatically considered as a contributing cause of elevated blood-lead levels. *Id.* at 660. Dr. Blackwell-White replied: "'If there is lead-based paint inside a house, I will consider it to be a contributing cause to elevated lead levels.' She elaborated that she would assume the home to be the most probable source of elevated blood levels 'until proven otherwise,' particularly if the house was built before 1970." *Id.*

In upholding the trial court's exclusion of Dr. Blackwell-White's testimony, the Court of Appeals noted that "Dr. Blackwell-White did not explain adequately how she

reached the conclusion that the [subject property] was 'the source' of the lead exposure that resulted in [the plaintiff's] elevated blood lead levels." *Id.* at 663. The Court elaborated that "[g]iven the uncontroverted evidence that there were various other sources of lead exposure in [the plaintiff's] environment, including her prior residence, and that she came to the [subject property] with already elevated blood lead levels, there were likely multiple causes of her elevated blood lead levels." *Id.* at 664. According to the Court, "[t]he real question for the fact-finder is *how much* exposure to lead at the [subject property] contributed to [the plaintiff's] blood lead levels over the pertinent time period[.]" *Id.* (emphasis in original). Dr. Blackwell-White's testimony that "she was merely identifying 'potential risk' and could not make any statement as to causation with certainty[,]" was therefore "as likely to confuse as to assist a jury." *Id.* Thus the Court concluded that Dr. Blackwell-White lacked an adequate factual basis to opine that the subject property was the source of the plaintiff's lead exposure that resulted in her elevated blood lead levels. *Id.* at 663.

In the instant case, Dr. Blackwell-White testified that she reviewed

> Plaintiff's Answers to Interrogatories; the plaintiff's deposition testimony; the plaintiff's mother's deposition testimony; the neuropsychological report by Dr. Hurwitz; MDE medical records; East Baltimore Medical Center medical records; Harbor Hospital records; birth records from, I believe Johns Hopkins Hospital; school records; a SDAT information sheet for [the Property]; the ARC report for [the Property]; building permits for the [Property]; and Dr. Sch[e]ller's report.

Dr. Blackwell-White testified to each of the documents she reviewed and explained the importance of the document in informing her conclusion that the Property was the

source of appellee's lead exposure and elevated blood-lead levels. In reviewing appellee's medical records that recorded elevated blood-lead levels, Dr. Blackwell-White testified:

> [Appellee's counsel]: Did medical records that you review, or that you reviewed in this case, do they contain any address information?
>
> [Dr. Blackwell-White]: They do, and I look closely at that because it helps me corroborate where a child's living when their blood lead levels are [elevated]. And so, yes, I do pay attention to the addresses on medical records.
>
> [Appellee's counsel]: And based on your review of the documents, the testimony that we've discussed, where was [appellee] living during the time when all of those elevated blood lead levels you just mentioned were recorded?
>
> [Dr. Blackwell-White]: At [the Property].
>
> [Appellee's counsel]: And are you aware from your review of all those records and the testimony when he began residing at [the Property]?
>
> [Dr. Blackwell-White]: That address appears on his birth records.
>
> * * *
>
> [Appellee's counsel]: In reviewing the testimony and the other records and material you've reviewed, did you see any indication that [appellee] was exposed to chipping, flaking, loose, or peeling paint at [the Property]?
>
> [Dr. Blackwell-White]: In deposition testimony for T[i]esha Robinson and the affidavits submitted by his mother and grandmother, it was mentioned that there was deteriorated paint in that residence. I remember especially around baseboards, around windows in the basement where he spent a lot of time with his great-grandfather, who lived down there at that time when he was little.
>
> And there was deteriorated paint on the porch. He played outside, but on the porch.

> There was a special mention made of a hole in the wall above the bed in the bedroom that he shared with his mother, that he picked at the hole to the point that it got bigger. He enlarged the hole in the wall.

As to the Property, Dr. Blackwell-White reviewed the State Department of Assessments and Taxation record for the house and the ARC Report, and testified to the following:

> [Appellee's counsel]: Did that document - - your review of that document help form any of your opinions in the case?
>
> [Dr. Blackwell-White]: Yes. And I reviewed the document a lot . . . . And it - - it's where I go to get the ages of houses.
>
> [Appellee's counsel]: What's the significance of a house being built in 1920 have for you?
>
> [Dr. Blackwell-White]: More than 80 percent of houses built before 1950 are presumed to contain lead-based paint unless they've been totally rehabilitated.
>
> * * *
>
> [Appellee's counsel]: Dr. Blackwell-White, I've just handed you what was previously admitted as Plaintiff's Exhibit Number 6. Is that a copy of the ARC inspection report that you reviewed?
>
> [Dr. Blackwell-White]: Yes.
>
> * * *
>
> [Appellee's counsel]: And in your review of the deposition testimony and the affidavit testimony that you talked about earlier, did you see any indication that any of the lead-positive areas in the ARC report were also noted to be chipping, peeling, or flaking at the time that [appellee] resided in the house?
>
> [Dr. Blackwell-White]: T[i]esha Robinson, in her deposition, noted that her child spent a lot of time in the basement. The ARC report

