Circuit Court for Baltimore City
Case No. 24-C-21-000128

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2068

September Term, 2022

MAYOR AND CITY COUNCIL OF BALTIMORE

v.

WILLIAM SNYDER

Graeff,
Albright,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: March 29, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

William Snyder, appellee, tripped and fell on uneven pavers on a public sidewalk in front of the building located at 400 East Pratt Street in downtown Baltimore and sustained personal injuries. He filed a negligence action in the Circuit Court for Baltimore City against appellant, Mayor and City Council of Baltimore ("the City"), and two additional parties who are no longer participants in this appeal, namely, PDL Pratt Associates, LLP, and Cushman & Wakefield U.S., Inc., the owner and manager, respectively, of the building located at 400 East Pratt Street. Prior to trial, the circuit court granted summary judgment in favor of PDL Pratt and Cushman & Wakefield based upon the court's conclusion that those defendants owed no duty to Mr. Snyder.[1]

The court, however, denied the City's motions for summary judgment, as well as the City's subsequent motions for judgment. The jury found in favor of Mr. Snyder on his negligence claim against the City and awarded him $700,000 in damages, which was reduced to $400,000 pursuant to the applicable statutory damages cap imposed by Md. Code (1974, 2020 Repl. Vol.), Courts and Judicial Proceedings Article, § 5-303(a)(1). The City now appeals from that judgment, contending that the circuit court erred in denying its motions for summary judgment and for judgment. Specifically, the City raises the following issues:

> I. Whether the circuit court erred in failing to find that the two uneven pavers were a trivial sidewalk defect as a matter of law; and

[1] After the City appealed the final judgment that was entered in the circuit court, Mr. Snyder noted a cross-appeal against PDL Pratt Associates, LLP, and Cushman & Wakefield U.S., Inc. But, after briefing, Mr. Snyder filed a line of dismissal of his cross-appeal. Consequently, PDL Pratt and Cushman & Wakefield are no longer parties to this appeal.

> II. Whether the evidence was insufficient to impute constructive notice of the two uneven pavers to the City under Maryland law, where the only evidence was two Google Street View photographs, taken seven months prior to the accident, there was a complete absence of any evidence that anyone had any knowledge of the two uneven pavers prior to the accident, and every witness that testified on the matter said that they did not notice the two uneven pavers when walking over them prior to the accident.

For the reasons that follow, because we conclude that the issues of triviality and constructive notice were properly submitted to the jury, we shall affirm the judgment of the circuit court.

BACKGROUND

In the afternoon of February 22, 2019, Mr. Snyder, a resident of Pennsylvania, was walking on a public sidewalk adjacent to the building located at 400 East Pratt Street in downtown Baltimore when he tripped and fell on uneven paving stones, sustaining serious injuries to his right elbow. He and two friends—Christian King and his brother, Henry King—were in Baltimore visiting another of the King brothers, Samuel King, who was in the hospital for reasons unrelated to this case. After concluding their visit at the University of Maryland Hospital, the three men drove to a public parking lot, exited their vehicle, and walked in the direction of the National Aquarium. Christian King was walking slightly ahead of the others when Mr. Snyder tripped and fell.

Mr. Snyder did not see what had caused him to trip and fall. Immediately afterward, however, Christian King noticed that there were several uneven paving stones on the sidewalk near Mr. Snyder's feet, and he inferred that Mr. Snyder had tripped on the uneven surface. As a result of the fall, Mr. Snyder suffered significant, permanent injuries to his elbow, which required multiple surgeries.

Mr. Snyder and his wife, Nancy Snyder, filed a complaint in the Circuit Court for Baltimore City against the Mayor and City Council of Baltimore (as well as PDL Pratt, and Cushman & Wakefield), alleging that the defendants had negligently failed to maintain the sidewalk where Mr. Snyder had tripped and fallen, and further claiming loss of consortium.[2] The case proceeded to discovery, and there were three witnesses whose depositions are particularly pertinent to this appeal: David Leibowitz, the corporate designee for PDL Pratt; Myron Feaster, the corporate designee for Cushman & Wakefield; and Kurt Callahan, the designee for the City.

Mr. Leibowitz testified on deposition that the section of sidewalk at issue was "suboptimal" because the pavers "were not level[,]" but he declined to say that the condition of the sidewalk was "dangerous[.]" He further acknowledged that, if he had been aware of the defective pavers, he would have "let the management know" and he would have "expect[ed] them to call 311."

Mr. Feaster testified on deposition that the defective pavers were "uneven" and that they created a "dangerous condition[.]"

Mr. Callahan testified on deposition that, if he had been aware of the condition of the pavers as depicted in the photographs, he would have notified the City's Maintenance Department "and asked them to repair the pavers."

After discovery had been completed, both the City and the other defendants filed motions for summary judgment. As relevant here, the City alleged in its motion that the

[2] For simplicity, we shall refer to Mr. Snyder as the sole plaintiff here despite the consortium claim.

defect in the sidewalk was "trivial" and asserted that the City did not have notice—either actual or constructive—of the defect prior to the accident. Mr. Snyder filed oppositions to the motions. Among the exhibits attached to Mr. Snyder's oppositions were a set of photographs and hash values obtained from Google LLC, indicating that the Google Street View photographs depicting the sidewalk where Mr. Snyder had fallen were taken in July 2018. Mr. Snyder also filed a close-up photograph of the defective pavers, taken a few days after the accident by Mr. Snyder's daughter.

