Circuit Court for Prince George's County
Case No. CAL 16-07777

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2714

September Term, 2018

MAMOUN K. ASHKAR, ET AL.,

v.

TOWN OF RIVERDALE PARK, ET AL.

Friedman,
Shaw Geter,
Harrell, Jr., Glenn T.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.
Dissenting opinion by Shaw Geter, J.

Filed: July 30, 2020

Appellants, Mamoun K. Ashkar ("Ashkar") and Greg's Towing, Inc. ("Greg's Towing"), request that we reverse the judgment of the Circuit Court for Prince George's County granting Appellees', Town of Riverdale Park ("Town" or "Riverdale") and members of the Riverdale Park Police Department ("RPPD")[1], motion for judgment notwithstanding the verdict ("JNOV"). Ashkar had succeeded initially in a jury trial, alleging that members of the RPPD discriminated against him and his towing company in the decision to designate a new tow provider for the Town other than Greg's Towing. Following the jury verdict in Ashkar's favor, the circuit court granted Riverdale's motion for JNOV, in part, because it was the trial judge's view that Ashkar failed to provide "direct evidence" of discrimination by Riverdale, as well as his failure to establish that Riverdale's given reason for not choosing him as tow provider was pretextual. Ashkar argues also that the trial court dismissed incorrectly (on a motion for judgment during the trial) his claim for malicious prosecution. We reverse the grant of the motion for JNOV, but affirm the court's decision to dismiss the claim for malicious prosecution.

FACTUAL BACKGROUND

Greg's Towing was formed in Maryland in 1974. For more than thirty years prior to this proceeding, it was the exclusive towing provider for Riverdale. Riverdale would

[1] Appellee officers include Chief of Police David Morris, Lieutenant Colonel Patrick Timmons, Lieutenant Robert Turner, Sergeant Joseph Sommerville, and Corporal Joseph Walch.

call (usually via its police officers) on the towing company to remove disabled vehicles, vehicles from accident scenes, and other general towing needs. Ashkar entered the towing business in Prince George's County in 2009 as Five Star Towing ("Five Star").

Ashkar sought towing work with the RPPD in 2011, inquiring about the possibility of having Five Star designated as a provider for Riverdale. When he approached the Assistant Chief of Police Lieutenant Colonel Patrick Timmons ("Lieutenant Colonel Timmons") with this request, Lieutenant Colonel Timmons explained that the Town had engaged Greg's Towing as its exclusive provider. In 2013, when Greg Prendable ("Prendable"), the owner of Greg's Towing, announced his plan to retire, Ashkar (along with his three brothers) seized the perceived opportunity to gain the business of the Town. He entered negotiations with Prendable to purchase Greg's Towing. He purchased Greg's Towing for $87,853. On 27 March 2014, Ashkar, a first generation Palestinian-American of Middle Eastern descent, became the "face" of the company. Although reliant heavily on the business generated by the RPPD while operated by Prendable, Greg's Towing at the time of this proceeding earned revenue also from tow provider contracts with the Prince George's County Police Department, the City of College Park, the Maryland State Police, and others.

During Ashkar's negotiations for the purchase of Greg's Towing, the RPPD, which was aware of Prendable's impending retirement, began to make plans for a transition to a new company. Another company, AlleyCat Towing, was selected by the Town to begin towing operations as of 1 November 2013. This arrangement was made on an interim basis and was contingent on further contract negotiations.

Following the transition in ownership of Greg's Towing, Ashkar reached out to Town officials to notify them of his continuation of operations by Greg's Towing (under his ownership) and the desire to retain the same relationship the parties had enjoyed previously. At the time, Greg's Towing remained the lone towing company with a storage lot within Riverdale city limits, an asserted reason of convenience provided by Lieutenant Colonel Timmons as to why Greg's Towing had been the exclusive provider previously. When speaking with Lieutenant Colonel Timmons in 2014 about renewing the relationship with Greg's Towing, Ashkar claimed that, at that time, the Lieutenant Colonel stated that "he just couldn't see kicking out AlleyCat and giving [Ashkar] the contract." Ashkar contacted numerous other Town officials, including Chief of Police David Morris ("Chief Morris"), attempting to discuss Greg's Towing returning as the Town's tow provider, but was unsuccessful. While Ashkar was seeking a meeting with Town officials, Chief Morris (behind the scene), according to testimony from Lieutenant Colonel Timmons, directed him to "deal with Mr. Ashkar." On 22 July 2014, Chief Morris accepted a proposal from AlleyCat to continue its services for Riverdale as the Town's exclusive provider.

During Ashkar's attempted entreaties to the Town, he alleged multiple incidents of unlawful discrimination by Town officials against him. Ashkar claims he heard from a Town councilmember and an RPPD officer that multiple Town officials made discriminatory remarks about him. The councilmember claimed that the Mayor was involved.[2]

[2] The content of the alleged statements were not permitted in evidence by the trial judge because they were deemed inadmissible hearsay.