> noted that there was . . . lead-positive areas in the rear basement storage room, rear basement exit hallway, door casing and threshold, several areas in the basement.
>
> * * *
>
> [Appellee's counsel]: Did you, in your review of documents and testimony, including the affidavits, see any indication that the [Property] had undergone any renovation between the time [appellee] and his family moved out and when ARC inspected the house in June 2013?
>
> [Dr. Blackwell-White]: I did review a list of work orders that showed different repairs being done. I did not see any evidence of major renovation during the time that [appellee] was there or previously -- previous to his moving in.
>
> [Appellee's counsel]: Is there any significance to you if, in fact, renovations had taken place since the time [appellee] and his family moved out between then and the time that ARC inspected?
>
> [Dr. Blackwell-White]: It would have removed any evidence of lead. So the inspection, the device that they use, picks up lead from the surface of whatever you're on, a wall let's say, to supporting structures. So if there was complete renovation, all of that would have been removed. And it would not have been noted in an inspection years out.

When asked whether there were any other sources of lead exposure, Dr. Blackwell-White testified:

> [Appellee's counsel]: Prior to beginning daycare, do you see any indication that [appellee] was visiting any other houses, other than [the Property]?
>
> [Dr. Blackwell-White]: I did not.
>
> [Appellee's counsel]: **Did you see any indication that the daycare facilities that he attended contained any deteriorated paint**?

> [Dr. Blackwell-White]: The mother - - **so T[i]esha Robinson and Sandra Moses, neither of them, in deposition testimony or affidavits, noted any deterioration at the daycare.**
>
> **T[i]esha Robinson mentioned that she paid by voucher. And for daycares that are using State vouchers, those are certified daycares that usually have to undergo lead inspection clearance.**

(Emphasis added). Dr. Blackwell-White further testified:

> [Appellee's counsel]: . . . Do you have an opinion, Dr. Blackwell-White to a reasonable degree of medical probability as to whether [appellee's] elevated blood lead levels were caused by exposure to deteriorated lead-based paint at [the Property]?
>
> * * *
>
> [Dr. Blackwell-White]: It is my opinion that he was and at that property.
>
> [Appellee's counsel]: And what's the basis for that opinion, Doctor?
>
> * * *
>
> [Dr. Blackwell-White]: **The basis is that that was the only property in my review of the documents that he was living**; that he had blood lead levels that were elevated; he had markers; that he was of an age to access lead dust; and that there was lead dust - - there was peeling, chipping paint available to him.

(Emphasis added).

The facts of the instant case are significantly different from those in *Ross*. In *Ross*, there were multiple sources of lead exposure other than the subject property. 430 Md. at 664. Here, by contrast, the Property is the *only* reasonably probable source of appellee's lead exposure and resulting elevated blood-lead levels because (1) appellee lived at the Property from birth and did not visit any other properties during the first eighteen months of his life, and (2) for the next two and one-half years, appellee lived at the Property and

attended daycare at facilities where there was no chipping, peeling, or flaking paint. Moreover, Dr. Blackwell-White did not have to assume that the Property was the most probable source of appellee's elevated blood-lead levels simply because of the presence of lead-based paint in the Property. Instead, she had the above evidence coupled with the 2013 Arc Report, building permits for renovation, the deteriorated condition of the paint where appellee spent most of his time, and appellee's elevated blood-lead levels. Dr. Blackwell-White explained how she analyzed each piece of evidence in coming to her conclusion that the Property was the source of appellee's lead exposure, and testified *unequivocally* that the Property was the source of appellee's lead exposure and such exposure contributed to his elevated blood-lead levels. Dr. Blackwell-White stated that the daycare properties appellee visited after he was eighteen months old were not likely sources, because they accepted daycare vouchers from the State and therefore had to undergo lead testing. Therefore, Dr. Blackwell-White had an adequate factual basis and the qualifications necessary to testify as to the source of appellee's lead exposure and the resulting elevated blood-lead levels. Accordingly, we hold that the circuit court did not abuse its discretion in allowing Dr. Blackwell-White to render an expert opinion on the source and source causation of appellee's lead exposure.

b. Dr. Davis & Dr. Lurito

Appellants next contend that the trial court abused its discretion by allowing appellee's vocational rehabilitation expert, Dr. Davis, to testify as to "[a]ppellee's vocational and education abilities absent lead exposure." Specifically, appellants argue that Dr. Davis's opinions regarding appellee's pre-injury potential lacked a sufficient

factual basis because "[s]he had no medical opinion addressing the anticipated educational achievement level of the [a]ppellee[,]" nor did she rely on any objective criteria, such as population studies, to frame her analysis of appellee's projected achievement level absent lead exposure. In addition, appellants argue that Dr. Lurito's testimony should be excluded because of his reliance on Dr. Davis's vocational opinions in determining appellee's damages for loss of earning capacity.

Appellee responds that Dr. Davis based her vocational opinion on the results of Dr. Hurwitz's neuropsychological testing. Using Dr. Hurwitz's opinion along with Dr. Davis's experience as a vocational rehabilitation counselor, appellee argues that Dr. Davis properly opined as to what appellee could have done absent any lead caused impairment. Moreover, appellee claims that Dr. Davis did not need to use population studies because Dr. Lurito's use of them in his analysis "filled in that part of the equation" that Dr. Davis's testimony was lacking.