Following a virtual hearing, the circuit court granted summary judgment in favor of PDL Pratt and Cushman & Wakefield, explaining that it was undisputed that the City owns the sidewalk at issue and that the building owner and manager did not cause the defect in the pavers. The court concluded that, only if those defendants had caused the defect would they have owed a duty to users of the sidewalk.

But the court denied the City's motion for summary judgment and explained:

> The next issue is best framed by the Court, first whether there's a genuine dispute of material fact as to whether a defect existed for a substantial length of time as to give the City constructive notice of the defect, as to Defendant 3, Mayor and City Council of Baltimore's motion for summary judgment.
>
> An issue to be determined as well is whether the alleged defect was trivial, as opposed to open and notorious.
>
> The Court first considers the certified Google document photos, not the photos or photograph taken by the Plaintiff's relative. I want to be clear on that. That photograph, which has been the subject of no small discussion here today, presents to this Court as presenting a defect which is not trivial.
>
> It was a minimum two inches deep, with regard to the concave of the paver and perhaps two, if not more, inches high on the outside.

> Yes, there is evidence that no one saw the defect before the Plaintiff fell, neither he nor his companion. His companion has offered evidence that that is the area where he fell. And that is the only area that had a defect per the Google photo.
>
> The City had constructive notice of the defect, given the date of the Google photo. It is a jury question as to whether the Plaintiff contributed to his injuries through the failure to exercise ordinary care given the depth of the defect as [it's] depicted.
>
> Upon that, respectfully, [the] Mayor and City Council of Baltimore's motion for summary judgment is denied.

Immediately prior to the start of the jury trial, the City renewed its motion for summary judgment, but the circuit court once again denied the City's motion, declaring that the issues raised were "for the jury to decide."

At trial, Mr. Snyder and Christian King testified via video deposition, consistently with the facts as summarized above. Mr. Snyder also presented testimony from Mr. Callahan, as well as Nancy Snyder, and his treating physician.

The City moved for judgment after the close of Mr. Snyder's case, contending, among other things, that the defect in the pavers was trivial and that there was insufficient evidence of constructive notice of the defective pavement. Following argument by the parties, the circuit court denied the City's motion for judgment, declaring:

> All right. The Court has considered all of the issues raised by the defense in this matter and quite frankly the Court has been thinking about it throughout the entire trial, these exact issues.
>
> The Court finds that these are matters of, most of them are matters of fact that need to be decided by the jury, so the Defense's motion is denied.

The City then presented evidence, and thereafter renewed its motion for judgment, raising substantially the same arguments it previously had raised. The circuit court once again denied the motion, explaining:

> And the Court has considered your argument and as I indicated before has pondered it for quite some time. Actually, when I first received this case and I started reading it it's amazing how -- Anyway, and I started reading it, but after hearing all of the evidence and the argument the Motion is denied.

Following jury instructions and closing arguments, the case was submitted to the jury, which returned a verdict for Mr. Snyder and awarded damages of $700,000. Invoking the damages cap in Courts and Judicial Proceedings Article, § 5-303(a)(1), the City filed a motion for remittitur, which the circuit court granted, reducing the judgment to $400,000.

The City noted this timely appeal.

DISCUSSION

Standard of Review

Motion for Summary Judgment

"The court shall enter judgment in favor of or against the moving party" on a motion for summary judgment "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). If there is a genuine dispute of a fact (or facts) material to the outcome of the case, then summary judgment is improper. *Dashiell v. Meeks*, 396 Md. 149, 168-70 (2006). If there is no genuine dispute of any material fact and the circuit court grants the motion, we then review the summary judgment that was

entered to "determine whether the court was legally correct." *DeBoy v. City of Crisfield*, 167 Md. App. 548, 554 (2006).

But a trial court exercises "discretionary power 'when affirmatively denying a motion for summary judgment or denying summary judgment in favor of a full hearing on the merits.'" *Webb v. Giant of Md., LLC*, 477 Md. 121, 135 (2021) (quoting *Dashiell*, 396 Md. at 164). That discretionary power "'exists even though the technical requirements for the entry of such a judgment have been met.'" *Id.* (quoting *Metro. Mortg. Fund, Inc. v. Basiliko*, 288 Md. 25, 28 (1980)). Accordingly, we review the *denial* of a motion for summary judgment for abuse of discretion. *Id.* at 135-36; *Dashiell*, 396 Md. at 165.

