Circuit Court for Montgomery County
Case No. 478190V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2290

September Term, 2023

VIVIAN CHEUNG

v.

HOWARD HUGHES MEDICAL INSTITUTE

Wells, C.J.,
Graeff,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Getty, J.

Filed: March 10, 2026

*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).

Appellant Vivian Cheung ("Dr. Cheung") is an accomplished RNA biologist and pediatric neurologist formerly appointed to Appellee Howard Hughes Medical Institute's ("HHMI") Investigator program. Following HHMI's decision not to renew Dr. Cheung for a third term as an Investigator, Dr. Cheung filed a claim in the Circuit Court for Montgomery County alleging violations of the Maryland Fair Employment Practices Act and Montgomery County Human Rights and Civil Liberties Law. Dr. Cheung alleged that HHMI had not renewed her based on discrimination against her for her disability, race, sex, and national origin. Dr. Cheung's claim for discrimination based on disability went to trial, while her claims for discrimination based on other protected classes were dismissed for failure to state a claim.

On appeal, Dr. Cheung challenges the dismissal of her claims for discrimination based on protected classes other than disability, the trial court's exclusion of HHMI's internal studies relating to potential bias in its program, and the denial of her motion for leave to amend her pleadings to reinstate the previously-dismissed claims.

Dr. Cheung presents, in essence, three questions for our review, which we have rephrased and restyled as follows:

1. Did the circuit court err when it restricted Dr. Cheung's pleadings to disability discrimination?
2. Did the circuit court err when it excluded HHMI's internal studies as evidence?

3. Did the circuit court err when it denied Dr. Cheung's motion for leave to amend?[1]

For the following reasons, we shall answer all three questions in the negative, and therefore affirm.

BACKGROUND

A. Factual Background

HHMI is a nonprofit biomedical research organization founded in 1953. HHMI's highly selective Investigator program provides financial support to established researchers pursuing novel discoveries. Prior to March 1, 2017, the program offered appointed Investigators a renewable term of five years; thereafter, the renewable term was extended to seven years. At the end of each term, Investigators undergo a peer review process to determine whether the Investigator's term should be renewed. Dr. Cheung's second term began in 2012, so the subject of this appeal is a five-year term renewal process.

During the review process, HHMI selects an Advisory Panel primarily comprised of members of its Medical Advisory Board and Scientific Review Board. The Medical Advisory Board advises HHMI on a number of scientific programs, while the Scientific

[1] Dr. Cheung phrased her questions as follows:

> 1. Was it reversible error to restrict the pleadings to disability discrimination?
> 2. Was it reversible error to exclude HHMI's internal studies?

Dr. Cheung presented a third question not included in the above by asserting:

> "The trial court legally erred or abused its discretion when it did not let Dr. Cheung reassert her claims."

Review Board is appointed by HHMI to participate in reviewing Investigators for reappointment. Each Advisory Panel consists of four individuals, with one person designated the primary reviewer. An advisory board of approximately twenty scientists also attends and participates in the presentations, but members of this board are not expected to review Investigators' materials beforehand. Members are selected for their knowledge of the Investigator's field and familiarity with the Investigator's body of work.

After the presentation and question-and-answer session, the Advisory Panel discusses the Investigator's presentation and research in a private executive session. Each member of the Panel then provides an A, B, or C grade.

According to HHMI's Investigator Administrative Handbook, an "A" score indicates that the Investigator clearly fulfills most of the review criteria, is a leader in the field, has outstanding accomplishments during the current appointment term, and will likely continue to contribute substantially to the field through further research. A "B" score indicates that the Investigator has a significant record of accomplishment and productivity, but denotes concerns about the extent of leadership in the field or prospects for future contributions. A "C" score indicates that the Investigator does not meet the criteria expected of an HHMI Investigator and reappointment is not recommended.

The Advisory Panel's scores and recommendations are, as the name suggests, strictly advisory, and the decision ultimately rests with HHMI's President and Vice President. Dr. Barbara Graves, a scientific officer involved in the review process, testified that there is no official policy on how the leadership should interpret the reviewers' scores, and that she recalled an instance where leadership renewed an Investigator despite mixed

B and C scores from reviewers. Investigators who are not renewed receive a two-year phase-out. An Investigator with a disability may opt for a five-year medical phase-out.

