Circuit Court for Baltimore City
Case No. 24-C-20-004976

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2223

September Term, 2022

ARROW PARKING CORP., ET AL.,

v.

JACQUELINE CADE

Shaw,
Ripken,
Tang

JJ.

Opinion by Shaw, J.

Filed: February 1, 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 Rule 1-104(a)(2)(B).

This is an appeal from a jury verdict in the Circuit Court for Baltimore City awarding damages in a civil action. Jacqueline Cade, Appellee, filed a lawsuit against Appellants, Arrow Parking Corp., Greenwald & Co. Inc. and Baltimore Arena Parking Associates, LLC (collectively referred to as "Arrow Parking"). She alleged Appellants were negligent in the operation and maintenance of an elevator at a parking garage after she sustained injuries exiting it.

Appellants timely appealed and present five questions for our review[1]:

1. Did the circuit court abuse its discretion when it failed to give a jury instruction on the defense of an "open and obvious" condition?

2. Did the circuit court abuse its discretion when it failed to give a jury instruction on the defense of contributory negligence alone or in combination with its refusal to provide the issue to the jury for determination?

[1] Appellants' questions have been reworded for clarity. Appellants' questions verbatim were:

1. Whether the circuit court's refusal to instruct on the defense of an "open and obvious" condition was an abuse of discretion warranting a new trial?

2. Whether the circuit court's refusal to instruct on the defense of contributory negligence alone or in combination with its refusal to provide the issue to the jury for determination was an abuse of discretion warranting a new trial?

3. Whether the circuit court abused its discretion in granting plaintiff's Motion in Limine to exclude e-mail?

4. Whether the circuit court abused its discretion in denying Arrow Parking's Motion in Limine to exclude evidence relating to Robyn Cobb-Randall's fall?

5. Whether the circuit court erred in denying Arrow Parking's Motion for Judgment when there was no evidence of notice?

3. Did the circuit court abuse its discretion in granting Ms. Cade's motion in limine to exclude an email produced two days before trial?

4. Did the circuit court abuse its discretion when it denied Arrow Parking's motion in limine to exclude evidence relating to Robin Cobb-Randall's fall?

5. Did the circuit court err in denying Arrow Parking's motion for judgment?

For the following reasons, we affirm.

BACKGROUND

On February 13, 2018, Jacqueline Cade ("Ms. Cade") parked in a garage located at 210 West Baltimore Street in Baltimore, Maryland. Ms. Cade exited her vehicle and used an elevator in the garage to go to her office without issue. When Ms. Cade returned to her vehicle that afternoon around 1:30 P.M., she fell while exiting an elevator on the seventh floor of the parking garage. Ms. Cade landed on "all fours" and as she looked behind her, she saw what she believed was a gap that she estimated was between one half an inch to an inch deep. Ms. Cade had been parking in the garage since 2013 and never had any difficulty when entering or exiting the elevators located in the garage.

On November 30, 2020, Ms. Cade filed a complaint in the Circuit Court for Baltimore City alleging that Appellants "negligently failed to take effective measures to properly maintain and/or repair the elevator(s), failed to adequately warn individuals (such as Plaintiff Cade) of the dangers presented by the use of the elevator(s), and/or failed to disable the elevator(s) so they could not be used at all, and were otherwise negligent in the maintenance, repair, operation, use and ownership of said elevator(s)." She alleged that the garage was on notice of the alleged condition because another individual, Ms. Robin

Cobb-Randall ("Ms. Cobb-Randall"), fell while exiting the same elevator on the same day, prior to Ms. Cade's fall.

Appellants later filed a Motion in Limine to Exclude Evidence Relating to a Separate Occurrence, seeking to preclude evidence, testimony, and argument relating to Ms. Cobb-Randall's incident. Appellants were notified that Ms. Cade's counsel was in possession of audio recordings from Otis Elevator Company, which revealed that both Ms. Cobb-Randall's fall and Ms. Cade's fall happened by 2:03 P.M. on the date in question. Upon learning of the recordings, Arrow Parking filed a Supplement to their Motion in Limine to prevent the recordings from being admitted into evidence.