Motion for Judgment

"A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence." Md. Rule 2-519(a). "The moving party shall state with particularity all reasons why the motion should be granted." *Id.* In ruling on the motion, "the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made." Md. Rule 2-519(b). "A party who moves for judgment at the close of the evidence offered by an opposing party may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. In so doing, the party withdraws the motion." Md. Rule 2-519(c).[3]

[3] The City moved for judgment after the close of the plaintiff's case, and, following the circuit court's denial of its motion, presented evidence. Then, after the close of all the evidence, the City renewed its motion for judgment, and the circuit court once again denied (continued…)

The Supreme Court of Maryland reviewed the standards applicable to a trial court's grant of a motion for judgment, and provided the following guidance, in *Thomas v. Panco Management of Maryland, LLC*, 423 Md. 387 (2011):

> We review the trial court's grant of Respondents' motion for judgment *de novo*, considering the evidence and reasonable inferences drawn from the evidence in the light most favorable to the non-moving party. *See* Md. Rule 2-519; *C & M Builders, LLC v. Strub*, 420 Md. 268, 290 (2011); *Scapa Dryer Fabrics, Inc. v. Saville*, 418 Md. 496, 503 (2011). Under Maryland Rule 2-519, when a defendant moves for judgment based on an affirmative defense, or upon the legal insufficiency of the plaintiff's evidence**, the trial judge must determine if there is "any evidence, no matter how slight, that is legally sufficient to generate a jury question," and if there is, the motion must be denied and the case submitted to the jury**. *C & M Builders*, 420 Md. at 290 (quoting *Tate v. Bd. of Educ.,* 155 Md. App. 536, 545 (2004)). It is only when the "facts and circumstances only permit one inference with regard to the issue presented," that the issue is one of law for the court and not one of fact for the jury. *Scapa*, 418 Md. at 503. An appellate court must review the grant or denial of a motion for judgment by conducting the same analysis as the trial judge. *C & M Builders*, 420 Md. at 291; *Tate*, 155 Md. App. at 545.
>
> Thus, the grant of Respondents' motion for judgment based on assumption of the risk was appropriate only if all evidence and reasonable evidentiary inferences, viewed in a light most favorable to Petitioner, could have led only to the conclusion that she assumed the risk of her injuries. *C & M Builders,* 420 Md. at 291.

Id. at 393-94 (emphasis added; footnote omitted); *accord Steamfitters Loc. Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704, 726 (2020) ("An appellate court performs the same task as the trial court, affirming the denial of the motion for judgment, if there is any evidence,

its motion. Therefore, the City effectively withdrew its motion for judgment after the close of the plaintiff's case, and only the court's denial of the motion after the close of all the evidence is before us. *Est. of Blair v. Austin*, 469 Md. 1, 29 n.1, 31 (2020) (Watts, J., concurring); *id.* at 41 n.1 (Getty, J., dissenting); *Gen. Motors Corp. v. Seay*, 388 Md. 341, 351 (2005).

no matter how slight, that is legally sufficient to generate a jury question." (internal quotation marks and citations omitted)); *Nat'l Union Fire Ins. Co. of Pittsburgh v. Fund for Animals*, *Inc.*, 451 Md. 431, 457 (2017) ("'[T]he trial judge must determine if there is any evidence, no matter how slight, that is legally sufficient to generate a jury question, and if there is, the motion must be denied and the case submitted to the jury. . . . An appellate court must review the grant or denial of a motion for judgment by conducting the same analysis as the trial judge.'" (quoting *Thomas*, 423 Md. at 394)).

We note that several Maryland cases have reviewed on appeal whether a trial court has committed error by failing to grant a motion for judgment based upon the defendant's claim that the plaintiff was contributorily negligent as a matter of law. The cases have consistently held that the motion for judgment must be denied unless there is no evidence that would permit a finding in favor of the plaintiff on the issue. *See, e.g.*, *Sanner v. Guard*, 236 Md. 271, 274 (1964) ("It is fundamental that the issue as to the existence *vel non* of negligence, whether primary or contributory, should ordinarily be left for determination by the jury. Each case must be judged on its own facts, and the court should rule as a matter of law that there is no contributory negligence only where the circumstances are such that reasonable minds could not reach differing conclusions on the issue.").

Similarly, in *Willis v. Ford*, 211 Md. App. 708 (2013), this Court held that the trial judge did not err in refusing to enter judgment for the defendant based upon the claim of contributory negligence "because [the defendant] failed to show that the only factual and legal conclusion available from the evidence was that the [plaintiffs] were contributorily

negligent as a matter of law." *Id*. at 719. Quoting *Scapa Dryer Fabrics*, 418 Md. at 503, we explained that, in ruling on a motion for judgment as a matter of law,

> the trial court must determine whether "the facts and circumstances only permit one inference with regard to the issue presented." [*Scapa Dryer Fabrics*, 418 Md. at 503.] On appeal, a challenge to the trial court's ruling on a motion for judgment notwithstanding the verdict is confined to whether the evidence rose above speculation, hypothesis, and conjecture in order to support the jury's verdict. *Id*.

Willis, 211 Md. App. at 715.

By analogy, in a case such as this in which the appellant asserts that the trial judge erred in *declining* to grant a motion for judgment, we will affirm the trial judge's decision unless we are persuaded that the evidence and all reasonable evidentiary inferences, viewed in the light most favorable to the appellee, permit only the conclusion that the appellant had no legal liability for the appellee's damages. *See, e.g., Steamfitters*, 469 Md. at 736 ("We hold that, under the facts of this case, [the appellant] had a duty to exercise reasonable care to maintain its property in a manner that would not cause an unreasonable risk of the spread of fire from cigarette butts habitually discarded in combustible material. Accordingly, we agree with the [Appellate Court of Maryland] that the trial court did not err in denying [the appellant's] motion for judgment and permitting the jury to resolve the negligence claim."); *Scapa Dryer Fabrics*, 418 Md. at 505 (ruling that "the denials of [the defendant's] motions for judgment and JNOV were not in error" because the evidence, "[w]hen viewed in the light most favorable to [the plaintiff] . . . was legally sufficient to permit a jury question on proximate cause"); *DeMuth v. Strong*, 205 Md. App. 521, 547 (2012) ("In the trial of a civil action, if, from the evidence adduced that is most favorable

to the plaintiff, a reasonable finder of fact could find the essential elements of the cause of action by a preponderance standard, the issue is for the jury to decide, and a motion for judgment should not be granted.").