HHMI first appointed Dr. Cheung to a five-year term as an Investigator in 2008. When she was first appointed, Dr. Cheung established her research laboratory at the University of Pennsylvania. Dr. Cheung's primary fields include RNA biology and neurogenetic disorders. During her first term as an Investigator, Dr. Cheung made the discovery that RNA and DNA sequences from the same cell are not identical.[2] At the end of her first term, Dr. Cheung presented her research regarding potential treatment for diseases such as Amyotrophic Lateral Sclerosis ("ALS") to the HHMI Advisory Panel and was renewed for a second term as an Investigator in 2012.

Dr. Cheung relocated her research laboratory from the University of Pennsylvania to the University of Michigan in Ann Arbor, Michigan in 2013. In 2014, Dr. Cheung learned of a family in Maryland with a unique genetic mutation that was relevant to her research. She negotiated an arrangement whereby the National Institute of Health would host her in Bethesda, Maryland, so that she could study the family, but her primary research laboratory remained at the University of Michigan, where she regularly commuted and conducted her work remotely.

In 2014, Dr. Cheung was diagnosed with a complex multi-system disease that affected her vision and connective tissue. Complications from a 2015 treatment damaged

[2] *See* Li M, et al., *Widespread RNA and DNA sequence differences in the human transcriptome*, SCIENCE 333: 53–58, available at https://www.science.org/doi/10.1126/science.1207018.

her spinal cord, which impacted her mobility. In February 2016, Dr. Cheung requested an accommodation to remain in Bethesda, Maryland, and to telecommute to Michigan so that she could more easily receive medical treatment at the National Institute of Health in Bethesda. HHMI initially denied this request, and indicated in its correspondence denying her request that her appointment would be terminated if she did not return to work in-person at the University of Michigan in Ann Arbor. HHMI guidelines mandate that Investigators must be physically present at their labs at least 75% of the time.

The day after Dr. Cheung requested an accommodation, HHMI scheduled the five-year review of Dr. Cheung's work for October 2016. Dr. Cheung then retained counsel. Thereafter, her request for an accommodation was granted and her review postponed until 2018. The parties dispute whether Dr. Cheung's review process should have originally been scheduled for 2016 or 2017.

Dr. Phillip Perlman, the scientific officer who would lead Dr. Cheung's Advisory Panel, advised Dr. Cheung to take the five-year phase out available to Investigators with disabilities. Dr. Janet Shaw, Dr. Cheung's personal scientific officer[3], also encouraged her to take the five-year phase-out. Dr. Cheung believed this pressure to phase out was connected to her health condition.

The twenty-three scientists who attended Dr. Cheung's 2018 review presentation

[3] Counsel for HHMI elaborated on this concept in response to Dr. Cheung's assertion that another Investigator received "coaching" from a scientific officer prior to the review process. HHMI explains that Investigators may seek guidance from scientific officers prior to review, and that Investigators are assigned a scientific officer with whom they are free to coordinate throughout their tenure.

provided the following grades: six "B minus" grades, seven "C plus" grades, and seven "C" grades. This left Dr. Cheung with a final average grade of C, which indicates that the Panel did not recommend her for renewal in the Investigator program. A number of Dr. Cheung's reviewers expressed concern with the sustainability and future viability of her research. Based on the Panel's score, Dr. Erin O'Shea, HHMI's President, decided against renewing Dr. Cheung for a third term. This was consistent with Dr. O'Shea's decision not to renew other Investigators who received similar scores. Dr. Cheung opted for a two-year phase-out, and her employment with HHMI ended in October 2020.

B. Procedural History

Dr. Cheung began by pursuing administrative remedies as required by both the Montgomery County Human Rights and Civil Liberties Law, Montgomery County Code § 27, and Maryland Code, State Government ("SG") § 20-601, et seq., also known as the Maryland Fair Employment Practices Act ("MFEPA"). She filed a complaint for discrimination with the Equal Employment Opportunity Commission ("EEOC"), which was cross-filed with the Montgomery County Office of Human Rights ("MCOHR"), in March 2019.

