Circuit Court for Prince George's County
Case No. CAL1702263

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2122

September Term, 2018

ADAM CARRIKER

v.

PRO-FOOTBALL, INC.

Wright,
Arthur,
Wells,

JJ.

Opinion by Wells, J.

Filed: November 14, 2019

A jury sitting in the Circuit Court for Prince George's County considered evidence of whether appellant, Adam Carriker, suffered an occupational disease to his left ankle arising from his employment with the Washington Redskins professional football team (hereafter "the Redskins"), appellee. The jury gave inconsistent answers to the two questions presented on the verdict sheet. For reasons that shall be discussed, the court twice instructed the jury that they should reconsider their answers. Ultimately, the jury returned a verdict in favor of the Redskins. Carriker filed a motion for a new trial, which the court denied.

Carriker filed a timely appeal and asks whether the circuit court erred in denying his motion for a new trial.[1] For the reasons discussed below, we shall affirm.

FACTUAL AND PROCEDURAL SUMMARY

A. Teams and Injuries

After graduating from the University of Nebraska where he played football as a defensive end, the Saint Louis Rams drafted Adam Carriker in 2007 to play at the same position. During an April 10, 2008 team conditioning session with the Rams he injured his left ankle and, ultimately, underwent surgery on January 18, 2010. While he was recuperating from surgery, in April 2010, Carriker was traded to the Washington Redskins.

[1] In his brief, Carriker posed the following question: Did the circuit court err in refusing to grant Mr. Carriker's motion for new trial, when the initial jury verdict sheet created an inconsistent verdict?

During his first summer with the Redskins, Carriker received daily ankle rehabilitation from the team trainers, as well as a series of injections in his ankle. By August 22, 2010 the trainers considered his ankle condition "resolved," and noted no evidence of Carriker's ankle injury from that time until November 11, 2013. Carriker played for the Redskins during the 2010-2011 and 2011-2012 seasons and they renewed his contract. On September 16, 2012, Carriker tore the tendon in his right quadricep, which prevented him from participating in any practices or games thereafter. In the fall of 2013, while rehabilitating his knee, Carriker's left ankle began to bother him, and a team doctor noted on November 11, 2013 that Carriker had left ankle impingement syndrome. Carriker underwent treatment for his knee only. The Redskins released him in April 2014.

Carriker began rehabilitation for his ankle in summer of 2014, but the impingement persisted, and Carriker ultimately became disabled after he had ankle surgery on December 5, 2014. Carriker was cleared to play approximately three months later, and in April 2015, he tried out for the Atlanta Falcons, but had to retire due to injuries.

B. Carriker Files Two Workers' Compensation Claims

In August 2014, Carriker settled a workers' compensation claim he had previously filed against the Saint Louis Rams citing his January 2010 ankle surgery. In December 2014, days after his second ankle surgery, Carriker filed another workers' compensation claim against the Redskins.

The Workers' Compensation Commission (hereafter "the Commission") held a hearing on March 3, 2016 and issued its final order denying Carriker workers' compensation claim involving the Redskins on January 20, 2017. The Commission found that Carriker "did not sustain an occupational disease arising out of and in the course of employment as alleged to have occurred on December 5, 2014," since he "was diagnosed with left ankle impingement . . . on January 8, 2009," and was "operated on in connection with that diagnosis on January 18, 2010," prior to being hired by the Redskins. The Commission's order concluded that "the proper employer on the date of disablement was the Saint Louis Rams."

C. Judicial Review of the Denial of the Redskins Claim

Carriker appealed the Commission's order to the Circuit Court for Prince George's County. After two days of testimony, including testimony from Carriker[2] and two orthopedic surgeons, one on behalf of Carriker (Dr. Michael Franchetti) and another on behalf of the Redskins (Dr. Ian Weiner),[3] the case was submitted to the jury.

1. The Verdict Sheet

Prior to closing arguments, the court inquired whether counsel had reviewed the verdict sheet, which contained a single question asking whether Carriker suffered an

[2] Carriker admitted upon cross-examination that he never experienced a discrete ankle injury while employed by the Redskins; rather, Carriker argued it was the repetitive, strenuous movements required by his employment with the Redskins that caused a new and separate occupational disease to his ankle.

[3] Neither doctor had ever performed surgery on or otherwise treated Carriker.

occupational disease arising out of his employment with the Redskins. Trial counsel for the Redskins proposed that if the jury was to respond with "yes," they would also need to provide the date of Carriker's disablement. After some debate, Carriker's attorney proposed a compromise: add a second question that would ask the jury to provide the date of disablement *only if* the jury answered "yes" to the first question. The Redskins' attorney and the court agreed to add Carriker's proposed second question. When the court read aloud for counsel its draft of the two questions, Carriker's counsel expressed his concern that the verdict sheet could give rise to an inconsistent verdict. The court responded that if the jurors were to answer in such a way, they would be sent back to deliberate with clarification. Carriker's counsel then suggested an additional phrasing amendment, to which the court agreed. Neither counsel raised further concerns prior to submission of the verdict sheet.