Municipal Corporation's Duty to Maintain Public Sidewalks

"Generally, a municipal corporation owes a duty to persons lawfully using its public streets and sidewalks to make them reasonably safe for passage." *Smith v. City of Baltimore*, 156 Md. App. 377, 383 (2004). *Accord Mayor of Baltimore v. Wallace*, ___ Md. App. ___ , ___, No. 1644, Sept. Term, 2022, slip op. at 23 (filed February 1, 2024) ("'[L]ocal governments are liable for damages if their negligence in performing this function is the proximate cause of injury or damage to those who travel on the streets or walkways.'" (quoting Assistant Attorney General Richard E. Israel)).

That duty, however, "is not absolute[,] and the municipality is not an insurer of safe passage." *Smith*, 156 Md. App. at 383. Here, the City argues that the circuit court should have granted judgment in its favor as a matter of law for one of two reasons: (1) the defect in the sidewalk was at most "trivial"; and (2) the City had no notice of a defect in the sidewalk where Mr. Snyder fell. The City places emphasis on the rulings in favor of the defendant municipalities in *Martin v. Mayor & Council of Rockville*, 258 Md. 177, 182 (1970), and *Smith*, 156 Md. App. at 383.

Mr. Snyder responds by arguing that his evidence was sufficient to create a jury question on these issues. He contends the evidence showed that the variation in the level of the pavers was not trivial and that the condition had been present long enough for the City to be on constructive notice of the need for maintenance. He places emphasis on the

legal analysis of the Supreme Court of Maryland in *Keen v. City of Havre de Grace*, 93 Md. 34, 39 (1901).

In the *Smith* case, 156 Md. App. at 384, this Court quoted the following "often repeated" passage from *Keen*:

> It is not questioned that the city of Havre de Grace has power to grade and repair its streets and sidewalks (Act 1890, ch. 180); and when such is the case, the municipality is bound to maintain them in safe condition, and if it negligently fail so to do and thereby persons, acting without negligence on their part, are injured, it is liable to respond in damages for all injuries caused by its neglect. Before, however, the municipality can be made liable in any case, it must be shown that it had actual or constructive notice of the bad condition of the street. As was well said in the case of *Todd v. City of Troy*, 61 N.Y. [506,] 509 [(1875)]: "By constructive notice is meant such notice as the law imputes from the circumstances of the case. It is the duty of the municipal authorities to exercise an active vigilance over the streets; to see they are kept in a reasonably safe condition for public travel. They cannot fold their arms and shut their eyes and say they have no notice. After a street has been out of repair, so that the defect has become known and notorious to those traveling the street, and there has been full opportunity for the municipality through its agents charged with that duty, to learn of its existence and repair it, the law imputes to it notice and charges it with negligence." If the defect be of such a character as not to be readily observable, express notice to the municipality must be shown. But if it be one which the proper officers either had knowledge of, or by the exercise of reasonable care and diligence might have had knowledge of, in time to have remedied it, so as to prevent the injury complained of, then the municipality is liable.

Keen, 93 Md. at 38-39 (citations omitted).

In *Keen*, there was eyewitness testimony that the hole in the sidewalk that caused Keen's fall had been present for two or three weeks. *Id.* at 40. The Supreme Court held that that was a sufficient period of time to create a jury question as to constructive notice. The Court reversed the directed verdict that had been entered in favor of the municipality, explaining:

> Now negligence is usually a question of fact for the jury; and it is only where the "facts are undisputed or where only one reasonable inference can be drawn from them," that the question is one of law for the Court. Moreover a case should not be withdrawn from the jury, if there be some reasonable evidence of the existence of facts requisite to fix liability upon the defendant.
>
> In view of this statement of the law, it follows that if there had gone to the jury evidence from which the jury could reasonably find that there was a dangerous hole in the sidewalk, of which the defendant had or ought to have had knowledge, and that such hole was the proximate cause of the accident, the prayer [for a directed verdict] should not have been granted. Without discussing the evidence on these points, it is sufficient to state that divers witnesses testify to the existence and character of the hole. Mrs. Suter said she had seen it there for three weeks before the accident; George Carroll that it had been there, "maybe a couple of weeks or so," and John Suter, "two or three weeks." There is further proof that the hole was in the bed of the sidewalk, and not hidden or obscured by anything from the full view of any one who passed along that part of the walk. There was also evidence that the plaintiff passing there on a dark night, without knowledge of the defect, stepped into the hole and "was thrown backward," and fell into the gutter, and thereby was injured. If the jury believed this testimony, they would unquestionably be justified in finding that the municipality was negligent, in not repairing the defect, if it, or its proper officers or agents, knew of its existence; and if they did not have knowledge of its existence then they did not exercise that active vigilance which was incumbent on them, to see that the sidewalk was kept in a reasonably safe condition for public travel.
>
> As this is the only question presented by the record it follows that the judgment must be reversed and the cause remanded.