Dr. Cheung then filed a complaint against HHMI in the Circuit Court for Montgomery County in January 2020[4] alleging that HHMI elected not to renew her as an Investigator based on her disability, race, sex, and national origin, and thus violated

[4] Md. Code, SG § 20-1202 and SG § 20-1013 required that Dr. Cheung wait at least 180 days after filing an administrative complaint before pursuing a legal complaint.

Montgomery County Code § 27-19 and MFEPA.[5]

HHMI responded in March 2020 with a partial motion to dismiss Dr. Cheung's claims based on race, sex, and national origin. The circuit court granted the motion and dismissed the relevant claims for failure to state a claim upon which relief can be granted pursuant to Maryland Rule 2-322(b)(2). The court stated that "[Dr. Cheung] fail[ed] to allege any specific facts" demonstrating that "the review panel held Dr. Cheung's sex against her." The court likewise found that Dr. Cheung failed to plead any concrete facts demonstrating that she faced discrimination because of her race or national origin. "The closest [Dr. Cheung] comes," the circuit court writes, "to adequately alleging different treatment is describing a white male, who was renewed during the same session of her presentation for renewal, who allegedly did not present as impressive or substantive work as [Dr. Cheung.] But the Complaint does not make any allegation that plausibly supports the conclusion that the 'white male' is a proper comparator, such as doing similar work, having similar credentials, or precisely how his work is less impressive than hers."

A number of filings on both sides preceded the trial. Relevant to this appeal, Dr. Cheung filed a combined Motion for Reconsideration and Motion for Leave to Amend on May 6, 2021, requesting that her previously-dismissed claims for discrimination based on her race, sex, and national origin be reinstated based on new evidence unearthed during

[5] Dr. Cheung's Complaint contained fourteen counts: counts one and two, addressing discrimination based on disability, went to trial; counts three through six for retaliation and harassment were granted summary judgment in favor of HHMI; and counts seven through fourteen, discrimination and harassment based on race, gender, and national origin, were dismissed for failure to state a claim. Dr. Cheung's claims for harassment and retaliation are not on appeal.

discovery.

The new information cited by Dr. Cheung included handwritten notes of Dr. Barbara Graves, a scientific officer involved in the review process. Dr. Graves included the Venus symbol (♀), commonly used to denote the female sex, next to the names of female Investigators under review, including Dr. Cheung. In these notes, Dr. Graves also wrote an "I" next to seven reviewees, including Dr. Cheung. At deposition, Dr. Graves testified that she did not remember what "I" meant. At trial, Dr. Graves indicated that the I "stands for 'international.'" When asked why Dr. Cheung, who was born in New York, received an "I" notation, Dr. Graves replied, "I can't recall, other than suspecting her Asian ancestry." Dr. Graves also totaled the number of female symbols and "I"s, amounting to four out of sixteen female reviewees and seven out of sixteen "I" reviewees.

The circuit court held a hearing on this motion on February 13, whereupon the judge denied the motion for reconsideration. From the bench, the judge expressed concerns regarding the considerable delay between when the relevant counts were dismissed and when the motion was filed. The judge took the motion for leave to amend under advisement and ultimately denied the motion in March 2023.

As trial approached, HHMI filed a motion in limine to exclude evidence of two internal reports and presentations related to its diversity initiatives. Dr. Cheung received two such studies during discovery: an internal report from 2014 and a "Diversity, Equity, and Inclusion Current State Assessment" that HHMI commissioned in 2019 for internal use (collectively, "the Diversity Studies"). HHMI moved to exclude the materials primarily on three grounds:

> First, broadscale, backward-looking, statistical surveys and studies as well as forward-looking initiatives, including those that did not and do not focus on either the Investigator population or disability status, are all irrelevant to the jury's consideration of whether HHMI discriminated against Dr. Cheung on the basis of disability when it decided not to renew her in October 2018 for a third Investigator term. Second, even if relevant, the probative value of general diversity-related studies and initiatives will be substantially outweighed by unfair prejudice to HHMI and risk of jury confusion since jurors may substitute the state and prospects of HHMI's diversity efforts generally with HHMI's motivation not to renew Dr. Cheung specifically. Third, any such studies or efforts that post-date HHMI's non-renewal decision on October 26, 2018, constitute subsequent remedial measures, which are rendered inadmissible to prove culpable conduct and, if used for any other purpose, will be similarly outweighed by the concerns of Maryland Rule of Evidence 5-403.