As discussed above, under Maryland Rule 5-702:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) **whether a sufficient factual basis exists to support the expert testimony**.

(Emphasis added).

In the instant case, Dr. Davis was accepted by the circuit court as an expert in "vocational rehabilitation counseling." Dr. Davis testified that she holds a Ph.D. in

rehabilitation counseling, has been a certified vocational rehab counselor since the late 1970s, and has conducted at least 100 vocational evaluations of young adults throughout her career. She explained that a vocational rehabilitation expert "works with individuals to help them find employment, generally, or to identify employment or to evaluate them to help them make decisions on employment." As a part of this assessment, according to Dr. Davis, vocational rehabilitation experts assess a person's educational background and medical records "to help to set some idea of what the earning capacity of the person is." When assessing an individual without a work record, Dr. Davis said that vocational rehabilitation counselors "look at what is the likely educational attainment of the individual, rather than citing specific jobs that they might do."

In evaluating appellee, Dr. Davis met with appellee and his mother, reviewed "[appellee's] Answers to Interrogatories, [appellee's] deposition transcript, [appellee's] mother's deposition transcript," Dr. Hurwitz's neuropsychological report, hospital records, Baltimore City Public School Records, and the report of appellants' vocational rehabilitation expert, Dr. Scheller.

Relying on Dr. Hurwitz's report, Dr. Davis concluded that appellee has "some neuropsychological problems that are ongoing and have stood in the way of his school progress and will likely be in the way of his vocational progress." Specifically, Dr. Davis noted that appellee has problems with executive function, which is "the part of the brain that helps you organize and to multitask and to put things in order." Dr. Davis also recognized that appellee "has problems with attention[,]" and "that [appellee] can't focus long enough on something to be able to carry through." She testified that appellee's

academic testing demonstrated that his "reading comprehension is poor[,]" and that "[h]e can do math at the level for . . . social survival[.]"

Dr. Davis explained further that the best indicator of vocational probability for an individual without a work history, like appellee, is academic achievement. Looking at appellee's academic records, Dr. Davis explained that appellee's "academic progress has not been good[,]" and that his grade point average for tenth grade was .17. Dr. Davis noted that school records indicated that appellee "had some problems with behavior, not being able to sit still, not focusing." She testified that appellee will likely not be able to pass the High School Assessments ("HSA"), "a test that an individual must pass in order to get their high school diploma," in Maryland. Dr. Davis stated that appellee may, however, be able to complete an alternate "bridge project[,]" which would allow him to obtain his diploma.

Based on this information, Dr. Davis concluded that with his lead caused impairments, appellee may receive his high school diploma, but would not have the academic and intellectual competency of someone with a high school diploma. Dr. Davis opined that appellee "will be in unskilled or low-level semi-skilled jobs[,]" and would have the earning capacity of "someone with less than a 12th grade education[.]" Dr. Davis pointed to appellee's issues with executive function, focus, and anger as the biggest hurdles to employability, even in "the most simple jobs[.]"

Over the objection of appellants' counsel, appellee's counsel asked Dr. Davis to opine about appellee's vocational abilities, absent lead exposure:

> [Appellee's Counsel]: Doctor, based on your education, training, experience, and the documents that you reviewed in this case, do you have an opinion to a reasonable degree of vocational probability as

> to what [appellee's] educational attainment would have been absent his cognitive deficits?
>
> [Dr. Davis]: Yes, I do.
>
> [Appellee's Counsel]: And what is that opinion?
>
> [Dr. Davis]: **He would at least have completed high school.** And I think looking at some of the IQ scores from Dr. Hurwitz, he had a verbal IQ of 89, which is - - that's - - the verbal IQ score is considered to be the best indicator of academic achievement.
>
> **And absent his cognitive issues, I think it would be likely that he could also go to a vocational tech school or a community college where he would learn some type of . . . hands-on work.**

(Emphasis added). Dr. Davis went on to explain that appellee's "lack of focus and the lack of attention . . . has interfered with his schooling[,]" but the academic records indicate that "if he could focus better - - once he's focused, he can do something."

Appellee then offered economist Dr. Lurito to testify about appellee's damages for loss of earning capacity. In forming his opinion, Dr. Lurito explained that he relied on Dr. Davis's conclusions about appellee's vocational probabilities with deficits and absent deficits, along with general statistical data from the Social Security Administration, Department of Labor, and the Census Bureau. Based on this information, Dr. Lurito testified that the present value of earnings for an individual with some college education was $2,787,434 (appellee's earning capacity absent deficits), whereas the present value of earnings for a below average high school graduate was $1,714,201 (appellee's earning capacity with deficits). Taking the difference between these two numbers, Dr. Lurito

calculated that appellee's damages for loss of earning capacity was $1,073,042.[9]