Id. at 40-41 (citations omitted).

This Court explained in *Smith* that, "when read in context[,]" *Keen's* reference to active vigilance "does not impose a duty on municipalities to conduct regular inspections of their roadways. Rather, the language explains the circumstances in which municipalities will be found to be on constructive notice of defects in their roadways, and the rationale underlying the concept of constructive notice." *Smith*, 156 Md. App. at 385. We said in *Smith* that a municipality "must perform repairs upon being notified of a 'bad condition of

the street.'" *Id*. at 386 (quoting *Keen*, 93 Md. at 39). "[T]herefore, when the evidence shows that a 'bad condition' is such that, by virtue of its nature or the length of time it has existed, the municipality would have learned of it by the exercise of due care, the municipality may be found to have constructive knowledge of its existence." *Id*. Because there was no evidence in *Smith* "showing that the defect [in the crosswalk signal] had existed for a sufficient length of time that it would have been reported to City authorities, and therefore would have been known to the City, had the City been abiding by its practice of responding to citizen reports of adverse roadway conditions[,]" *id*., summary judgment in favor of the City was appropriate in *Smith*.

I. Triviality

The City asserts that the trial court erred in failing to rule as a matter of law that the defect in the sidewalk was too trivial for the jury to consider. The City reproduces photographs, which were attached to Mr. Snyder's oppositions to the motions for summary judgment and subsequently were admitted into evidence, depicting what the City asserts amount to "only a minor elevation visible in only two of the pavers out of more than a dozen pavers making up a single row across the sidewalk and out of the hundreds (if not thousands) of pavers making up the entire block's otherwise smooth sidewalk." The City argues in its brief that "[a]bsolutely nothing about the sidewalk in the pictures appears to present any greater danger than might be typically expected on any sidewalk anywhere in Maryland." Upholding the judgment in this case, in the City's view, would be tantamount

to imposing on the City a duty as an insurer of safe passage on public sidewalks, contrary to settled Maryland law.

Mr. Snyder counters that the evidence established that the defect in the sidewalk was not trivial. He points out that the court and the jury were shown larger color versions of the same photographs reproduced in the City's brief which depicted more clearly the defect in the sidewalk. At the summary judgment stage of the proceedings, the court could rely upon the deposition testimony of several witnesses who had observed the defect (post-accident), including Mr. Leibowitz, the corporate designee for PDL Pratt; Mr. Feaster, the corporate designee for Cushman & Wakefield; and Mr. Callahan, the designee for the City. At trial, the jury heard testimony from Mr. King, who had accompanied Mr. Snyder on the day of the accident, and excerpts from Mr. Feaster's deposition, the former of which described a "two inch[]" difference in elevation in the sidewalk, and the latter of which described the defective pavers as creating a "dangerous condition[.]" According to Mr. Snyder, this evidence was sufficient to sustain the trial court's rulings that the condition of the pavers was a tripping hazard and was not trivial as a matter of law, contrary to the City's assertion.

The City contends that the uneven pavers on which Mr. Snyder fell "are the kind of trivial defect that Maryland law says pedestrians must expect in sidewalks."[4] In support, it cites decisions such as *Martin*, 258 Md. 177; *President & Comm'rs of Town of Princess*

[4] The City did not request a jury instruction on triviality, and no such instruction was given. We shall assume, without deciding, that the City did not thereby waive its argument that the evidence was insufficient for the jury to conclude that the defect was not trivial.

Anne v. Kelly, 200 Md. 268, 272 (1952); *Leonard v. Lee*, 191 Md. 426, 432-33 (1948); and *Cordish v. Bloom*, 138 Md. 81, 84-85 (1921). The City urges us to hold that the circuit court was obligated to rule as a matter of law that the defect in the sidewalk in this case was too trivial for the jury to consider. In support of that contention, the City asserts that the trial judge was required to make the dispositive ruling on triviality, and the City directs our attention to the fact that the *Martin* Court affirmed such a ruling by a trial judge by affirming the entry of a judgment notwithstanding the verdict in *Martin*.

The *Martin* Court quoted with approval language from the *Kelly* case where it had said: "While a municipality must generally respond in damages for injuries caused by its negligence, acts or omissions, especially in connection with the public streets and sidewalks under its care and control, there must be a limit to such liability, and it cannot be held responsible for injuries caused by every depression, difference in grade, or unevenness in sidewalks." 258 Md. at 182 (internal quotation marks and citation omitted). The *Martin* Court also quoted the following language from *Kelly*: "The better considered authorities, however, hold that, on the facts in each case, the court should determine whether there is sufficient evidence of the gravity of the alleged defects to permit a jury to consider the question of negligence. Clearly the matter cannot be reduced to a mathematical formula." *Id.* at 183 (emphasis, quotation marks, and citations omitted). After reviewing several Maryland cases, the *Martin* Court concluded that the trial judge had reached the correct result in that case by entering a judgment for the municipality notwithstanding the jury's verdict. *Id.* at 185.