Motion in Limine to Exclude Evidence Regarding HHMI's Diversity Studies and Efforts, 1–2, *Cheung v. Howard Hughes Medical Institute*, No. 478190-V (Cir. Ct. Mont. Co. 2023).

Dr. Cheung's response to the motion asserted that the Diversity Studies were probative of the discriminatory atmosphere and work culture at HHMI that led to Dr. Cheung's dismissal. The trial judge heard arguments at a pre-trial conference in December 2023 and determined that Dr. Cheung was permitted to introduce into evidence that the 2014 study did not address disability in HHMI's Diversity Initiative. The judge ruled that Dr. Cheung was not permitted to present any information regarding other protected classes the Diversity Studies addressed—including race, sex, and national origin, the subjects of Dr. Cheung's previously-dismissed claims. The trial court also agreed with HHMI's assertion that the 2019 study was inadmissible in part because the study was conducted after HHMI's decision regarding Dr. Cheung's non-renewal; however, the court ruled that

Dr. Cheung was permitted to try to lay a foundation at trial to demonstrate admissibility of the Diversity Studies.

Trial took place over the course of eight days, from December 4 to December 13, 2023. Dr. Cheung's counsel sought to introduce the Diversity Studies at multiple points throughout the trial, particularly during cross-examination of Dr. David Clapham, HHMI's then-Vice President, and Dr. Erin O'Shea, HHMI's President. All of HHMI's objections to the introduction of the materials were sustained, beyond the limited scope outlined in the pre-trial motions hearing.

When both parties had rested their cases, the jury was presented with a verdict sheet containing one question: "Was disability a motivating factor in the employer's action?" The jury returned a verdict in favor of HHMI, and the court entered judgment on December 19, 2023. Dr. Cheung filed a motion for a new trial, which the trial court denied.

This appeal followed.

DISCUSSION

I. The circuit court properly dismissed Dr. Cheung's race, sex, and national origin discrimination claims.

A. The Parties' Contentions

Dr. Cheung asserts that the circuit court erred when it dismissed her claims for discrimination based on race, sex, and national origin. In Dr. Cheung's view, this court should hold that when a plaintiff adequately alleges discrimination based on one protected

status, such as disability, "there is a reasonable inference the employer failed to root out" discrimination on the basis of other protected statuses.

Dr. Cheung also asserts that this Court should hold that when discovery reveals evidence that supports a claim that was previously dismissed, "justice requires" the reinstatement of such a claim. This would not be unfairly prejudicial to the defendant, Dr. Cheung elaborates, because the defendant was already on notice of the claim that was previously dismissed.

HHMI responds that Dr. Cheung waived her right to appeal the decision because Dr. Cheung's counsel conceded that dismissal was proper at the time. Moreover, HHMI submits that contrary to Dr. Cheung's assertion, the circuit court considered all of Dr. Cheung's claims together, including alleged indicators of discrimination on bases other than disability, and nevertheless found those claims lacking.

HHMI asserts that Dr. Cheung's theory that sufficiently alleging one claim of discrimination should entitle a plaintiff to discovery on any other claim of discrimination is, first, not properly before this court, because this issue is raised for the first time on appeal, and second, that the claim is without merit.

B. Standard of Review

We review the circuit court's ruling on a motion to dismiss *de novo*. *Chavis v. Blibaum & Assocs., P.A.*, 476 Md. 534, 551 (2021). Dismissal of a claim is proper "if the allegations and permissible inferences, if true, would not afford relief to the plaintiff[.]" *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643 (2010); Md. Rule 2-322(b). In general, we limit our review of the facts underlying the circuit court's analysis to the

contents of the complaint and its incorporated exhibits. *See Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004). "The well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *RRC Ne., LLC*, 413 Md. at 644.