2. Jury Returns Inconsistent Answers

The jury returned a verdict sheet that answered "yes" to the first question—that Carriker suffered an occupational disease that arose when he was with the Redskins—but provided the date of disablement as a date when Carriker was still with the Rams. After reviewing the verdict form, the court immediately informed counsel of the inconsistency and addressed the jury:

> THE COURT: Ladies and gentlemen of the jury, I've had an opportunity to review your verdict and your verdict is inconsistent. The two questions are inconsistent, your answer to the two questions. Question No. 1 says, "Did the Plaintiff sustain

> an occupational disease arising out of and in the course of his employment with the Washington Redskins?" And you answered yes. You then answered the date that he sustained the disability January 18, 2010. That's an inconsistent answer. You need to go back and decide do you want to answer the first question the way you did or the second question the way you did and go back and look at your memory of the facts of when he became employed with the Washington Redskins.

After sending the jurors back to deliberate, the court told counsel that if there was another inconsistent verdict, the court would consider counsels' suggestions for how to proceed.

Shortly after they retired, the jury submitted a written query to the court about the second question: "Why were we presented the date option during Respondent's closing argument if we said 'yes' when it could only be one date?" When the court presented this query to counsel, Carriker's attorney asserted that the jury's initial response to the first question should constitute the verdict. The court disagreed, saying, "Okay. But that's not what we asked them, so that can't be their verdict." Carriker's attorney then alleged that the court's subsequent instruction to the jury effectively told them to find against Carriker. Counsel for the Redskins suggested the opposite: that the re-instruction told the jury to find against the Redskins.

3. The Court Re-Instructs the Jury for the Second Time

The court asked if counsel would like the court to further emphasize that the jury could change their response to either question. The Redskins' attorney answered affirmatively, but Carriker's counsel objected, saying, "the Court should vacate the second

order and enter a verdict consistent." The court then called the jury back into the courtroom.

> THE COURT: I want to be perfectly clear in what I instructed you when you brought me the verdict and what I said is 'this is an inconsistent verdict and that if you answer – if you answered yes to the first question, which you did, saying that this individual's disease occurred while he was employed by the Redskins, then you could not pick the date you used because that date was prior to his employment.'
>
> . . . that's where the inconsistency is. I want to be perfectly clear I sent you back in there to evaluate your first answer and depending on what you agree on your first answer, then you move on to the second question if you have a yes to that first question . . . You must decide the questions based upon the evidence that you heard and the law as I instructed it to you.

After the jury retired to deliberate, the court conferred again with counsel. Carriker's attorney continued to express his concern with the verdict sheet.

> [CARRIKER'S COUNSEL]: The question we asked . . . was about date of disablement and if you look at the jury instruction, the date of disablement is when the occupational disease occurred, and they've found that that date of disablement occurred while he was with the Redskins, right? That's the answer to the first question. It can't be a date before he was with the Redskins. That's the problem with the verdict sheet.
>
> THE COURT: I understand, but by asking both questions, which both parties agreed to have asked, what came back was an inconsistent verdict.
>
> [CARRIKER'S COUNSEL]: I agree 100 percent.

THE COURT: And based upon that, I am asking them to reconsider their decision. If they come back and say they've reconsidered it and the answer is what the answer is, then I will entertain the next motion that one of you will give me.

[CARRIKER'S COUNSEL]: Okay.

The jury returned a verdict responding "no" to the first question asking whether Carriker sustained an occupational disease arising out of the course of his employment with the Redskins. The clerk polled the jury at the request of Carriker's counsel. The clerk then hearkened the jury and entered judgment in favor of the Redskins.

4. The Court Denies Carriker's Motion for a New Trial

Carriker filed a motion for new trial or, in the alternative, to revise judgment, on two (2) separate grounds. *First*, that the circuit court did not have jurisdiction over the second question submitted to the jury because the date of Carriker's disablement had not been heard or decided by the Commission. *Second*, that the court did not follow the appropriate procedures for resolving inconsistent jury verdicts pursuant to Md. Rule 2-522.[4] Carriker contended that the court's re-instruction was unjust in that it emphasized

[4] Carriker's counsel refers to Md. Rule 2-522(b)(3) which states:

> (3) *Return in Open Court*. A verdict shall be returned in open court. If the verdict is in the form of written findings pursuant to subsection (b)(2) of this Rule, the verdict sheet shall be handed to and examined by the judge prior to the announcement of the verdict or any harkening or polling. *If there is any material inconsistency between the verdict as announced and the written findings, the court shall inform the jury and the parties of the inconsistency and invite and consider, on the record, the parties' position on any response.*

changing a verdict that was in his favor. Further, Carriker alleged that the court did not respond to his counsel's motion for judgment following that re-instruction.

The circuit court denied the motion, explaining that Carriker's attorney did not object to the verdict sheet on the record and ultimately agreed to it, thereby waiving his right to assign error to its submission to the jury under Rule 2-522(b)(5).[5] The court also stated that it complied with Rule 2-522(b)(3) when it invited and considered counsels' opinions about how to respond following the jury's inconsistent answers. The court said that it was justified in not following Carriker's attorney's suggestion that the jury's response to the first question only should be its verdict. Finally, the court stated that it found the jury's final verdict to be consistent and not against the weight of the evidence. Carriker timely appealed the circuit court's denial of his motion for new trial.