On October 14, 2022, Arrow Parking's president, Benjamin Greenwald, forwarded to Arrow Parking's counsel an email that he located dated February 15, 2018. The email was sent by Benjamin Greenwald to three undisclosed recipients and stated that Ms. Cade fell first, and Ms. Cobb-Randall fell second. Appellants' counsel then sent the email to Appellee's counsel, two days before the scheduled trial. Ms. Cade filed a Motion in Limine to Exclude the email and any "Suggestive or Explicit Testimony or Argument Related to Any Writing or Record Not Produced by Defendants in Discovery."

On October 18, 2022, prior to trial, the parties argued their respective motions in limine. The court denied Arrow Parking's Motion in Limine to Exclude Evidence Relating to a Separate Occurrence and Arrow Parking noted its objection to any evidence relating to Ms. Cobb-Randall's fall. The court granted Ms. Cade's Motion in Limine to Exclude [the] Email Produced Two Days Before Trial and Any Suggestive or Explicit Testimony or Argument Related to Any Writing or Record Not Produced by Defendants in Discovery.

The case proceeded to trial and Ms. Cade testified. She stated that after the fall, she gathered her belongings and limped to her vehicle. Ms. Cade testified that she immediately began to exit the garage and stopped at the cashier's booth on the way out to notify the cashier on duty that she had fallen. According to Ms. Cade, Mr. Anthony Kabui ("Mr. Kabui"), the cashier on duty, told her that his manager was on the third floor responding to a similar incident and had been there for at least ten minutes. Ms. Cade testified that she informed Mr. Kabui she could not wait to speak with the supervisor as she had to pick up her children. She wrote on the back of her business card that she fell on the seventh floor at 1:35 P.M. and handed it to Mr. Kabui. The card was produced in discovery by the Appellants. Mr. Kabui later denied having any recollection of speaking with Ms. Cade or of being notified of a second fall.

Ms. Cobb-Randall testified that on the same day she also tripped while exiting the elevator in the parking garage. When Ms. Cobb-Randall fell, she testified that an unknown colleague who was riding in the elevator, helped her sit up and then went back down to the first floor to get help from the garage employees. Ms. Cobb-Randall testified that two garage employees came to assist her after her fall, later identifying them as Jeff Knickman ("Mr. Knickman") and Gilbert Kariuki ("Mr. Kariuki"), who were both Arrow Parking supervisors. Ms. Cobb-Randall testified that while Mr. Knickman and Mr. Kariuki were assisting her, she overheard one of the garage employees receive a call reporting that someone else had fallen on the seventh floor.

Mr. Kabui testified that when he was informed of a fall on the third floor, he called Mr. Knickman for assistance. Mr. Kabui testified that Mr. Knickman arrived about five

minutes after Mr. Kabui's call. After the two falls, Mr. Knickman provided in his deposition that he rode the elevator to identify the leveling problem and then used his key to shut off the elevator until Otis Elevator Company could repair the issue. Mr. Knickman was originally scheduled to testify on behalf of the defendants but was never put on the stand at trial.

During his deposition, Mr. Kariuki denied being present in the garage on the day of the incidents. Mr. Kariuki was heard on a recorded service call with Otis Elevator Company informing Otis of two falls at 2:03 P.M. After listening to the calls during the trial, Mr. Kariuki changed his testimony and stated that he must have been at the garage on the day in question, as he was the one reporting the incident to Otis Elevator Company. A second call was made to Otis Elevator Company at 3:30 P.M. by Mr. Knickman, reiterating that two people had fallen as a result of the elevator mis-leveling and telling Otis not to come after hours and charge them overtime rates.

Ms. Cade's supervisor, Ms. Karen King-Sheridan, testified that she asked Ms. Cade to fill out an incident report forty-eight hours after the incident. On the report, Ms. Cade noted that the garage cashier told her his managers were on the third floor assisting someone else who had fallen before her.