C. Analysis

Dr. Cheung made her claims against HHMI under two statutory frameworks: Montgomery County Code § 27-19 and MFEPA. MFEPA provides that an employer may not "fail or refuse to hire, discharge, or otherwise discriminate against any individual . . . because of" the individual's status as a member of a protected class, including "race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment." SG § 20-606(a).[6] MFEPA is modeled after federal anti-discrimination legislature and thus Maryland courts often look to federal precedent in analyzing MFEPA's application. *See Doe v. Catholic Relief Servs.*, 484 Md. 640, 656 (2023).

Montgomery County Code § 27-19 likewise provides that an employer may not "fail or refuse to hire, fail to accept the services of, discharge any individual, or otherwise discriminate against any individual" or "limit, segregate, or classify employees in any way that would deprive or tend to affect adversely any individual's employment opportunities

[6] This quotation represents the protected classes listed in SG § 20-606(a) in effect when Dr. Cheung filed her claims. The Maryland legislature amended MFEPA to add "military status" as a protected class in 2024. *See* 2024 Md. Laws Ch. 323 (enacting S.B. 413).

or status as an employee" based on "race, color, religious creed, ancestry, national origin, age, sex, marital status, sexual orientation, gender identity, family responsibilities, or genetic status of any individual or disability of a qualified individual[.]" The statutory language of Chapter 27 includes a policy statement that specifies, "[t]he prohibitions in this article are substantially similar, but not necessarily identical" to those in similar state and federal laws and that the chapter's intent is "to assure that a claim filed under this article may proceed more promptly than possible under either state or federal law," but that it does not intend to create a duplicative or cumulative outcome once a claim is processed under a similar state or federal law. Montgomery County Code § 27-1.

A plaintiff who seeks to establish a prima facie case for employment discrimination based on circumstantial rather than direct evidence of discriminatory conduct must show: (1) the plaintiff's membership in a protected class, (2) an adverse employment action taken against the plaintiff, (3) the plaintiff's satisfactory job performance at the time of the adverse employment action, and (4) circumstances supporting an inference of discrimination. *See Town of Riverdale Park v. Ashkar*, 474 Md. 581, 615–16 (2021) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)). The plaintiff need not establish all of these factors fully to survive a motion to dismiss; however, the plaintiff must state a claim on which relief can be granted, which requires that the plaintiff alleges facts that "raise an inference of discrimination." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511–12 (2002).

Here, the circuit court found that Dr. Cheung failed to allege sufficiently that HHMI discriminated against her based on her race, sex, or national origin. On the matter of race,

the court found Dr. Cheung's claims to be "conclusory and opinion-oriented," noting that she mentioned no "allegations of racist epithets or derogatory remarks related to her race."

On the subject of sex discrimination, the court found that "[t]he only mention of sex in [Dr. Cheung's] Complaint is that Asian-American female investigators were subjected to more stringent renewal standards than their male counterparts." Dr. Cheung did not allege that "any sexist comments were made, nor that any person exhibited sexually inappropriate behavior. Nor, does the Complaint point to any examples of the alleged different standards that HHMI applies to men and women."

On these two points, in the circuit court's view, "[t]he closest [Dr. Cheung] comes to adequately alleging different treatment is describing a white male, who was renewed during the same session of her presentation for renewal, who allegedly did not present as impressive or substantive work as [Dr. Cheung]. But the Complaint does not make any allegation that plausibly supports the conclusion that the 'white male' is a proper comparator, such as doing similar work, having similar credentials, or precisely how his work is less impressive than hers."

We agree. Evaluating a presentation on the merits of one's work contains by necessity a degree of subjectivity, as does judging the comparative merit of the work itself. Merely alleging that another reviewee was less impressive without some factual metric by which the court can gauge the plausibility of such an assertion is not sufficient to establish a claim of discriminatory treatment.

Finally, on the matter of national origin, the court likewise found that Dr. Cheung "fails to cite any concrete facts at all that demonstrate that any member of HHMI remotely

considered Dr. Cheung's national origin in deciding not to renew Dr. Cheung's term." On all of the above dismissed counts, Dr. Cheung failed to plead facts with sufficient specificity to establish her claims, and thus the court properly dismissed them.