DISCUSSION

I. "Irregularities" in the Verdict Sheet

Md. Rule 2-522(b)(3) (emphasis supplied).

[5] (5) *Objections; Waiver*. No party may assign as error the submission of issues to the jury, the instructions of the court, or the refusal of the court to submit a requested issue unless the party objects on the record before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Upon request of any party, the court shall receive objections out of the hearing of the jury.

Md. Rule 2-522(b)(5).

On appeal, Carriker first asserts that three (3) "irregularities" associated with the verdict sheet denied him a fair trial. Specifically, *first* Carriker alleges that the circuit court's inclusion of the second question resulted in multiple and inconsistent jury verdicts. *Second*, Carriker also contends that the circuit court did not resolve his request for judgment following the court re-instructing the jury. *Finally*, Carriker alleges that the court did not follow the procedures for resolving an inconsistent jury verdict, and its re-instruction implied to the jury that it should change its initial decision that was favorable to Carriker to a decision that was not in his favor.

We review a circuit court's denial of a motion for new trial for abuse of discretion. *Mahler v. Johns Hopkins Hosp., Inc.*, 170 Md. App. 293, 321, *cert. denied*, 396 Md. 13 (2006).[6] "The decision whether to grant a motion for a new trial is 'within the sound discretion of the trial court.'" *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 349 (2013). Given "the unique opportunity of the trial judge . . . to closely observe the entire trial, complete with nuances, inflections, and impressions never to be gained from a cold record," that decision is afforded great deference and rarely disturbed on appeal. *Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 58 (1992).

A. Carriker waived any objection to the second question on the verdict sheet.

[6] A circuit court's decision to alter or amend a judgment under Md. Rule 2-534 follows similar standards: it is reviewed for abuse of discretion, *Miller v. Mathias*, 428 Md. 419, 438 (2012), and the circuit court has even broader discretion in making that decision. *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002) ("With respect to the denial of a Motion to Alter or Amend . . . the discretion of the trial judge is more than broad; it is virtually without limit.").

Carriker asserts that the inclusion of the second question on the verdict sheet set the stage for an inconsistent jury verdict. The Redskins counter that pursuant to Maryland Rule 2-522(b)(5), Carriker waived his right to appellate review of the verdict sheet by failing to object before the jury retired to deliberate. The Redskins add that in counsels' discussion of the two questions with the court prior to submission to the jury, both parties acknowledged the potential for an inconsistent verdict, but agreed that "any inconsistency could be resolved with subsequent instructions regarding the inconsistency." For the reasons that follow, we concur with the Redskins.

Maryland Rule 2-522(b)(5) provides, in relevant part, that

> [n]o party may assign as error the submission of issues to the jury, the instructions of the court, or the refusal of the court to submit a requested issue unless the party objects on the record before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection.

Accordingly, Maryland appellate courts have held that a party has waived review of both form and content of a verdict sheet if the party did not object to those items before the jury retired to deliberate. *Edwards v. Gramling Eng'g Corp.*, 322 Md. 535, 550, *cert. denied*, 502 U.S. 915 (1991) (explaining appellant did not preserve review of the wording of questions submitted to the jury, because "[i]f he felt they formed an insufficient basis for the court's later consideration of the remaining equitable issues, he should have objected before the jury retired."); *Bacon & Associates, Inc. v. Rolly Tasker Sails (Thailand) Co.*, 154 Md. App. 617, 630 (2004) (declining to address appellants' challenge to the form of verdict sheets since appellants failed to object to the wording of the sheets at trial);

Baltimore Luggage Co. v. Ligon, 208 Md. 406, 413–14 (1955) ("The luggage company's contention that the issues submitted to the jury were inconsistent and conflicting and, so confusing, likewise requires the short answer that it did not object to any of the first five issues . . . the luggage company may not now complain for the first time of the five issues which were decisive.").

Similarly, Maryland Rule 2-520(e) provides, in relevant part, that

> [n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection.

Consistent with Rule 2-522(b)(5), Maryland courts have held that the provisions of Rule 2-520 show that a party may preserve an objection to jury instructions only if the objection is raised *promptly after* the jury has been instructed, but *before* it has been sent to deliberate.

Maryland's appellate decisions are in accord. For example, in *Landis Office Center v. Barefield*, 73 Md. App. 315, 322 (1987), this Court held that counsel waived his objection to jury instructions pursuant to Rule 2-520(e) when he raised exceptions only after the jury had retired to deliberate. We emphasized the importance of strict adherence to the Rule:

> [T]hat does not mean [the court shall receive objections] after the jury has retired to begin its deliberations because the purpose of the rule is to give the trial judge an opportunity to amend or supplement his charge if he deems amendment necessary. We suggest that judges neither sanction nor encourage any method for taking exception that does not comport fully with the rule. To do otherwise will "trap" on appeal counsel who comply with such "shorthand methods" of dealing with jury instructions.