But we observe that similar language from the Maryland appellate opinions that led the *Martin* Court to affirm the trial judge's decision to override the jury's finding of negligence on the facts shown in that case supported the opposite result in *Kelly*, where the municipality had "argue[d] that the depression was slight, that the town is not an insurer, and that the sidewalk was in a reasonably safe condition, as evidenced by the absence of any record of prior accidents." 200 Md. at 271. In *Kelly*, the Supreme Court affirmed the judgment in favor of the plaintiff.

We are persuaded that the trial court did not err by denying the City's various motions for judgment (whether for pretrial summary judgment or motions for judgment during the trial). The court's ruling was consistent with the legal principle stated as follows in *Kelly*: "[O]n the facts in each case, the court should determine whether there is sufficient evidence of the gravity of the alleged defects to permit a jury to consider the question of negligence." *Id.* at 273 (quotation marks and citation omitted).

Our reading of *Martin* leads us to conclude that, generally, triviality is a factual question for the jury, much like whether a plaintiff in a negligence action is contributorily negligent. *See Martin*, 258 Md. at 179 (explaining that the trial court "fully charged the jury on burden of proof, negligence, contributory negligence, constructive notice on the part of the City, measure of damages and triviality").

In *Martin*, the trial judge had reserved ruling on the defendant's motion for judgment, and then instructed the jury on triviality and submitted the case to the jury.[5] *Id.* After the jury rendered a verdict for the plaintiff, *id.* at 178, the trial court granted the defendant's motion for judgment notwithstanding the verdict on the ground that the defect at issue was trivial. *Id.* at 181. In our view, *Martin* simply illustrates the general principle that, when the evidence is such that no rational jury could reasonably have found, by a preponderance of the evidence, an element of the plaintiff's case, then the court must grant judgment in favor of the defendant. *See Steamfitters*, *supra*, 469 Md. at 726 (declaring that an appellate court will reverse a trial court's denial of a motion for judgment "only if the facts and circumstances permit but a single inference as relates to the appellate issue presented" (quotation marks and citation omitted)). *Martin* does not hold that triviality is always a legal question that must be decided by the court.

With respect to the dispositive question here—which, as noted in *Steamfitters*, is whether there was "any evidence, no matter how slight, that [was] legally sufficient to generate a jury question[,]" 469 Md. at 726 (quotation marks and citations omitted)—we conclude that there was sufficient evidence to submit the issue to the jury.

[5] Presumably, the trial court in *Martin* would not have instructed the jury on triviality if that question was always a purely legal matter. But, in this case, the City did not request a jury instruction on triviality, and the circuit court did not give such an instruction. Therefore, the propriety of the court's failure to instruct the jury on triviality is not properly raised, Md. Rule 2-520(e), and we shall not address it further.

The jury saw photographic evidence depicting the defective pavement. And the jury heard testimony from several witnesses—Messrs. Callahan, Feaster and King—describing the condition of the pavers as a dangerous tripping hazard.

Mr. Callahan, who was "the designee for [the] Defendant, Mayor and City Council of Baltimore[,]" testified during the plaintiffs' case. Mr. Callahan confirmed that he was an "Inspections Associate Supervisor for the Footways Department for the Department of Transportation for the City," and acknowledged that he had "been with the Footways Department in some capacity for over 16 years[.]" He indicated that he was familiar with the sidewalk at 400 East Pratt Street, located at the corner of Pratt and Gay Streets, and he agreed that it is a "well-traveled area of the City[.]" When asked if the City had performed any "preventative maintenance . . . to that area of the sidewalk[,]" he replied: "Not to my knowledge." He also gave the following testimony—which the jury was entitled to consider in the light most favorable to Mr. Snyder—regarding the alleged defect in the pavers.

> Q [By Counsel for Mr. Snyder] . . . [Y]ou would agree, as the inspection associate supervisor for the Footways Department of the City, and sitting here on behalf of the City, that a raised or sunken paver is a defective condition on a sidewalk?
>
> A [By Mr. Callahan] Yes.
>
> * * *
>
> Q Based on your training and your experience, **you would define a trip hazard as a difference of two to three inches?**
>
> A **Anything that you can get my [sic] foot caught in I consider a trip hazard. So anything raised, yes.**

* * *

Q Mr. Callahan, I'm showing you what was marked as Exhibit 27. It's been admitted into evidence. . . . You've seen this picture before, correct?

A Yes.

Q Okay. And it's a picture of two pavers?

A Well, it's a bunch of pavers, but yes.

Q Okay. It's a picture of two pavers, um, that are sunken in the middle and raised on the outside, correct?

A Does appear. Yes.

* * *

Q Based on your training and your experience as the inspection associate supervisor for the Footways Department, and being in that department for 16 years, is that something you would have noticed as a hazard if you would have walked by?

[Objection overruled]

MR. CALLAHAN: Yes.

* * *

If I was notified of this and went to inspect it, yes, I would write that up.

* * *

Q **You would agree that that is a defective sidewalk?**

A **Yes.**

Q Okay. **And that it should be fixed?**

A **Yes**.