The true crux of Dr. Cheung's argument, however, is more a matter of policy than of legal error. Rather than arguing whether her claims were properly dismissed, Dr. Cheung posits a legal theory under which sufficiently alleging any one claim for discrimination would allow for discovery on any other such claim.

This is not the state of the law, nor is it a viable proposal. Dr. Cheung cites to *Romeka v. RadAmerica II, LLC*, 485 Md. 307, 330 (2023), suggesting that our Supreme Court's holding that "anti discrimination laws serve the broad, overarching purpose of rooting status-based discrimination out of the workplace" supports her proposal that a claim of discrimination based on one protected status insinuates the existence of other forms of discrimination. *Id.* (quoting *Romeka v. RadAmerica II, LLC*, 254 Md. App. 414, 455 (2023)). However, this is a mischaracterization of the holding in *Romeka*. In that case, our Supreme Court affirmed this Court's holding that the appellant "failed to genuinely dispute Employer's evidence that she was terminated for reasons unrelated to her alleged protected disclosure." *Id.* at 334. This Court's assertion, quoted above, refers to discriminatory reasoning as "even one" contributor to an employer's adverse decision among other legitimate factors, not to a boundless amalgam of different types of discrimination.

We therefore hold that the circuit court properly dismissed Dr. Cheung's claims.

II. The circuit court did not err when it excluded HHMI's internal studies as evidence.

A. The Parties' Contentions

Dr. Cheung contends that the circuit court erred in excluding the Diversity Studies because even if her claims were limited to disability discrimination, an internal study examining biases against other protected classes was relevant to show a "general atmosphere" of discrimination. Dr. Cheung argues that the Diversity Studies show that HHMI articulated changes it aspired to implement in 2014 and then found in 2019 that it had not met those aspirations, and that this failure is relevant to show a likelihood of discriminatory conduct in Dr. Cheung's review process.

Dr. Cheung then argues that the circuit court erred during trial when it found that counsel for HHMI did not "open the door" to introduce the 2014 study based on the following exchange during cross-examination:

> [COUNSEL FOR HHMI]: And that it is very difficult to maintain your status as an HHMI investigator, correct?
> [DR. CHEUNG]: I'm not sure how true that is. I would say in – based on general statistics, over 80 percent of investigator, especially if you are male and white, you get renewed, 80 percent or more of the time.
> [COUNSEL FOR HHMI]: And you don't have any factual basis to support that, do you?
> [DR. CHEUNG]: I think I have pretty good numbers.

Dr. Cheung asserts that HHMI presented a theory that its Investigator review process is rigorous and competitive for everyone, and that when Dr. Cheung referenced HHMI's internal study which she alleges shows bias within HHMI, HHMI's counsel then asked the above follow-up question in bad faith, knowing that the study had already been excluded.

HHMI responds that the trial court properly reserved judgment on the Diversity Studies during the hearing on the motion in limine and then made rulings on the admissibility of the Diversity Studies during trial, balancing the potential relevancy of the Diversity Studies against other considerations. HHMI notes that the circuit court did not fully grant HHMI's motion, but rather limited the scope of the Diversity Studies to their relevancy regarding the disability discrimination claim at issue.

Regarding the "opened door" issue, HHMI counters that the trial court in fact found that the question opened the door in a limited capacity, and that the trial court properly exercised its discretion to limit Dr. Cheung's response to the scope of her own personal experience.

B. Standard of Review

In general, we review the circuit court's evidentiary rulings for abuse of discretion; however, whether a piece of evidence is relevant is a question of law that we review *de novo*. *Perry v. Asphalt & Concrete Servs., Inc.*, 447 Md. 31, 48 (2016). The applicable standard "depends on whether the trial judge's ruling under review was based on a discretionary weighing of relevance in relation to other factors or on a pure conclusion of law." *J.L. Matthews, Inc. v. Maryland-Nat'l Cap. Park & Plan. Comm'n*, 368 Md. 71, 92 (2002). "Although trial judges have wide discretion 'in weighing relevancy in light of unfairness or efficiency considerations, trial judges do not have discretion to admit irrelevant evidence.'" *Id.* (quoting *State v. Simms*, 420 Md. 705, 724–25 (2011)).