Id. See also, Bacon & Associates, Inc., 154 Md. App. at 634 (declining to address appellants' claim that the court failed to give an instruction to the jury since appellants failed to raise an exception on the missing instruction promptly after the jury was instructed); *Molock v. Dorchester County Family YMCA, Inc.*, 139 Md. App. 664, 670–71 (2001) (holding appellants' argument that "instruction is inapposite to evidence in the case . . . was not preserved for appellate review because appellants made no objection to the instructions actually given in the trial court."); *Billman v. State of Md. Deposit Ins. Fund Corp.*, 88 Md. App. 79, 111 (1991), *cert. denied*, 325 Md. 94 (1991) ("[T]he issue has not been preserved because, neither in the pre-instruction conference, nor in exceptions taken after the jury had been charged, did appellants ask the court [to amend its instructions]"); *In re Jeannette L.*, 71 Md. App. 70, 88–89 (1987) (holding counsel had waived objection to the lack of a definition provided in jury instructions, when she objected only after the jury asked the court for a definition during deliberations).

In this case, the record clearly shows that the second question was added at Carriker's counsel's suggestion. Although Carriker's counsel later made one objection on the record, that objection did not come until after the court re-instructed the jury following the initial inconsistency and immediately before the court reconvened the jury to address its query about the second question:

> [CARRIKER'S COUNSEL]: Well, I object too because I think the trial is over and I think the Court should vacate the second order and enter a verdict consistent because if [the jurors] didn't think it was

> related, you told them to stop. So they do. So I'm not sure how we're going to correct this.

As we see it, this objection was not timely, as the jury had already begun to deliberate. To preserve his objection, consistent with the requirement of Rule 2-520(e), Carriker's counsel should have objected to the inclusion of the second question before the jury retired.

This Court's decision in *In re Jeannette L.*, *supra*, is particularly instructive on this point. In that case, the circuit court had instructed the jury and sent them to deliberate, with no objection from counsel. 71 Md. App. at 88–89. During deliberations the jury requested a "better" definition of a word used in the instructions. *Id.* at 89. Appellant's counsel objected to the court defining the word, saying: "On the basis that the Court did not define the word the first time, I will object to any further instruction at this point." *Id.* In refusing to consider the objection on appeal, this Court explained:

> Counsel's objection was directed to the fact that the court had not previously defined the word . . . There was no objection to the content of the instruction. There was no claim of error in instruction. The objection as made does not meet the requirement of Rule 2-520(e), and we do not consider it.

71 Md. App. at 88–89.

Carriker's objection was raised not only after the jury had initially retired to deliberate, but after the jury delivered an inconsistent verdict, the court re-instructed them, and the jury asked another question. We hold that Carriker's objection to the verdict sheet was not timely and, thus, not preserved for review.

Additionally, Carriker's untimely objection did not "stat[e] distinctly the matter to which the party objects and the grounds of the objection." Rule 2-522(b)(5); Rule 2-520(e).

In *Blaw-Knox Const. Equipment Co. v. Morris*, 88 Md. App. 665 (1991), Blaw-Knox objected on the record to the trial court's instruction that the jury could skip consideration of other grounds of liability after it found strict liability:

> And for the record Your Honor I do take exception. I believe, I would request that they be asked to resolve the other issues on liability as well, as the strict liability design.

Id. at 667–68. On appeal, this Court held that Blaw-Knox waived its objection to the court's permitting the jury to skip consideration of other theories of liability due to Blaw-Knox's failure to state distinctly the matter to which it objected and the grounds of the objection. *Id.* (*citing* Md. Rule 2-522(b)(5)).

Similarly, Carriker's attorney did not express whether his objection was to the inclusion of the second question (for which it would have been too late pursuant to Rule 2-55(b)(5)), or the judge's subsequent clarification to the jury (for which the objection would have been premature, since it had not been made promptly *after* the instruction as required by Rule 2-520(e)). In either instance, as noted, Carriker did not object to the inclusion of the second question on the verdict sheet before the jury retired to deliberate, and the objection did not state with specificity the grounds. For these reasons, we conclude that Carriker waived review of the verdict sheet.

B. Carriker's "Unresolved" Motion for Judgment

Carriker asserts that the circuit court did not respond to his motion for judgment "following the initial verdict." The Redskins contend that reinstating the jury's initial

response to question one alone as the verdict, as Carriker's counsel requested at trial, "exceeds the scope of the Court's authority to revise a jury verdict under Maryland Rule 2-535." The Redskins argue that the initial response from the jury did not constitute a verdict pursuant to Maryland Rule 2-522, since the jury's written answers were rejected by the court based on inconsistency and were not read aloud, hearkened, or polled by the jury. The Redskins further contend that a judge may only revise a verdict "to effectuate the true intent of the jury," *Turner V. Hastings*, 432 Md. 499, 501 (2013), and the true intent of the jury was fully expressed with its ultimate response.

We conclude that Carriker's motion for judgment was not preserved for review. Had it been preserved, we determine that the court's failure to address the motion was harmless, because the jury's initial inconsistent responses were not a verdict. Consequently, there was nothing for the court to reinstate.