Instructive to our analysis of whether Dr. Davis's testimony had a sufficient factual basis is the Court of Appeals' recent decision in *Sugarman v. Liles*, __ Md. __, __, No. 80, September Term 2017 (filed July 31, 2018). In *Sugarman*, the plaintiff designated Mark Lieberman as his vocational rehabilitation expert. Slip op. at 7. Lieberman assessed the plaintiff by meeting with him, reviewing the report of the plaintiff's neuropsychology expert, Dr. Robert Kraft, and reviewing the plaintiff's medical and educational records. Slip op. at 7. Based on this information, Lieberman concluded that, although the plaintiff "had the skills of a high school graduate, [Lieberman] anticipated that difficulties would arise for [the plaintiff] once he started college." Slip op. at 8. Lieberman explained that the plaintiff had the "'IQ potential and basic academics to be . . . at least an Associate[']s degree graduate[,]'" but that the plaintiff "would not be able to obtain that degree" based on "his ability to function in the college setting as the work gets more difficult[,]" and that he will eventually hit a "brick wall[,]" "the point where he's not going to be able to get the Associate[']s degree." Slip op. at 8. He therefore opined that the plaintiff "will not earn an Associate's and that, without the deficits caused by his exposure to lead, he would have earned a degree." Slip op. at 42.

The plaintiff then offered Dr. Michael Conte as an expert in economics, who testified about the plaintiff's damages caused by the loss of earning capacity. Slip op. at 9. Dr. Conte explained that the difference in earning capacity of someone with an

[9] We note, however, that the difference between $2,787,434 and $1,714,201 is $1,073,233.

Associate's degree from someone with a high school diploma and some college was $1,698,808.[10] Slip op. at 9. That number, Dr. Conte explained, "represents the sustained loss of earnings resulting from [the plaintiff]'s injuries." Slip op. at 9. After a jury returned an award in favor of the plaintiff, Sugarman appealed. Slip. op. at 12.

On appeal, Sugarman argued that the case should not have been submitted to the jury because "Lieberman's opinion rested on the 'baseless' assumption that without deficits, [the plaintiff] would have obtained an Associate's degree." Slip op. at 42. The Court of Appeals disagreed, holding that "Lieberman's opinion was based on substantial material." Slip op. at 49. Specifically, the Court noted that Lieberman

> interviewed [the plaintiff], conducted additional vocational testing, and reviewed his educational and medical records. He also reviewed and relied upon the neuropsychological evaluation and conclusions of Dr. Kraft. Additionally, Lieberman relied on his years of experience as a vocational rehabilitation counselor during which he has helped thousands of students attend college. After reviewing this data, he concluded that [the plaintiff] was not likely to receive a college degree due to the attention problems Dr. Kraft identified. He further proffered that, in his expert opinion, [the plaintiff] would have been able to earn a college degree without his disabilities. Dr. Conte, the economics expert, then testified regarding the financial earnings of an individual with a college degree versus those of an individual without a college degree.

Slip op. at 49-50. In summary, the Court stated that "[t]he combined information offered by Lieberman and Dr. Conte presented a detailed and individualized analysis of [the

[10] Dr. Conte testified that "the career earnings of someone with the educational attainment of an Associate's degree [was] $3,456,127 ([the plaintiff]'s likely earnings without the deficits)" while "the career earnings of someone with the educational attainment of a high school diploma and some college [was] $1,757,320 ([the plaintiff]'s likely earnings with deficits)." Slip op. at 9. Dr. Conte explained that the difference between these numbers was $1,698,808. Slip op. at 9.

plaintiff's] employment prospects and future earnings. . . . [The plaintiff] set forth an individualized analysis of his likely outcome coupled with statistical data to assist the jury in quantifying his damages." Slip op. at 51. The Court, therefore, concluded that the plaintiff "set forth sufficient evidence of damages in the form of loss of earning capacity" to submit the issue to the jury. Slip op. at 51-52.

Similarly, in the instant case, Dr. Davis interviewed appellee and his mother, reviewed Dr. Hurwitz's neuropsychological report, and reviewed appellee's medical and educational records. Dr. Davis also relied on her experience of having worked as a vocational rehabilitation counselor for over 30 years during which she has assessed and helped over 100 young adults. After reviewing this data, Dr. Davis concluded that appellee would not have the academic and intellectual competency of someone with a high school diploma because of his problems with executive function and focus that were identified by Dr. Hurwitz. Having reviewed appellee's academic records, Dr. Davis further stated that, in her expert opinion, appellee would have been able to earn a high school diploma and attend "a vocational tech school or a community college where he would learn some type of . . . hands-on work[,]" without his disabilities. Through this testimony, Dr. Davis adequately explained that appellee had sustained a loss of earning capacity as a result of his injuries. Specifically, with his injuries, he would have the earning capacity of someone with a high school diploma, and without his injuries, he would have the earning capacity of someone with a high school diploma and some college education. Therefore, Dr. Davis's detailed and individualized analysis provided a sufficient factual basis for her to opine about appellee's vocational potential with deficits and without deficits.

Nevertheless, appellants argue that Dr. Davis's opinion lacked a sufficient factual basis because she did not rely on general statistical data in determining appellee's vocational potential absent his deficits. They point to this Court's decision in *Lewin Realty III, Inc. v. Brooks*, 138 Md. App. 244 (2001), *aff'd*, 378 Md. 70 (2003). *Lewin Realty*, however, does not support appellants' position. In fact, the Court of Appeals relied on *Lewin Realty* in making its decision in *Sugarman* that Lieberman had "substantial material" to determine the plaintiff's employment prospects absent lead exposure. *See Sugarman*, slip op. at 51.