The question of whether the "opened door" doctrine was invoked is a legal one which we review *de novo*; however, once the doctrine has been invoked, we review the

court's decision on the admissibility of the evidence thereafter for abuse of discretion. *See Westley v. State*, 251 Md. App. 365, 414 (2021).

C. Analysis

"Relevant evidence is evidence that makes a fact in issue more or less probable." *State v. Robertson*, 463 Md. 342, 352–53 (2019) (citing Md. Rule 5-401). "Evidence that is not relevant is not admissible." Md. Rule 5-402.

Here, Dr. Cheung sought to admit HHMI's two internal Diversity Studies to support her claims of discrimination, even though Dr. Cheung's claim was limited to discrimination based on disability, and the Diversity Studies did not measure potential bias based on disability. The circuit court found at the hearing on the motion in limine that the Diversity Studies might be relevant to support Dr. Cheung's claims because the 2014 Study did not consider disability as a factor in its assessment of bias within HHMI, and this might tend to show bias based on disability. The court reserved judgment on the 2019 Study entirely.

The circuit court properly assessed the limited relevance of the Diversity Studies and admitted the 2014 Study on a limited basis to support Dr. Cheung's claim of discrimination based on disability. Dr. Cheung's claims for discrimination based on race, sex, and national origin were dismissed and not at issue during trial; the only remaining claims at trial were for discrimination based on disability. Thus, a study on potential bias within HHMI that did not consider disability as a factor would not have a high degree of relevance. The court properly assessed the relevance of the evidence and did not err in limiting its admissibility.

During trial, Dr. Cheung referenced the Diversity Studies on three occasions: the "opened door" argument which we will address below, a statement from HHMI's then-Vice President Dr. Clapham in the 2019 Study, and statistical information from the 2014 Study presented during testimony from HHMI's President Dr. O'Shea. The court found that the statement from the 2019 Study was inadmissible because it was made after the decision not to renew Dr. Cheung. The court rejected Dr. Cheung's proffering of the 2014 Study because it was offered to refresh Dr. O'Shea's memory when Dr. O'Shea did not request it, and testified to the statistical information from memory. Under these circumstances, the court properly exercised its discretion in excluding the Diversity Studies.

On the matter of whether HHMI opened the door to the 2014 Study, the circuit court agreed with Dr. Cheung: the court found that HHMI's line of questioning "may have [] opened [the door] a bit." Thus, we need not address the question of whether the door was opened, but instead the question of what evidence the court then allowed. The court ultimately decided that Dr. Cheung could reference only her own personal experience, which was that during her own 2018 review session, "there were eight white men, and seven of them were renewed, so 87.5 percent. And there were two women of color, and both of us were not renewed, zero percent."

This line of questioning is not in itself relevant to the claim for disability discrimination at issue, but the court found that the line of questioning permitted Dr. Cheung to respond more fully than she had done originally. The court did not abuse its discretion.

III. The trial court properly denied Dr. Cheung's motion for leave to amend.

A. The Parties' Contentions

Finally, Dr. Cheung argues that the circuit court erred when it denied her motion for leave to amend. Dr. Cheung draws attention to the court's emphasis on the considerable delay between the initial dismissal of the claims and the motion for leave to amend, and asserts that this constitutes legal error under Maryland Rule 2-504 because, in Dr. Cheung's view, the court should not have considered the timeline of the case against "the normal course of a trial," and "[i]f the circuit court wished to establish such a 'normal course' under which amendments occurred before discovery closed or dispositive motions were filed, it could do so in the [scheduling order]. See Md. Rule 2-504(a)-(b)."

Dr. Cheung then asserts that the circuit court abused its discretion when it rescheduled the hearing on this motion. The hearing was initially set for July 2022, then rescheduled to October, then January 2023, and ultimately took place in February 2023. The result was that a different judge heard arguments on the motion for leave to amend, because the judge who issued initial orders in the case had retired. Dr. Cheung asserts that a series of events leading to denial of her motion for leave to amend in March 2023 would have been averted if the original judge had heard the motions arguments.