1. Carriker did not make a motion for judgment.

Preliminarily, we note that the trial transcript reveals that Carriker's counsel did not move for judgment at the conclusion of the evidence. So, his contention that the court failed to resolve such a motion is not preserved for review.

Maryland Rule 2-519(a) provides, in relevant part:

> A party may move for judgment on any or all of the issues in any action at the close of evidence offered by an opposing party, and in a jury trial at the close of all evidence. The moving party shall state with particularity all reasons why the motion should be granted.

We have interpreted the Rule to require that a motion for judgment be clearly made at the close of evidence before the case is submitted to the jury in order to be preserved for appellate review. *John Crane, Inc. v. Puller*, 169 Md. App. 1, 82–83 (2006) (declining to review on appeal the contention that a motion for judgment was erroneously denied "because there was no motion. A grab-bag of undifferentiated post-trial motions may not stand proxy for a phantom trial motion that never was."); *Fearnow v. Chesapeake & Potomac Telephone Co. of Md.*, 104 Md. App. 1, 14 (1995) ("To obtain such relief [under a motion for judgment], or to preserve the point for appellate review, a party must: (i) specifically make the motion at the close of the evidence; and (ii) state with particularity the grounds for the motion").

The trial transcript does not show that Carriker made a motion for judgment at the close of the evidence. Indeed, the record is clear: there is no indication of any objection or motion that Carriker's counsel made at the conclusion of the testimony, after the court read the jury instructions, or at any time before the jury was sent to deliberate.

The only indication in the record of anything close to an objection is Carriker's counsel's proposal for a verdict after the jury had been re-instructed and submitted a query to the court. At that time, the court sought counsels' proposals on a response:

THE COURT:	Suggestions?
[CARRIKER'S COUNSEL]:	I think their answer to Question No. 1 is their verdict.
THE COURT:	Okay. But that's not what we asked them, so that can't be their verdict.

Later during this discussion and immediately before the court reconvened the jury to address its query, Carriker's counsel raised the objection referenced above:

> [CARRIKER'S COUNSEL]: Well, I object too because I think the trial is over and I think the Court should vacate the second order and enter a verdict consistent because if [the jurors] didn't think it was related, you told them to stop. So they do. So I'm not sure how we're going to correct this.

Just as the record does not support that Carriker made a motion for judgment before the case was submitted to the jury, it does not support that he made a clear motion for judgment following the jury's initial response to the verdict sheet. Although Carriker did suggest—and later made an objection to the same effect—that the jury's initial answer to question one should be its verdict, these statements were not timely or made with enough particularity to constitute a motion for judgment. *John Crane*, 169 Md. App. at 82–83.

2. Any failure to resolve such a motion for judgment would have been harmless.

Assuming for the sake of argument that Carriker had properly moved for judgment when he asserted the jury's initial response to the first question should be its verdict, the court's subsequent actions communicated its refusal to grant the motion. The court explained to Carriker's attorney why it did not agree with this assertion and continued to confer with counsel on the issue after it reconvened the jury and then sent the jury back to deliberate:

> [CARRIKER'S COUNSEL]: That's—are we on the record, Your Honor? So the question we asked—the question asked

was not about last injurious exposure. The question was about date of disablement and if you look at the jury instruction, the date of disablement is when the occupational disease occurred and they've found that that date of disablement occurred while he was with the Redskins, right? That's the answer to the first question. It can't be a date before he was with the Redskins. That's the problem with the verdict sheet.

THE COURT: I understand, but by asking both questions, which both parties agreed to have asked, what came back was an inconsistent verdict.

[CARRIKER'S COUNSEL]: I agree 100 percent.

THE COURT: And based upon that, I am asking them to reconsider their decision. If they come back and say they've reconsidered it and the answer is what the answer is, then I will entertain the next motion that one of you will give me.

[CARRIKER'S COUNSEL]: Okay.

No further discussion ensued, and the jury returned with its verdict shortly thereafter.

Assuming for a moment the court had left such a motion unresolved, we hold that to have done so would have constituted harmless error. This is because the jury's first response to the verdict sheet did not constitute a verdict, therefore, it could not have been "reinstated." Maryland Rule 2-522(b)(3) provides that verdicts must be returned in open court, and written verdicts must be "handed to and examined by the judge prior to announcement of the verdict or any harkening or polling." Rule 2-535 provides that the court has revisory power over the judgment for thirty days after it is entered. In short, Rule 2-522 sets out the requirements for the proper return of a verdict, after which the verdict is

taken from the jury and a judgment is entered. *Turner v. Hastings*, 432 Md. 499, 507, 510 (2013). Rule 2-535 sets out the court's revisory powers over that judgment once it has been entered. *Id.* at 510. *Turner* explained the intersection of these two rules:

> [F]or a jury verdict to be properly returned in open court, it must be orally announced, hearkened to by the jury, and subject to an opportunity to poll. Once these requirements are met, the verdict is then taken from the jury and, upon the entering of a judgment, becomes subject to a judge's revisory powers.