Like *Sugarman*, the plaintiff in *Lewin Realty* designated Lieberman as his vocational rehabilitation expert. *Lewin Realty*, 138 Md. App. at 278. Lieberman conducted an individualized assessment of the plaintiff by reviewing Dr. Hurwitz's neuropsychological evaluation, Dr. Klein's medical report, and medical and educational records. *Id.* at 284. He also considered information provided by the plaintiff's mother and grandmother, and "took into account [the plaintiff's] achievement of developmental milestones and his mother's work and educational background." *Id.* at 284. This Court explained that based on the individualized assessment and his own expertise, Lieberman was able to form opinions about the plaintiff's educational and vocational future with deficits and absent deficits. *Id.* Specifically, Lieberman opined that "without the medical disabilities from lead exposure, it was probable that [the plaintiff] would have in the future attained an education level of between 9th and 12th grade, and would have been employable in jobs requiring organizational and oversight skills[,]" but with the deficits, the plaintiff "was more likely than not [to] drop out of school at the age of 16 and would

not complete a 9th grade education, and that he would only be employable for 'very basic manual labor.'" *Id.* at 285. *Then*, using general statistical data, Lieberman determined that the plaintiff's "earning capacity was less than what it would have been had he not been injured." *Id.* We concluded that "the combination of evidence specific to [the plaintiff] and general to the population that was adduced at trial was such as to permit a reasonable finding that, more likely than not, [the plaintiff's] future earning would be less than it would have been if he were not injured." *Id.*

We never held in *Lewin Realty* that an expert must take into account general statistics when considering what an individual's vocational potential would be absent deficits. *Cf. Sugarman*, slip op. at 51. In other words, the determination that an individual would have obtained a higher degree of education absent deficits does not need to be based on general statistical data. The *quantification of the loss* between the earning capacity absent deficits and with deficits, however, must be based on general statistical data.

That is exactly what happened here. Dr. Davis conducted a detailed and individualized assessment of appellee. Based on such assessment and her expertise in vocational rehabilitation counseling, Dr. Davis concluded that with appellee's deficits, he will not have the academic and intellectual competency of someone with a high school diploma, and absent his deficits, appellee would have completed some college education. Based on this testimony, Dr. Lurito was able to quantify this loss between earning capacity with deficits and absent deficits. He used general statistical data to quantify the earning capacity of an individual with some college education versus an individual with a high school diploma. Taking the difference between the present day values of those two

numbers, Dr. Lurito opined as to the damages suffered by appellee for the loss of earning capacity.

Taking *Sugarman* and *Lewin Realty* together, we conclude that Dr. Davis's opinion regarding appellee's probable educational achievement and vocational capability absent lead impairments was based on a sufficient factual basis. Accordingly, Dr. Davis's testimony was admissible under Rule 5-703(3), and the circuit court did not abuse its discretion by admitting Dr. Davis's testimony into evidence.

Finally, appellants' sole challenge to Dr. Lurito's testimony was that it was based on Dr. Davis's conclusions, which, according to appellants, lacked a sufficient factual basis. Because we conclude that Dr. Davis's testimony was admissible, it follows that Dr. Lurito's testimony was admissible as well.

III. Motion *In Limine* To Exclude Dr. Lurito's Testimony and Report as Untimely

Appellants also filed a motion *in limine* to exclude Dr. Lurito's report, and the testimony based thereon, because of the late disclosure of the report. The circuit court's scheduling order set the deadline for appellee to designate his experts as August 7, 2013, and provided that all discovery be completed by May 10, 2014. The scheduling order also directed that all depositions of expert witnesses be completed by May 10, 2014, and set the trial for September 9, 2014. Appellee responded to appellants' interrogatories on February 23, 2014, by identifying five economic experts, including Dr. Lurito. According to appellants, on August 4, 2014, they received Dr. Lurito's report from appellee. On August 28, 2014, appellants filed a Motion to Strike the report and testimony of Dr. Lurito arguing

that the "late disclosure of actual expert economic opinions by Dr. Lurito was both a discovery violation and a violation of the Scheduling Order[.]" Consequently, appellants claimed that Dr. Lurito's report and testimony based on the report should be excluded.

On the first day of trial, September 15, 2014, the circuit court heard argument on the motion *in limine* and denied the same. The court reasoned that, although appellants received Dr. Lurito's report just short of seven weeks before trial, Dr. Lurito was listed on appellee's expert designation, and appellants did not take any action either to depose Dr. Lurito or to request a postponement after they received his report on August 4, 2014. When its motion *in limine* was denied, appellants requested that the trial be postponed, which the circuit court also denied. The court, however, allowed appellants to take the deposition of Dr. Lurito that day and designate an economic expert of their own.