Mr. James Filippone, P.E. ("Mr. Filippone"), an expert in the field of professional engineering, with a specialty in elevator repairs, licensing, and safety, testified via video deposition. Mr. Filippone testified that after performing a site inspection at the parking garage and reviewing the depositions in the case, Maryland statutes, codes, and maintenance repair records, that the garage breached the standard of care and duty in this

case because they should have taken the elevator out of service as soon as "they found out about the first accident." Mr. Filippone testified in regard to the un-leveled elevator that "anything over a half-inch represents a hazard." When asked by Appellants' counsel if any person using the elevator would be able to see the un-leveling by greater than a half-inch, Mr. Filippone responded "[i]f they look down, yes." Mr. Filippone went on to testify that "[m]ost people are looking straight ahead . . . . [t]he expectations nowadays is that the elevators are going to be level[.]"

At the close of Ms. Cade's case-in-chief, Appellants moved for judgment pursuant to Maryland Rule 2-519, arguing there was no affirmative evidence that Arrow Parking had been on notice of the hazardous condition before Ms. Cade's fall. The court denied the motion and Appellants renewed the motion at the close of their case. The court again denied the motion and proceeded to discuss jury instructions with counsel. Appellants had submitted a pre-trial request for jury instructions, including four instructions for the "open and obvious" condition defense and the Maryland Pattern Jury Instruction 19:12 for the contributory negligence defense. The court denied Appellant's request for both instructions, stating the issues had not been generated by the evidence. Appellants did not, thereafter, note an objection to the court's failure to give the requested instructions. Likewise, the Appellants did not object to the trial court's refusal to include a question addressing contributory negligence on the verdict sheet, either when the ruling was made, nor prior to the jury retiring for deliberations.

On October 20, 2022, the jury returned a verdict in favor of Ms. Cade, finding that Arrow Parking was negligent. Ms. Cade was awarded $181,421.89 in past medical bills,

$20,311.43 for past lost wages, $54,000.00 for future medical expenses, and $1,022,000.00 in non-economic damages. Arrow Parking subsequently filed an unopposed motion to conform the non-economic damages to the statutory limitation of $845,000.00, which was granted.[2] Arrow Parking timely noted this appeal.

STANDARD OF REVIEW

A. Jury Instructions

When we review a trial court's grant or denial of a requested jury instruction, we apply "the highly deferential abuse of discretion standard." *White v. Kennedy Krieger Inst., Inc.*, 221 Md. App. 601, 623, *cert. denied*, 443 Md. 237 (2015). In determining whether there was an abuse of discretion, we consider the following factors: "'(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given.'" *Keller v. Serio*, 437 Md. 277, 283 (2014) (quoting *Stabb v. State*, 423 Md. 454, 465 (2011)); *see also* Md. Rule 2-520(c) ("The court need not grant a requested instruction if the matter is fairly covered by another instruction."). The trial judge is required to give a requested instruction that correctly states the applicable law and that has not been fairly covered in other instructions. *Six Flags Am., L.P. v. Gonzalez-Perdomo*, 248 Md. App. 569, 589 (2020).

[2] Ms. Cade filed two motions to revise the judgment because the clerk incorrectly revised the judgment to reflect only the non-economic damages award and exclude the economic damages award. The clerk also mistakenly entered judgment against only one of the three Appellants, who are jointly and severally liable. The court granted both motions, delaying the issuance of a final, appealable judgment.

"Similarly, the decision to use a particular verdict sheet will not be reversed absent abuse of discretion." *Consolidated Waste Industries, Inc. v. Standard Equipment Co.*, 421 Md. 210, 220 (2011) (internal citations omitted). "An abuse of discretion occurs where no reasonable person should share the view taken by the trial judge." *Six Flags*, 248 Md. App. at 592 (internal citations omitted).

B. Motions in Limine and Admission of Evidence

The appellate court reviews a trial court's grant or denial of a motion in limine for an abuse of discretion. *Lowery v. Smithsburg Emergency Med. Serv.*, 173 Md. App. 662, 674 (2007). When weighing the probative value of proffered evidence against its potentially prejudicial nature, an abuse of discretion in the ruling may be found "where no reasonable person would share the view taken by the trial judge." *Brown v. Daniel Realty Co.,* 409 Md. 565, 601 (2009) (citing *In re Adoption/Guardianship No. 3598,* 347 Md. 295, 312 (1997)). An abuse of discretion occurs when a decision is "removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *King v. State,* 407 Md. 682, 711 (2009). When a trial court is found to have abused its discretion, this Court will not reverse unless the particular error is determined likely to have affected the verdict. *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 219 (2011).