432 Md. at 501.

In this case, after reading the jury's initial responses to the verdict sheet, the court informed the jury and the attorneys that the verdict was inconsistent and that the jury needed to revisit its responses. To properly be considered the verdict, counsel would have had the opportunity to poll the jury, the clerk would have harkened the jurors, and the court would have enrolled the judgment. *Turner*, 432 Md. at 510. Because the jury's initial responses were not a verdict, the circuit court's revisory power had not yet begun. Md. Rule 2-535. The court did not abuse its discretion in declining Carriker's request that the court enter the jury's initial responses as the verdict.

C. The court's re-instruction of the jury in response to its inconsistent verdict

Carriker asserts that the circuit court did not abide by the procedures for the return of an inconsistent verdict, and that its re-instructing the jury emphasized "changing a verdict that was favorable to Mr. Carriker to an unfavorable verdict." Carriker cites Rule 2-522(b)(3) for support arguing that "the [c]ourt was required to consider both [Carriker's] position and [the Redskins'] position on the re-charge," but instead the circuit court "made

its own determination and in re-charging the jury guided the jury to reverse its favorable answer to question one. The implication to the jury was that they could leave if they simply changed the answer to question one to 'no.'"

The Redskins do not expressly address the circuit court's consideration of the parties' positions in response to the inconsistent verdict sheet answers but contends that the court properly found the jury's initial answers were inconsistent. The Redskins also assert that the ultimate verdict was not the product of the circuit court's influence, since the court's re-charge to the jury was "provided in clear, neutral terms," and the court "did not at any time tell the jury what its verdict should be."

For the reasons discussed, we hold that the circuit court substantially complied with the relevant procedures for return of an inconsistent verdict. The court's re-instruction to the jury did not unfairly emphasize one course of action over another. The court clearly instructed that the jury was free to change either of the inconsistent answers it initially gave. Consequently, a new trial is not justified.

1. The court complied with procedures for return of an inconsistent verdict.

Rule 2-522(b)(3) addresses court procedures for return of an inconsistent verdict. It reads, in relevant part that,

> If there is any material inconsistency between the verdict as announced and the written findings, the court shall inform the jury and the parties of the inconsistency and invite and consider, on the record, the parties' position on any response.

The Rule clearly requires the court to notify the parties of an inconsistent verdict and solicit their input on how to respond before the court acts. It does not require, however, that the court follow the parties' suggestions.

In this case, the court's decision to re-instruct the jury after receiving the initial responses on the verdict sheet was not an abuse of discretion. The court was faced with an irreconcilably inconsistent verdict, and "irreconcilably inconsistent verdicts . . . are not permitted to stand." *Turner*, 432 Md. at 517. An irreconcilably inconsistent verdict is one "[w]here the answer to one of the questions in a special verdict form would require a verdict in favor of the plaintiff and an answer to another would require a verdict in favor of the defendant." *Southern Management Corp. v. Taha*, 378 Md. 461, 467 (2003) (holding irreconcilably inconsistent a verdict that found employees not liable but found employer corporation liable on a theory of respondeat superior). Here, the jury's initial response of "yes" to the first question of whether Carriker "sustain[ed] an occupational disease arising out of and in the course of his employment with the Washington Redskins," indicated a verdict for Carriker. But the jury's response of "January 18, 2010" to the second question, the "date . . . Mr. Carriker sustain[ed] a disablement due to the occupational disease," indicated that the jury felt that Carriker sustained the occupational disease when he was employed by the Saint Louis Rams. Thus, the jury's initial responses were irreconcilably inconsistent, and the court properly sought to remedy the inconsistency.

The first of Carriker's two exceptions to the court's response relates to the sequence of events in light of Rule 2-522(b)(3). As Carriker correctly asserts, the record indicates

the court did not consider the parties' positions before re-instructing the jury immediately after the court received the jury's inconsistent answers. After reviewing the verdict sheet, the court simply announced to the parties that the verdict was inconsistent, asked the jury to re-assemble in the courtroom, and once it did, the court told the jury that it would need to revisit its responses. Significantly, the record does not show that counsel for either party objected following the court's re-instruction. After the jury retired, the court informed counsel that it would consider their positions if the jury came back with another inconsistent response. When the jury subsequently submitted its query, the court presented it to counsel and invited their suggestions for a response.

The record does not suggest the court would have proceeded differently had it solicited the parties' positions prior to its initial re-instruction. Even after hearing Carriker's suggestion that the court should enter a verdict, the court decided to provide clarification to the jury. We see no material differences between the court's initial clarification without counsel's input:

> THE COURT: The two questions are inconsistent, your answer to the two questions. Question No. 1 says, "Did the Plaintiff sustain an occupational disease arising out of and in the course of his employment with the Washington Redskins?" And you answered yes. You then answered the date that he sustained the disability January 18, 2010. That's an inconsistent answer. You need to go back and decide do you want to answer the first question the way you did or the second question the way you did and go back and look at your memory of the facts of when he

became employed with the Washington Redskins.

And the court's clarification to the jury with counsels' input:

THE COURT: I want to be perfectly clear in what I instructed you when you brought me the verdict and what I said is 'this is an inconsistent verdict and that if you answer—if you answered yes to the first question, which you did, saying that this individual's disease occurred while he was employed by the Redskins, then you could not pick the date you used because that date was prior to his employment.'