Appellants argue in this Court that the circuit court abused its discretion by denying their motion *in limine* because appellee's disclosure of Dr. Lurito's report was in violation of the discovery rules and the court's scheduling order. Further, according to appellants, the court "clearly placed the blame of not receiving any expert economic figures on [a]ppellants, claiming that since [a]ppellants knew that Dr. Lurito (along with four other economists) was designated as an expert, they were required to depose him[.]" In support of their position, appellants point to *Lowery v. Smithsburg Emergency Medical Service*, 173 Md. App. 662, 678 (2007), where we held that a circuit court did not abuse its discretion in excluding an expert report and testimony for lost wages as a discovery sanction for late disclosure.

Appellee responds that the circuit court did not abuse its discretion because Dr. Lurito was designated as an expert over a year before the discovery deadline and Dr. Lurito's report was actually produced on July 29, 2014, not August 4, 2014.[11] Appellee points out that "appellants had no issue taking nearly every one of [appellee's] expert witness depositions in the month of August, 2014," beyond the discovery deadline, "with the lone exception of Dr. Lurito." Because appellants did not provide any excuse for not taking Dr. Lurito's deposition in August, appellee argues that appellants deliberately chose not to seek Dr. Lurito's deposition "so that they could file their motion to exclude below, thereby cutting their potential liability significantly." Furthermore, appellee contends that appellants failed to show that they were prejudiced by the admission of Dr. Lurito's report and/or testimony. Even if appellants were prejudiced, appellee argues that any prejudice was offset by the court allowing appellants to take Dr. Lurito's deposition during trial and call their own economic expert.

The Court of Appeals has explained that "the admissibility of expert testimony is a matter largely within the discretion of the trial court, and its action in admitting or excluding such testimony will seldom constitute a ground for reversal." *Roy v. Dackman*, 445 Md. 23, 38-39 (2015) (internal quotation marks and citation omitted). We have held:

> [A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. Rather, for us to conclude that the circuit court has abused its discretion, [t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court

[11] The time period from July 29, 2014, to September 15, 2014, the trial date, is one day shy of seven weeks. The time period from August 4, 2014, to September 15, 2014 is exactly six weeks.

> and beyond the fringe of what that court deems minimally acceptable.

Aronson & Co. v. Fetridge, 181 Md. App. 650, 688 (alterations in original) (internal quotation marks and citation omitted), *cert. granted*, 406 Md. 743 (2008), *and cert. dismissed*, 408 Md. 148 (2009). When considering discovery sanctions, "[t]he exercise of discretion contemplates that the trial court will ordinarily analyze the facts and not act, particularly to exclude, simply on the basis of a violation disclosed by the file." *Taliaferro v. State*, 295 Md. 376, 390, *cert. denied*, 461 U.S. 948 (1983). In exercising its discretion regarding whether to exclude an expert witness as a discovery sanction, "a trial court should consider: (1) the reasons why the disclosure was not made; (2) the existence and amount of prejudice to the opposing party; (3) the feasibility of curing any prejudice with a continuance; and (4) any other relevant circumstances." *Thomas v. State*, 397 Md. 557, 570-71 (2007) (footnote omitted).

Reviewing the decision to deny appellants' motion *in limine*, we conclude that the circuit court did not abuse its discretion. Contrary to appellants' characterization, the court did not rule that, because Dr. Lurito was designated by appellee, appellants should have deposed him, even without a report. Instead, the court denied appellants' motion *in limine*, because once they received Dr. Lurito's report, either on July 29, 2014, or August 4, 2014, they took no action, despite taking depositions throughout the month of August of other experts designated by appellee. Specifically, the court stated that "[t]he fact that there was a report received, and no action from your office, based on the report, the request for postponement should have been filed then." The court explained that "no action was taken

to resolve the discovery problem[,]" and no action was taken to suggest that they were doing "everything [they] could to go forward on this issue." With appellants having waited until close to trial to raise the issue, the court denied appellants' motions to exclude and for a postponement. The court did, however, fashion a remedy for the late disclosure by allowing appellants to designate their own expert economist and giving them the opportunity to depose Dr. Lurito on the first day of trial. Taking all of these considerations together, we cannot say the court's action was a clear abuse of discretion.

Moreover, appellants reliance on *Lowery* is misplaced. Appellants accurately point out that the facts in *Lowery* are similar to those in the instant case. In that case, the plaintiff sued his former employer for defamation and tortious interference with contract, among other claims. *Lowery*, 173 Md. at 668. The trial court issued a scheduling order requiring "all experts be named by August 6, 2005, and all discovery be completed by November 25, 2005." *Id.* In response to the defendant's interrogatories requesting disclosure of expert witnesses, the plaintiff stated on March 24, 2005, that he had "'not yet retained any experts.'" *Id.* On August 5, 2005, the plaintiff designated Dr. Richard Edelman to render "an opinion in regard to future lost wages" but did not disclose Dr. Edelman's report until March 15, 2006, twelve days before trial. *Id.* at 669. The defendant responded immediately by filing a motion to exclude Dr. Edelman, and the circuit court granted the motion. *Id.* At trial, the defendant's motion for judgment made at the end of the plaintiff's case-in-chief was granted, and the plaintiff subsequently appealed. *Id.*