The admissibility of evidence is committed to the sound discretion of the trial court, and therefore reviewed under an abuse of discretion standard. *See Perry v. Asphalt Concrete Services, Inc.*, 447 Md. 31, 48 (2016). Trial judges have broad discretion in

"weighing relevancy in light of unfairness or efficiency considerations[,]" but they do not have the discretion to admit irrelevant evidence. *Id.*

C. Motion for Judgment

The same standard of review applies to a motion for judgment notwithstanding the verdict and a motion for judgment at the close of the evidence: for both motions, the appellate court considers whether, on the evidence presented, a reasonable fact-finder could find the elements of the cause of action by a preponderance of the evidence. *Six Flags*, 248 Md. App. at 581 (quoting *Univ. of Maryland Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012)). On review of a motion for judgment, the appellate court assumes the truth of all credible evidence on the issue and any inferences therefrom in the light most favorable to the appellee, the nonmoving party. *Id.* (quoting *Lowery v. Smithsburg Emergency Med. Services*, 173 Md. App. 662, 683 (2007)). On a motion for judgment at the close of the evidence, if there is any evidence, no matter how slight, that is legally sufficient to generate a jury question, the case must be submitted to the jury for its consideration. *Id.*

DISCUSSION

I. Appellants' exceptions to the jury instructions and verdict sheet were not preserved for appellate review.

Appellants argue the trial court abused its discretion when it did not instruct the jury on the defenses of an "open and obvious condition" and contributory negligence and declined to include a question regarding contributory negligence on the verdict sheet.

Appellee counters that Appellants did not properly preserve the jury instruction issues or the contributory negligence verdict sheet issue at trial.

Maryland Rule 2-520(e) provides, "[n]o party may assign as error the giving or 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. Upon request of any party, the court shall receive objections out of the hearing of the jury." Md. R. 2-520.

In the case at bar, prior to instructing the jury, the court held discussions with both sides and Appellants' trial counsel raised objections to several of the court's proposed instructions. The court noted the objections and stated:

> I'm not going to read any instructions about open and obvious because it just doesn't come in to play in this case. And I don't think there's any room for the jury to be confused now. So I really don't even think I need the – I need to further instruct them about [Mr. Filippone's] testimony other than the limits that already placed on it given what [Mr. Filippone's] testimony was.

Thereafter, the court instructed the jury and following the court's instructions, Appellants did not renew or offer any objections.

At oral argument, Appellants relied upon *Sergeant Co. v. Pickett,* stating that no "special form" is required for an objection, and we agree. 283 Md. 284, 288 (1978). We note that while "no special form" is required, an objection in some form is necessary. In *Sergeant Co. v. Pickett*, the Court explained that the reason an objection is required after jury instructions have been given is to "enable the trial court to correct any inadvertent error or omission in the oral charge, as well as to limit the review on appeal to those errors which are brought to the trial [c]ourt's attention." *Id.* Here, because Appellants failed to

make any objection to the lack of an "open and obvious" instruction or a "contributory negligence" instruction following the court's oral charge, the issues are not preserved for appellate review, and we, therefore, decline to address them.

Assuming, arguendo, the court's failure to instruct the jury on the "open and obvious" condition and contributory negligence defenses were preserved, we hold, nevertheless, that the trial court did not abuse its discretion. We note that a jury instruction is properly given when it is a correct statement of the law, is applicable to the facts of the case, and it was not fairly covered by other instructions given by the court. *Woolridge v. Abrishami*, 233 Md. App. 278, 305 (2017).

Appellants, here, did not present evidence that would merit the instructions requested. An open and obvious condition, as defined by Maryland case law, is a condition or danger "which [is] known or which [is] so obvious and apparent that one may reasonably be expected to discover [it]." *Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 393 (1997). Appellants did not present any evidence that suggested the half-inch to one-inch gap was "so obvious and apparent" that Ms. Cade could have "reasonably been expected to discover [it]." *Id.* In arguing otherwise, Appellants appear to rely on Ms. Cade's elevator safety expert, Mr. Filippone. When asked by Appellants' counsel if the mis-leveling by greater than a half-inch would be visible, he testified that a person using the elevator would be able to see the gap "if they look down." Mr. Filippone followed this statement with "most people are looking straight ahead." Mr. Filippone concluded that a reasonably prudent person would likely not look down while exiting an elevator, and thus the gap would go undetected. Appellants contend that Ms. Cade's testimony that she could

see the gap once she was on the ground was evidence that it was open and obvious. We observe that there is a difference in one's perspective while standing versus falling on all-fours.