I want to be perfectly clear—that's where the inconsistency is. I want to be perfectly clear I sent you back in there to evaluate your first answer and depending on what you agree on your first answer, then you move on to the second question if you have a yes to that first question. Remember in my original instructions, I told you opening statements and closing arguments by the lawyers are not evidence in this case. Either one of them can argue whatever they choose to argue and either one of them could tell you what they believe is the correct answer to your two questions. That is their argument.

You must decide the questions based upon the evidence that you heard and the law as I instructed it to you.

In either instance, the court properly re-instructed the jury. We conclude that even if the court had considered the attorneys' input prior to its initial re-instruction, it would have had no material effect on its handling the initial inconsistency. In other words, had the court followed Rule 2-522(b)(3) to the letter—in this case, by conferring with the parties before it gave the jury its initial re-instruction—it does not appear that a different

outcome would have resulted. As a result, any error the court might have committed made no difference in the result.

2. The Court's re-instructions to the jury were neutral

Had Carriker preserved review of the circuit court's instructions to the jury, we would nevertheless conclude that the court did not coerce the jury into adversely revising a decision that was in Carriker's favor. As has been discussed, the jury's initial response to the verdict sheet was not the verdict. Rather, the jury's response to the first question was irreconcilably inconsistent with the jury's answer to the second question. Neither statement was properly a verdict in either party's favor.

Further, we do not discern in either the court's initial re-instruction or its subsequent clarification to the jury any suggestion that a verdict favor either party. Both of the court's instructions expressly informed the jury that it could change its answer to either question.

II. Jurisdiction over Question Two of the Verdict Sheet—Date of Disablement

Carriker contends that the circuit court lacked jurisdiction over the issue of his date of disablement because the Commission "never decided the second question." This argument, as we understand it, is based on the Commission order's lack of a specific *date* identified as the date of disablement. Carriker also asserts that the issue was rendered moot before the Commission after it found that he did not sustain an occupational disease arising out of and in the course of his employment with the Redskins.

The Redskins' response is that the circuit court had jurisdiction over the issue, since the Redskins raised the issue of the date of disablement before the Commission. More importantly, according to the Redskins, the Commission decided Carriker's date of disablement when the Commission found "that the proper employer on the date of disablement was the Saint Louis Rams."

The Commission's order lists the following issues for which the hearing was held:

1. Did the Employee sustain an occupational disease arising out of and in the course of employment?
2. Is the disability of the employee the result of occupational disease arising out of and in the course of employment?
3. Who was the proper employer on the date of disablement?
4. Who was the employer at the time of the last injurious exposure?
5. Medical expenses

The Commission then expressly found,

> that the claimant did not sustain an occupational disease arising out of and in the course of employment as alleged to have occurred on December 5, 2014 as the claimant was diagnosed with left ankle impingement by Dr. Matava Matthew on January 8, 2009. He was operated on in connection with that diagnosis on January 18, 2010. The claimant was not hired by the Washington, DC NFL team until 2010. The claimant had this occupational disease prior to being hired by the Washington, DC NFL team. The Commission further finds that the proper employer on the date of disablement was the Saint Louis Rams. The Commission further finds that the claimant was employed by the Saint Louis Rams at the time of the last injurious exposure. Therefore, the remaining issues are not applicable, and the Commission will disallow the claim filed herein.

Assuming for the sake of argument that, as we discussed in the previous section, Carriker did not waive review of jurisdiction over the issue, we find the Commission made at least an implicit decision on the date of disablement. In our view, contrary to what

Carriker argues, the issue was not rendered moot by the Commission's finding on occupational disease. Thus, the issue was properly before the circuit court.

At oral argument, Carriker relied almost exclusively on *Trojan Boat Co. v. Bolton*, 11 Md. App. 665 (1971) to assert that the issue was not properly before the circuit court. In *Trojan Boat*, the Commission heard the following issues related to a claim:

1. Did the Employee sustain an accidental personal injury arising out of and in the course of his employment.
2. Is the disability of the Employee the result of an accidental personal injury arising out of and in the course of his employment.
3. Average weekly wage.
4. Such other and further Issues as may be raised at the time of the hearing.

Id. at 666. Upon finding that the employee did not sustain an accidental personal injury arising during the course of employment, the Commission disallowed the claim and did not address the remaining issues. *Id.* at 667. On appeal, the circuit court reversed the Commission's finding on the first question and issued a remand for further proceedings. *Id.* On remand, as instructed, the Commission then addressed the second issue, finding the employee's disability had resulted from the accidental personal injury arising out of employment, and the employer appealed. *Id.* at 668.

This Court found the employer's appeal of causation was not barred by res judicata, since the employer could not have appealed causation in its first appeal to the trial court's holding. *Id.* This Court held that "the only issue properly before the trial court in the prior proceedings . . . was the question as to the occurrence of an accidental injury arising out of and in the course of employment," *id.* at 668, and explained that "issues rendered moot by

the Commission's disposition of earlier issues . . . [are] not raisable on appeal." *Id.* at 671. This final point, we believe, is at the core of Carriker's reliance on *Trojan Boat*.