Dr. Cheung also notes that if her initial Complaint had been solely for diversity discrimination, and she had later discovered evidence that supported claims of discrimination based on race, sex, or national origin, she would not have needed leave to amend her complaint.

HHMI responds that Dr. Cheung's proposed amendments did not address the pleading failures the court identified when the claims were dismissed. HHMI notes that while Dr. Cheung's motion for leave to amend was originally filed in May 2021, Dr. Cheung did not supplement the motion with the Diversity Studies, but instead introduced them for the first time at the hearing in February 2023.

HHMI asserts that the court properly denied Dr. Cheung's motion both because the amendment would have caused undue delay and because the amendment would have been futile.

B. Standard of Review

The circuit court's "determination to allow amendments to pleadings or to grant leave to amend is within the sound discretion of the trial judge." *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443–44 (2002). Therefore, "only upon a clear abuse of discretion will a trial court's rulings in this arena be overturned." *Id.* at 444. When a trial court does not issue a written opinion regarding the denial of a motion to amend, we look to the record to determine whether the trial court abused its discretion. *See Med. Mgmt. & Rehab. Servs., Inc. v. Md. Dep't of Health & Mental Hygiene*, 225 Md. App. 352, 362 (2015).

C. Analysis

Maryland Rule 2-322(c) provides that when a claim has been dismissed, "an amended complaint may be filed only if the court expressly grants leave to amend." "Denial of leave to amend is appropriate if the amendment would result in prejudice to the

other party, undue delay, or where amendment would be futile because the claim is irreparably flawed." *Eastland Food Corp. v. Mekhaya*, 486 Md. 1, 20 (2023).

As a threshold matter, Dr. Cheung proposes a theory whereby the circuit court committed legal error when it considered the timing of the motion, the considerable delay, and the notion that the amendment would put the case "back at Square One with discovery" after considerable additional discovery had already occurred. In Dr. Cheung's view, the court was not at liberty to exercise its discretion to consider the timing of the proposed amendment or the court's schedule, but instead should have set a deadline for amended pleadings in its initial scheduling order.

This argument holds no water. Md. Rule 2-504 sets forth requirements for an initial scheduling order. It does not strip the court of its discretion to deny an amendment based on prejudice or delay. Thus, we review the denial of Dr. Cheung's motion for leave to amend for abuse of discretion.

In doing so, we see no abuse of discretion in the circuit court's reasoning. The court outlined its concerns regarding the considerable delay between the original dismissal of the claims and the subsequent motion for leave to amend, and its concerns about "resetting the clock" when discovery had already been extensive. The court acknowledged the possibility that the 2014 Study could be probative, but noted its concerns with reopening discovery on issues that were not part of the initial discovery. The court then took the matter under advisement and denied the motion a month later in March 2023.

The court properly exercised its discretion to weigh the potential value of the new evidence Dr. Cheung presented to support her proposed amended claims against the

potential for "prejudice to the other party, undue delay, or [futility of the amendment] because the claim is irreparably flawed." *Eastland Food Corp.*, 486 Md. at 20. Dr. Cheung frames the 2014 Study as an "explosive document" that would naturally have supported her previously-dismissed claims, but the circuit court did not share her view. The record shows that the court considered the potential value of the study and weighed it against the potential prejudice to HHMI, the potential for undue delay, and the potential futility of the proposed amendments. Thus, the court did not abuse its discretion.

Finally, Dr. Cheung asserts that the circuit court abused its discretion because the judge who originally issued orders in the case, including an order that resulted in production of the 2014 Study, rescheduled the hearing on her motion on a number of occasions, which ultimately resulted in another judge presiding over the hearing, as the original judge had retired. Dr. Cheung suggests that this rescheduling created the delay that was the subject of the court's concern at the motions hearing. On the contrary, the circuit court expressed concern with Dr. Cheung's delay in filing, as well as the overall length of discovery. Dr. Cheung made a number of requests for further discovery or extended time between October 2021 and February 2023; one assumes that at least some of the resultant delays were for her benefit.

In sum, we find neither legal error nor abuse of discretion in the circuit court's denial of Dr. Cheung's motions for reconsideration and for leave to amend.

CONCLUSION

For the foregoing reasons, we affirm the decision of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.