Appellants rely heavily on *Six Flags Am., L.P. v. Gonzalez-Perdomo*, 248 Md. App. 569 (2020), *cert. denied*, 474 Md. 206 (2021), but the case at hand can be easily distinguished. In *Six Flags*, "[t]he obviousness of the wet and potentially slippery condition of the bridge was hotly debated at trial, and witnesses for both sides presented testimony regarding whether they were able to perceive the wet condition of the bridge." 248 Md. App. at 591. In the present case, the evidence and argument presented at trial centered around whether or not the defendants were on notice of the dangerous condition at the time of Ms. Cade's fall. The obviousness of the gap in the elevator was never debated. As the trial court noted, this case "is not an open and obvious case. This is a notice case."

Similarly, Appellants did not produce any evidence to support a contributory negligence defense. "Contributory negligence is that degree of reasonable and ordinary care that a plaintiff fails to undertake in the face of an appreciable risk which cooperates with the defendant's negligence in bringing about the plaintiff's harm." *County Commissioners v. Bell Atlantic*, 346 Md. 160, 180 (1997). Although a defendant's burden of production on the issue of contributory negligence is slight, he nevertheless must offer more than a "mere scintilla of evidence, . . . more than surmise, possibility, or conjecture that [plaintiff] has been guilty of negligence," to generate a jury issue. *McQuay*

v. Schertle, 126 Md. App. at 568-69 (1999) (quoting *Rosenthal v. Mueller*, 124 Md. App. 170, 174 (1998)).

Arrow Parking points to Ms. Cade's trial testimony when she stated that she did not look down while exiting the elevator. Arrow Parking posits that her statement alone supports their contributory negligence defense. Like the trial court, we do not agree that her statement, in and of itself, established the burden of production. The expert explained that most people do not look down. We note, also, that Arrow Parking did not present any affirmative evidence to support their assertion. In sum, the assertion was conjecture and the evidence did not generate a contributory negligence issue for the jury's consideration.

Clearly, a verdict sheet must be reflective of the issues and evidence presented during the course of the trial. Md. Rule 2-522(b)(2)(A); *see also Six Flags Am., L.P. v. Gonzalez-Perdomo*, 248 Md. App. 569, 593 (2020). Because Appellants failed to present sufficient evidence of contributory negligence, the court did not abuse its discretion in declining to include a question on that issue on the verdict sheet.

II. The court did not abuse its discretion in granting Ms. Cade's Motion in Limine to Exclude an Email Produced Two Days Prior to Trial.

Appellants argue that the exclusion of an email that corroborated Arrow Parking's position was a "drastic sanction" when there was no willful or contemptuous conduct. Appellants argue the court abused its discretion. Appellee responds that the email sent to counsel on the evening of Friday, October 14, 2022, two days before trial, was substantial and unreasonable, in addition to the email being unreliable hearsay.

Under Maryland Rule 5-403, "relevant evidence may be excluded if its probative value is outweighed substantially by the danger of unfair prejudice, confusion of the issues, or misleading the jury." A trial court has discretion to impose, or not impose, sanctions for discovery violations based on "(1) the reasons why the disclosure was not made; (2) the existence and amount of any prejudice to the opposing party; (3) the feasibility of curing any prejudice; and (4) any other relevant circumstances." *Dackman v. Robinson*, 464 Md. 189, 231-32 (2019); *see also Taliaferro v. State*, 295 Md. 376, 390-91 (1983). The *Taliaferro* factors focus on whether there is "good cause to excuse the failure to comply with the [discovery] order." *Asmussen v. CSX Transportation*, *Inc.*, 247 Md. App. 529, 550 (2020).