Notably, *Trojan Boat* also distinguished "implicitly decided issues," which *are* raisable on appeal:

> [A]n implicit decision by the Commission is one that, in the logical process of disposing of the proceeding, the Commission encountered and solved, although without explicit mention of it in the record.

Id. at 671–72. This Court found the Commission had not implicitly decided the issues of causation and wages in the first hearing, reasoning that "the logical process" of disposing of the existence of an accidental personal injury arising under employment would not have required the Commission to reach those issues. *Id.* at 672.

Carriker also relies on *Pressman v. State Acc. Fund*, 246 Md. 406 (1967) to assert that issues not decided by the Commission are not properly before the circuit court. In *Pressman*, the Court of Appeals held that the issue of whether an employer was covered by the insurer at the time of the employee's injury was not decided by the Commission and thus not properly before the circuit court on appeal. *Id.* at 415. The Court reasoned that although the Commission labeled the employer as "no insurance" in its records, it did not reflect an adjudication by the Commission, "made manifest by the fact that no evidence on the point was offered or considered at the hearing." *Id.* The Court explained:

> The reviewing court considers and passes only on matters covered by the issues raised and decided below *or on relevant matters to which there was evidence before the Commission*.

Id. (emphasis supplied).

A. The Commission Decided the Date of Disablement.

Contrary to what Carriker asserts, the facts of this case are not analogous to those of *Trojan Boat* or *Pressman*. First, the issue of the date of Carriker's disablement was decided by the Commission. In *Trojan Boat*, there is no suggestion that the Commission's initial order contained anything more than a finding on the first issue—that the employee was not injured on the job—and a rejection of the employee's claim. 11 Md. App. at 667.

The Commission's order in Carriker's case made express findings on the first four issues—including Carriker's employer on the date of disablement: *"The Commission further finds that the proper employer on the date of disablement was the Saint Louis Rams."* Consequently, Carriker's argument that because the Commission failed to identify a specific date the Commission did not decide the date of disablement, is not correct. In fact, arguably, the date could be considered an "implicitly decided issue" as defined in *Trojan Boat*. In the Commission's "logical process" of finding that the Saint Louis Rams was the proper employer on the date of disablement, it would have "encountered and solved" the issue of the date, even if "without explicit mention of it in the record." *Id.* at 671–72.

Notably, the Commission's order does provide two dates: January 8, 2009 as the date Carriker was diagnosed with the ankle injury, and January 18, 2010 as the date he was operated on in connection with the injury. In contrast to *Pressman*, in Carriker's case the Commission was presented with evidence of prior injuries and medical treatment from which it could have decided the date of Carriker's disablement, even if the disablement

occurred during previous employment. Given that the Commission at least implicitly decided the date of disablement, the issue was properly before the circuit court.

B. The Date of Carriker's Disablement was not rendered moot by the Commission's decision on the first issue.

Finally, we are not convinced that *Trojan Boat* establishes a legal standard for "moot" issues that the Commission is barred from determining, or, as Carriker argues, that the circuit court cannot address even if determined by the Commission. Recall that in *Trojan Boat* the Commission found that the employee did not suffer an employment-related injury and, therefore, decided none of the other issues such as causation or the employee's average weekly wage. 11. Md. App. at 666. We disagreed with the Commission, concluding that the employee sustained a work-related injury and remanded to the Commission for further consideration. We said it was proper to "remand the proceedings to the Commission for original determination of the remaining issues which were *thought to be moot* in the earlier Commission proceedings." *Id*. at 669 (emphasis supplied). We conclude, contrary to Carriker's urging, that this language does create a legal standard for questions thought to be rendered moot and outside the Commission's purview. Rather, this language simply means that issues not originally decided by the Commission but sent back for further consideration on remand should now be addressed.

In any event, the issue of date of disablement was not rendered moot by the Commission's determination that Carriker did not sustain an occupational disease arising out of employment with the Redskins. In *Trojan Boat*, it would have been illogical for the Commission to determine whether a disability had been caused by an employment-related

injury it deemed not to have occurred. But in Carriker's case, the Commission was not faced merely with determining whether an injury had arisen *at all* in the course of employment, but, instead, *with which employer* Carriker had sustained a disabling injury. No one disputed that Carriker had suffered a disabling ankle condition while he was a professional football player. The Redskins, by arguing that Carriker was disabled during his employment with the Saint Louis Rams, raised the issue of "the proper employer on the date of disablement," and prompted the Commission to determine *which* football team employed Carriker at the time he became disabled.

The lack of a specific date in the Commission's order is simply not analogous to its initial lack of a finding on causation in *Trojan Boat,* or its lack of adjudicating insurance coverage in *Pressman.* The issue of the date of disablement, albeit phrased differently when raised before the Commission, was not rendered moot by the Commission's finding that Carriker did not sustain an occupational disease from employment with the Redskins. The Commission heard evidence on, and at least implicitly decided, the issue of Carriker's date of disablement. Therefore, the second question on the verdict sheet was properly before the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.