* * *

Q Mr. Callahan, I am handing you what's been marked as Exhibit 28 in this trial . . . . [L]ooking at that picture, would you agree that that area, that's depicted in Exhibit 28, is within the public sidewalk that's owned by Baltimore City?

A Yes.

* * *

Q Okay. And **if you saw those pavers,** um, in Exhibit 28 **you would have sent maintenance and asked them to repair it**?

A **Yes**.

(Emphasis added.)

During the defendant's case, the City read portions of the deposition of Myron Feaster, who was a representative of the building manager, Cushman & Wakefield. Mr. Feaster confirmed that the sidewalk in that location "gets a significant amount of foot traffic[.]" Although he denied noticing the variation in the pavers prior to Mr. Snyder's fall, when shown the photograph that was introduced at trial as Exhibit 27, Mr. Feaster agreed that the pavers shown in that photograph presented a dangerous condition:

Q [By Counsel for Mr. Snyder] . . . Does Cushman & Wakefield have an opinion as to whether the pavers that are in the center of Exhibit [27] depict pavers in a dangerous condition?

A [By Mr. Feaster] I would say they are uneven, yes.

Q So you would agree that these pavers present a dangerous condition?

A I would agree that they are uneven, yes.

Q Okay. So that's not – My question is whether you agree that they are, that they present a dangerous condition, yes or no.

A Yes.

* * *

Q If you had noticed pavers in the condition of Exhibit [27] or an employee of Cushman & Wakefield had noticed pavers in that condition what, if anything, would be done?

A We would probably call 311.

Q And report to 311 with an expectation that they would repair it?

A That the City would repair it, yes.

During the plaintiff's case, the jury also heard Mr. Christian King give an estimate of amount of variation in the level of the sidewalk pavers that appeared to be the cause of Mr. Snyder's fall:

Q [By Counsel for Mr. Snyder] Do you know based upon your own observation the difference in elevation between the majority of the sidewalk and where the concrete bricks dipped?

A [By Mr. King] You know, I can't give you an exact, but I would say maybe about two inches. Two or three inches. In that range.

Q And how many bricks were involved in the change in elevation?

A If I remember correctly it was two or three. Right around that. Between two and four.

Considering all the evidence in a light most favorable to Mr. Snyder, we cannot conclude, as a matter of law, that the defective pavers were too trivial to create a dangerous condition. In other words, a reasonable finder of fact could have found by a preponderance of the evidence that the defect in the pavement was not trivial. Therefore, the circuit court

did not err in denying the City's motion for judgment. *Steamfitters*, 469 Md. at 726. This is not a situation where "the facts and circumstances permit but a single inference as relates to the appellate issue presented." *Id.* (quotation marks and citation omitted).[6]

II. Constructive Notice

We reach a similar conclusion with respect to the City's contention that the circuit court erred in finding that there was sufficient evidence of constructive notice to generate a jury question. The City asserts that, although existence of a defect for a sufficient amount of time prior to the plaintiff's injury is a necessary condition to establish constructive notice, the circuit court in this case appeared to conflate a necessary condition with a sufficient condition. In other words, the City urges us to construe *Smith* to permit a finding of constructive notice only where the plaintiff can prove that a defective condition "pre-existed the plaintiff's injury for enough time so as to have made it [i.e., the defect] a matter of common knowledge to the townspeople," quoting *Smith*, 156 Md. App. at 384. But we also stated in *Smith*, *id*. at 386, that constructive knowledge on the part of the municipality may be found "when the evidence shows that a 'bad condition' is such that, by virtue of its nature **or** the length of time it has existed, the municipality would have

[6] Nor did the circuit court abuse its discretion in denying the City's motions for summary judgment. At the time the court ruled on those motions, in addition to the photographic evidence before the court at that juncture, it also could consider the deposition testimony of Mr. Leibowitz, Mr. Feaster, and Mr. Callahan, which we summarized previously. The City focuses on the circuit court's declaration that the depth of the depression in the sidewalk was "a minimum two inches deep," an estimate the City characterizes as "absurd[.]" But the *Kelly* Court noted that '"the gravity of the alleged defects' . . . cannot be reduced to a mathematical formula." 200 Md. at 273 (quoting *Leonard*, 191 Md. at 435).

learned of it by the exercise of due care[.]" (Emphasis added.) The City's suggestion that constructive notice requires that the defect become a matter of common knowledge is not supported by the *Smith*.

The City asserts three principal arguments why the circuit court erred in finding sufficient evidence of constructive notice to submit the case to the jury. First, it contends that, although "the unevenness in the two pavers" was "discernable by those actively looking for it," it was "so minor as to not be 'readily observable' to passersby." Second, the City contends that there was "no evidence that the two uneven pavers were known and notorious, or even common knowledge, prior to the accident." And finally, the City contends that, "[g]iven their minor nature, there was no evidence that seven months would be enough time for the two uneven pavers to become known and notorious, or even common knowledge."