Based on the record, we hold that the court did not abuse its discretion in granting Ms. Cade's motion. The information had been in Appellants' sole possession since 2018, and the reason presented for the delay amounted to a lack of due diligence. The risk of prejudice, also, was significant because the email went to "the crux of the case" and Ms. Cade did not have the opportunity to authenticate the document or depose the previously unidentified recipients of the email. As stated by the trial court, "clearly, this email deals with -- this is the whole issue in this case; right? And so it -- this is definitely a substantial violation. And also that the timing of the disclosure, I think, it's just unreasonable." The court continued:

> The reason for the violation, there isn't any. I mean, it just – there's no reason for the violation, other than it was missed along the way. And that there was just an overall lack of due diligence. And then the degree of prejudice. And here's where the problem lies is (1) it's a substantial violation. This issue, again, is pretty much the crux of the case in a lot of ways; (2) it's not just that

> the email, in terms of prejudice, it's not just that, you know, on the one hand, this is a position that this witness has always taken . . . . The fact that it came in an email back then to three other now witnesses, and the witnesses were never disclosed. And so then the plaintiff has no ability to contact these witnesses, ask them any questions, whether they got any more emails, whether they responded to the email, or whether there – like he said, whether there was an email before that, or anything else, for that matter. It's incredibly prejudicial. And then the prejudice, if any, to the defendant, should I exclude this piece of evidence, is relatively minor because the witness is here, and the witness certainly can testify about what he knows.

As noted by the court, the prejudice to Appellants was slight, as Mr. Greenwald, the author of the email, was called to testify and he was available to produce the same evidence through "less prejudicial means." *Consolidated Waste*, 421 Md. at 220. The prejudice to Appellee, however, was far greater, and a postponement would have pushed the case into the next year, which, as explained by the court "is just not desirable at all. . . . given, again, the minor nature of any prejudice, if you will, to the defendant." Under these circumstances, the trial court did not abuse its discretion.

III. The court did not abuse its discretion in denying Arrow Parking's Motion in Limine to Exclude Evidence Relating to Ms. Cobb-Randall's Fall.

According to Appellants, the court abused its discretion in denying Arrow Parking's Motion in Limine to Exclude Evidence Relating to a Separate Occurrence and Supplement thereto. Appellants assert "there was no competent affirmative evidence that Ms. Cobb-Randall fell before [Ms.]Cade." Appellee argues there was substantial evidence that Ms. Cobb-Randall fell first, including two uncontested contemporaneous writings, Ms. Cade's business card and the incident report Ms. Cade filled out forty-eight hours after her fall.

Rulings with respect to the admissibility of evidence are "left to the sound discretion of the trial court." *Consolidated Waste*, 421 Md. at 219. The proper legal standard for the admission of evidence of another incident is whether the other incident was (1) a prior incident and (2) "sufficiently relevant and illuminating because there is a similarity of time, place and circumstance." *Locke, Inc. v. Sonnenleiter*, 118 Md. 443, 447-51 (1955). "In order to present '...evidence as to past accidents, tendencies or defects,' there must be '...similarity of time, place and circumstance' and, in the discretion of the trial court, the evidence must not '...cause an unfair surprise or confusion by raising collateral issues.'" *Southern Management Corp. v. Mariner*, 144 Md. App. 188, 194 (2002) (quoting *Locke*, 117 Md. at 447-48).

Here, evidence was presented that Ms. Cobb-Randall's accident was at a similar time, the same place, and caused by the exact same circumstances. Appellants concede that Ms. Cobb-Randall fell at the same place and under the same circumstances as Ms. Cade. During trial, Appellee presented evidence that Ms. Cobb-Randall's fall happened first in time. Ms. Cade testified that Mr. Kabui informed her that someone else had fallen on the third floor. Ms. Cobb-Randall testified that she fell on the third floor and overheard an Arrow Parking employee informing the supervisors that another person had fallen. In the recorded phone call to Otis Elevator Company, both Mr. Kariuki and Mr. Knickman state that two people had fallen as a result of the mis-leveled elevator. Mr. Kariuki's call took place at 2:03 P.M., establishing that both falls had taken place by that time. The evidence relating to Ms. Cobb-Randall's fall was "sufficiently relevant and illuminating."

Locke, 118 Md. at 448. The testimony was not a surprise to Arrow Parking, nor was it a collateral issue.