On appeal, this Court concluded that the circuit court did not abuse its discretion by granting the defendant's motion to exclude. *Id.* at 678. We reasoned that "[t]he

determination by a trial court as to when discovery should be concluded ordinarily rests in the exercise of its sound discretion[,]" and that trial courts have "broad discretion in fashioning a remedy for the violation of discovery rules." *Id.*

In *Lowery*, this Court properly reviewed the grant of the motion *in limine* under an abuse of discretion standard. *Id.* at 674. The abuse of discretion standard "makes generous allowances for the trial court's reasoning, [and appellate courts] grant great deference to that court's conclusion[.]" *Central Truck Center, Inc. v. Central GMC, Inc.*, 194 Md. App. 375, 398 (2010) (internal quotation marks and citation omitted). Specifically, the Court of Appeals has explained that whether the exclusion of an expert "is an abuse of discretion turns on the facts of the particular case." *See Taliaferro*, 295 Md. at 391. As a result, a holding under an abuse of discretion standard does not mean that in a similar factual scenario a trial court is required to take the same action. Instead, the standard allows for the trial court's exercise of *discretion*, which can result in decisions that vary from judge to judge in similar circumstances. Our task is only to determine whether the circuit court's ruling was so "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *See Fetridge*, 181 Md. App. at 688 (internal quotation marks and citation omitted).

Finally, as appellee points out, appellants did not assert in their opening brief they were prejudiced by the discovery violation and the court's denial of their motion *in limine*. In their reply brief, however, appellants argued for the first time that they were prejudiced by the late disclosure of Dr. Lurito's report because they "did not have the time and opportunity to retain an expert economist who would otherwise be available for a trial in

less than six weeks," and who could "review and evaluate Dr. Lurito's opinions and factual basis supporting his economic opinions[.]" "Pusuant to [Maryland Rule 8-131(a),] an appellate court ordinarily will not consider an issue raised for the first time in a reply brief." *Jones v. State*, 379 Md. 704, 721 (2004).

Nevertheless, even if we consider appellants' argument that they were prejudiced by appellee's discovery violation and denial of their motion *in limine*, we would still conclude that the circuit court did not abuse its discretion. The court noted that, although Dr. Lurito's report was late, appellants received the report six weeks before trial, and thus the issue was "resolvable." Instead, appellants waited until about two weeks before trial to file a motion *in limine* to exclude Dr. Lurito's report and testimony. Determining that the appellants made no efforts to resolve the discovery issue by scheduling a deposition of Dr. Lurito in August and designating their own expert, the court concluded that appellants were not entitled to claim prejudice. In addition, the court offered appellants a solution for any perceived disadvantage by giving them the opportunity to take Dr. Lurito's deposition and designate their own expert. Accordingly, appellants did not demonstrate that they were prejudiced by the late disclosure and subsequent admission of Dr. Lurito's testimony at trial.

We, therefore, conclude that the circuit court did not abuse its discretion by denying appellants' motion *in limine* to exclude Dr. Lurito's report and testimony, and by denying appellants' motion to postpone the trial.

IV. Motion for Judgment Notwithstanding the Verdict

After the jury returned a verdict in favor or appellee, appellants filed a Motion for

Judgment Notwithstanding the Verdict, arguing that appellee had failed to: (1) establish a *prima facie* case of negligence, specifically causation, and (2) establish economic damages. The circuit court denied the motion after a hearing. On appeal, appellants challenge that ruling. [12]

A motion for judgment notwithstanding the verdict ("JNOV") under Rule 2-532 "tests the legal sufficiency of the evidence." *Impala Platinum, Ltd. v. Impala Sales (USA), Inc.*, 283 Md. 296, 326 (1978). The Court of Appeals has explained the appellate standard of review as follows:

> We review the trial court's grant or denial of a motion for judgment notwithstanding the verdict to determine whether it was legally correct. *Scapa Dryer Fabrics, Inc. v. Saville*, 418 Md. 496, 503, 16 A.3d 159, 163 (2011) (quoting *Scapa Dryer Fabrics, Inc. v. Saville*, 190 Md. App. 331, 343, 988 A.2d 1059, 1065 (2010)). In so doing, we must "resolve all conflicts in the evidence in favor of the plaintiff and must assume the truth of all evidence and inferences as may naturally and legitimately be deduced therefrom which tend to support the plaintiff's right to recover." *Smith v. Bernfeld*, 226 Md. 400, 406, 174 A.2d 53, 55 (1961). If there is any competent evidence, "however slight, from which a rational mind could infer a fact in issue," then denial of a motion for judgment notwithstanding the verdict is appropriate. *Impala Platinum v. Impala Sales*, 283 Md. 296, 328, 389 A.2d 887, 905–06 (1978). Thus, if there is any evidence legally sufficient to generate a jury question, we must affirm the denial of a motion for judgment notwithstanding the verdict. *Jones v. State*, 425 Md. 1, 30–31, 38 A.3d 333, 350 (2012).

Exxon Mobil Corp. v. Albright, 433 Md. 303, 349, *cert. denied*, 571 U.S. 1045 (2013).