Regarding this last contention, the City maintains that the advent of applications such as Google Street View has created a new circumstance, namely that, for the first time, it is possible, without direct human intervention, to present visual evidence of defective conditions in pavement. According to the City, prior to "the advent of Google Street View in 2007, the vast majority of evidence of a defect's pre-accident existence came in the form of human witnesses testifying that they, and possibly others, had noticed a defect at some point in the past." There was, therefore, "relatively little reason for cases to parse the distinction between evidence of a defect *existing* for a certain period of time and evidence of a defect *being known* to people for that time." According to the City, "trial courts developed a habit, not grounded in logic or precedent, of treating evidence of pre-accident

existence of a defect for a certain period of time as tantamount to evidence of public knowledge of that defect's existence for that amount of time." But now, the City urges, when a party relies upon such machine-generated evidence to prove the existence of a defect prior to an accident and constructive notice, we should require "an extra step[,]" and require that a party must introduce evidence, either direct or circumstantial, that a *person* had pre-accident knowledge that the defect existed.

Mr. Snyder counters that the length of time the defect pre-existed the accident was itself sufficient evidence for the jury to find constructive notice. According to Mr. Snyder, the Google Street View photographs established that the defective pavers existed at least seven months prior to his fall. And, he asserts, the evidence showed that City employees had been at that location (for other reasons) at least twice during that time period.[7] He asserts that the City "cannot 'fold its arms and shut its eyes' [paraphrasing *Keen*, 93 Md. at 38-39] to defects that existed for months simply because the defects were not reported via the 311-reporting system[,]" a system which he says "most citizens are unaware of as a reporting mechanism[.]"[8]

Mr. Snyder did not produce evidence that the City had *actual* notice of the defective pavers prior to Mr. Snyder's fall. Consequently, the dispositive issue is whether there was

[7] It appears that Mr. Snyder obtained that information from City 311 records.

[8] It is undisputed that the City relies upon the 311 reporting system to be informed of hazardous conditions on its sidewalks and streets rather than conducting periodic inspections.

sufficient evidence that the City had *constructive notice* of the defective pavement for the trial judge to submit the issue to the jury. We conclude that there was.

As we said in *Smith*,

> [w]hether the municipality performs routine inspections or relies on citizens' reports to discover "bad conditions," it cannot avoid notice by turning a blind eye; therefore, when the evidence shows that a "bad condition" is such that, **by virtue of its nature or the length of time it has existed**, the municipality would have learned of it by the exercise of due care, the municipality may be found to have constructive knowledge of its existence.

Smith, 156 Md. App. at 386 (emphasis added). But, even if we followed the City's suggestion (which we do not) and replaced "or" in that quote with "and," we would arrive at the same conclusion. As noted above, the *Keen* Court held: "[I]f [the defect] be one which the proper officers either had knowledge of, or **by the exercise of reasonable care and diligence might have had knowledge of, in time to have remedied it, so as to prevent the injury complained of, then the municipality is liable**." 93 Md. at 39 (emphasis added).

The sidewalk at issue is in the downtown business district, approximately one block from the National Aquarium.[9] (Indeed, the City acknowledges that, at the time of the accident, there was "a CVS Pharmacy, a Nalley Fresh, a Chick-Fil-A, and a bank" in the same block as the defective sidewalk, which it describes as a "busy section of Pratt Street[.]") After viewing the photographic evidence and hearing the witnesses describe the condition of the pavers as being dangerous and in need of repair, the jury reasonably could

[9] We may judicially notice that the National Aquarium is located at 501 East Pratt Street. *See* https://aqua.org/ (last visited Feb. 11, 2024). Md. Rule 5-201(b), (c).

have concluded that the defect was such that, by the exercise of reasonable care and diligence, the City could have learned of the issue in time to repair the sidewalk before Mr. Snyder's fall.

The City contends that, because there was no evidence that anyone had reported the defective pavers through the 311 system during the (at least) seven-month period prior to the accident, the City cannot be charged with constructive notice of a defect no matter how dangerous or how long it existed. In essence, it contends that the possibility that someone could report a defect by calling the 311 system absolves the City of any duty to maintain any sidewalks for which it could receive a complaint via the 311 system until such time as some person calls 311 to report a problem no matter how many months that takes.

But the jury was entitled to draw a different inference—that the 311 system failed, at least in this instance, to fulfill its intended purpose of notifying the City of hazardous conditions. And the jury heard the City's representative admit that the City had performed no preventative maintenance whatsoever at this location because the City only responds to complaints submitted via the 311 system. "[D]rawing inferences is for a trier of fact, which in this case was the jury." *Latz v. Parr*, 251 Md. App. 442, 465 (2021). "If reasonable persons could disagree as to what the facts are, or the inferences and conclusions to be drawn from undisputed facts, the question is one for the trier of the facts." *Cnty. Comm'rs of Anne Arundel Cnty. v. Cole*, 237 Md. 362, 366 (1965).

Under all the circumstances here, we hold that there was at least "slight" evidence, *Steamfitters*, 469 Md. at 726, that "by virtue of its nature" *and* "the length of time" the defective condition pre-existed the accident, the City "would have learned of" the defective

condition of the pavers "by the exercise of due care[.]" *Smith*, 156 Md. App. at 386. Therefore, there was sufficient evidence for the trial court to submit to the jury the issue of whether the City had constructive knowledge of the hazardous condition. The circuit court did not err in denying the motion for judgment; nor did the circuit court abuse its discretion in denying the City's previous motions for summary judgment.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY MAYOR AND CITY COUNCIL OF BALTIMORE.