Appellants rely on *Smith v. Hercules Co*., 204 Md. 379, 385 (1954), where the plaintiff fell and was injured while installing cargo battens in the hold of a ship. There, the Supreme Court of Maryland held that the testimony of an employee who fell in the same hold on the day of the accident because of a defective clamp was properly excluded because there was no evidence that a clamp, much less a defective clamp, had caused the plaintiff to fall. *Id.* The Supreme Court stated that "[e]vidence of other accidents, particularly where the circumstances are not identical, have little probative value and are calculated to prejudice the jury." *Id.*

The present case can be readily distinguished, as it is uncontested that the circumstances of Ms. Cobb-Randall's fall were identical to Ms. Cade's fall, creating significant probative value. In *Cordish v. Bloom*, 138 Md. 81, 93 (1921), a plaintiff alleged that his injury was caused as he walked by a defective condition in a cellar door on the pavement in Baltimore City. The Supreme Court held that evidence of other accidents that had occurred in the same manner was admissible to show that the defendant had notice. *Id.* The Court explained that: "Evidence of similar accidents from the same cause is competent, not for the purpose of showing independent acts of negligence, but as tending to show that the common cause of the accidents is a dangerous, unsafe thing[.]" *Id.*

As stated in *Locke*, evidence of this kind is relevant if it "relates to an occurrence which happened under substantially the same conditions, at substantially the same place as the accident in suit, and at a time not too remote therefrom." *Locke, Inc.*, 118 Md. at 448.

Ms. Cobb-Randall's fall occurred under substantially the same unleveled elevator conditions, on the same elevator as Ms. Cade's fall, and within the hour of Ms. Cade's fall. The court did not abuse its discretion in denying the Motion in Limine.

IV. The court did not err in denying Appellants' Motion for Judgment.

Appellants argue there was no evidence that Arrow Parking had sufficient notice of Ms. Cobb-Randall's fall in sufficient time to warn her, and, therefore, the court erred in denying Appellants' motion for judgment. Appellee responds that the evidence "overwhelmingly suggested, if not conclusively established" that Ms. Cobb-Randall fell before Ms. Cade, putting Appellants on notice of the defect in the elevator in sufficient time to prevent Ms. Cade's fall.

In order to establish negligence, the plaintiff must establish: "(1) that the defendant was under a duty to protect the plaintiff from injury; (2) that the defendant breached that duty; (3) that the plaintiff suffered actual injury or loss; and (4) that the loss or injury proximately resulted from the defendant's breach of the duty." *Wankel v. A&B Contractors, Inc.*, 127 Md. App. 128, 157 (1999) (citing *Baltimore Gas Elec. Co. v. Lane*, 338 Md. 34, 43 (1995)); *see also Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 314 (2007). In a premises liability action, the plaintiff bears the burden of proving "how long the dangerous condition existed prior to the accident." *Maans v. Giant of Maryland, LLC*, 161 Md. App. 620, 640 (2005). The plaintiff must prove that the owner or operator had notice of the dangerous condition in sufficient time for them to have taken action to avoid the injury. *Id.*; *see also Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 315 (2007) ("the

burden is upon the customer to show that the proprietor created the dangerous condition or had actual or constructive knowledge of its existence").

In reviewing the trial court's denial of Appellants' motion for judgment, we view the evidence de novo, in the light most favorable to the non-moving party. *Six Flags*, 248 Md. App. at 581. Here, it is clear that Ms. Cade presented "legally relevant and competent evidence from which a rational mind could infer a fact in issue." *Giant Food, Inc. v. Booker*, 152 Md. App. 166, 177, *cert. denied*, 378 Md. 614 (2003). Ms. Cade presented testimony, concurrent writings, and witness statements that supported her position that Ms. Cobb-Randall's fall happened first, and that Arrow Parking was on notice of the elevator defect in enough time to prevent Ms. Cade's fall. Considering all evidence, in the light most favorable to Ms. Cade, we affirm the circuit court's denial of Arrow Parking's motion for judgment. *Smithfield Packing Co. v. Evely*, 169 Md. App. 578, 591, *cert. denied*, 396 Md. 10 (2006).

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