[12] Appellants also challenged the trial court's denial of their motion for judgment, made at the close of appellee's case-in-chief. Because the standard of review for a motion for judgment and a motion for judgment notwithstanding the verdict is the same, we review the latter for brevity. *See Giant Food, Inc. v. Booker*, 152 Md. App. 166, 176 ("We review the denial of a motion for judgment and a motion for judgment notwithstanding the verdict ('JNOV') under the same appellate lens."), *cert. denied*, 378 Md. 614 (2003).

a. Causation

First, appellants argue that the circuit court erred in denying its motion for judgment notwithstanding the verdict because appellees failed to make out a *prima facie* case of negligence. In particular, according to appellants, "[a]ppellee did not produce adequate, sufficient and admissible evidence that any lead-paint hazards existed at the property that were the result of chipping, flaking or peeling lead-based paint." (Emphasis omitted). We disagree.

The motion for judgment notwithstanding the verdict was properly denied for the same reasons that the court denied the motion for summary judgment before trial, discussed above. The one distinction in the analysis is that the focus now is on whether the evidence admitted *at trial* was legally sufficient to generate a jury question. We hold that it was.

As stated *supra*, to prove causation in a negligence claim based on a violation of a lead paint statute or ordinance, the plaintiff has the burden to present sufficient facts that establish: "(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*, 430 Md. at 668.

The evidence at trial showed that appellee lived at the Property with his mother and grandmother from the time of his birth in February 1997 until 2001. Appellee stayed at the Property exclusively until he was approximately eighteen months old. During that period of exclusive residence at the Property, appellee had elevated blood lead levels of 12 µg/dL and 13 µg/dL. Thereafter, for two and one-half years, appellee stayed at the Property

and visited daycare facilities. Competent evidence was adduced showing that the day care facilities were not reasonably probable sources of lead exposure. During this latter time period, appellee had elevated blood-lead levels of 12 µg/dL, 14 µg/dL, 9 µg/dL, and 9µg/dL.

Moreover, appellee's mother testified that there was chipped and peeling paint in the bedroom where appellee slept. The bedroom had a hole in the wall that appellee would pick at. Appellee also spent significant time in the basement with his great-grandfather. Appellee's grandmother testified that there was chipping and flaking paint on the front door, baseboards, windows, basement, and front porch. She claimed that the requests for repairs/painting were ignored by the landlord. The test for lead paint conducted by ARC in 2013 identified lead paint in and around the basement and front porch.

Appellee also produced trial testimony from a lead risk assessor Barnett that the Property contained lead-based paint hazards and from pediatrician Dr. Blackwell-White that the Property was a source of lead exposure and a substantially contributing source of appellee's elevated blood-lead levels.

Given the above evidence, a jury could conclude that the Property was a reasonably probable source of appellee's lead exposure and a substantially contributing factor in his elevated blood-lead levels. Indeed, the evidence supported a finding that the Property was the only source of appellee's lead exposure and elevated blood-lead levels.

Dr. Blackwell-White also opined that the lead exposure at the Property resulting in appellee's elevated blood-lead levels was a substantial contributing factor in causing appellee's injuries. Such opinion satisfied the third link of the causation requirement in a

lead paint case under *Ross*. *See* 430 Md. at 668 ("(3) the link between those blood lead levels and the injuries allegedly suffered by the plaintiff.").

Based on a review of the record in a light most favorable to appellee, we conclude that there was sufficient evidence upon which a reasonable jury could have determined the issue of causation in favor of appellee. Accordingly, we uphold the circuit court's denial of appellants' Motion for Judgment Notwithstanding the Verdict as to causation.

b. Economic Damages

Second, appellants contend that the trial court erred in denying their motion for judgment notwithstanding the verdict as to economic damages because the jury heard inadmissible testimony from Dr. Davis and Dr. Lurito. As stated above, appellants argue that Dr. Davis lacked a sufficient factual basis to opine about appellee's pre-injury vocational potential, and Dr. Lurito's determination of economic damages was similarly inadmissible because he relied on Dr. Davis's report.

"[C]ompensatory damages are not to be awarded in negligence . . . actions absent evidence that the plaintiff suffered a loss or detriment." *Sugarman v. Liles*, 234 Md. App. 442, 471 (2017) (internal quotation marks and citation omitted), *aff'd*, __ Md. __, __, No. 80, Sept. Term 2017 (filed July 31, 2018). The Court of Appeals has explained that "an award for compensatory damages must be anchored to a rational basis on which to ensure that the awards are not merely speculative." *Beall v. Holloway-Johnson*, 446 Md. 48, 70 (2016) (internal quotation marks and citation omitted). Appellants specifically challenge appellee's claimed damages for loss of earning capacity.

We disagree with appellants' contentions and hold that the circuit court did not err in denying the Motion for Judgment Notwithstanding the Verdict as to the economic damages award. As discussed above, we conclude that Dr. Davis's testimony was admissible, and therefore reject appellants' argument that Dr. Lurito's testimony was inadmissible because of its reliance on Dr. Davis. The combined testimonies of Dr. Davis and Dr. Lurito presented a detailed and individualized analysis of appellee's employment prospects and future earnings with deficits and absent deficits. This individual analysis coupled with statistical data permitted a quantification of appellee's loss of earning capacity. Accordingly, appellee submitted sufficient evidence to support an award of economic damages based on a loss of earning capacity.

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