Ashkar testified that Lieutenant Colonel Timmons, Ashkar's primary contact with the Town and an influential participant in deciding who received the tow contract, used a racial slur in reference to Ashkar. Ashkar claimed that he heard Lieutenant Colonel Timmons refer to him in March 2014 as a "camel jockey" and that "this fucking camel jockey doesn't get the point." Lieutenant Robert Turner, who was in charge of the day-to-day towing issues for the RPPD, accosted Ashkar at the police station on the same day, stating:

> I don't understand what [you're] doing here . . . [you're] never going to get the contract . . . there's no need to see the chief of police, Timmons is in charge, you're not going to get the contract stop bothering us and don't come back here . . . I'm just taking orders from Timmons.

Ashkar reported these incidents to a Town councilmember, Jonathan Ebbler,[3] as well as to the President of the Fraternal Order of Police, Richard Sease ("Officer Sease"). On 17 January 2015, Officer Sease met with Ashkar and called Sergeant Joseph Sommerville ("Sergeant Sommerville") on speaker phone (with Ashkar in the room). Ashkar claims that, after Officer Sease asked about Greg's Towing, "the first thing that jumped out of Sommerville's mouth was . . . no, no, no, don't use this company, Mike's not his real name, these guys can't pass a background check and pretty much he's a foreigner and just stick with – we've got to stick together."

A few months later, on 25 April 2015, Ashkar had another contentious interaction with the RPPD. Called by a private party for a tow request, Ashkar (as Greg's Towing) arrived on the scene of an accident that had happened within the town limits. Sergeant

[3] Councilmember Ebbler did not testify at trial.

Sommerville and Corporal Joseph Walch ("Corporal Walch") were on the scene. When Ashkar approached Sergeant Sommerville to inform him that he was going to tow the vehicle as he had been employed by its owner to do, Sommerville became hostile and told Ashkar "he doesn't give a goddamn if he is going to tow that car or not, to get the fuck out of here." Ashkar complied with the directive, informing the customer he could not tow the vehicle. Sergeant Sommerville emailed subsequently Lieutenant Turner and Lieutenant Colonel Timmons to inform them of the interaction with Ashkar.

The following day, Lieutenant Colonel Timmons informed Chief Morris, who requested criminal charges be filed against Ashkar, a task delegated to Corporal Walch. Two charges were filed: disturbing the peace and hindering passage; and obstructing and hindering an investigation. The first charge was stetted by the District Court of Maryland, sitting in Prince George's County, on the condition that Ashkar perform 16 hours of community service. The second charge was stetted, without condition, on 29 June 2015. Ashkar signed the stets and performed the community service. Both charges were entered *nolle prosequi* on 11 August 2015.

Ashkar brought suit against the RPPD officers and Riverdale, alleging incidents of (1) discrimination based upon his national origin and (2) malicious prosecution. The latter claim was disposed of by the court through the grant of the defendants' motion for judgment at the close of Ashkar's case. The jury returned a verdict on the discrimination claim in favor of Ashkar, awarding $244,212 in economic damages and $15,000 in non-economic damages. Riverdale filed a motion for judgment notwithstanding the verdict (JNOV), or in the alternative, for a new trial or remittitur. In a written memorandum

opinion, the judge granted the motion and vacated the jury's verdict. Ashkar appealed timely.

QUESTIONS PRESENTED

Appellant presents two questions for our consideration, which we have rephrased, without substantive change:

I. Did the trial court err in granting the motion for JNOV? [4]
II. Did the trial court err at trial in dismissing a claim for malicious prosecution on a motion for judgment?

STANDARDS OF REVIEW

We review the grant of a motion for JNOV using a non-deferential standard of review and "assume the truth of all credible evidence on this issue and any inferences

[4] A third point of attempted appellate controversy—whether there was sufficient evidence adduced to support the damages awarded Ashkar—is not properly before us. The trial judge, in her written memorandum explaining her grant of the motion for JNOV, noted in passing that additionally "this Court is not persuaded that the evidence provided to the jury to determine damages was sufficient, as it was speculative at best." This observation, made after an extended justification for why the evidence of actionable discrimination was inadequate, strikes us as gratuitous under the circumstances. Although an alleged inability to establish damages sufficiently was a specific point of contention raised by the Town in its pre-trial motion for summary judgment (which the judge denied on the morning of trial before it commenced), it was not raised as grounds in support of its motion for judgment at the close of Ashkar's case-in-chief or at the end of all evidence. Md. Rule 2-532(a) states that a trial court may only grant JNOV "on the grounds advanced in support of the earlier motion [for judgment]." *See also Sage Title Grp., LLC v. Roman*, 455 Md. 188, 215 (2017) (stating "when a party has previously moved for judgment at the close of all of the evidence, and subsequently moves for JNOV, the party's motion for JNOV is limited only to the grounds advanced in support of its earlier motion for judgment."). As such, the trial judge's comment on this subject in her ruling on the JNOV motion was gratuitous and its content is not properly before us.

therefrom in the light most favorable to . . . the nonmoving parties." *Lowery v. Smithsburg Emergency Med. Serv.*, 173 Md. App. 662, 682 (2007). "[I]f 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.* at 683. We are tasked, therefore, with determining whether the trial court's grant of JNOV was correct legally. *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 349 (2013). "We review the grant of a motion for judgment under the same standard as we review grants of motions for judgment notwithstanding the verdict." *Tate v. Board of Educ., Prince George's County*, 155 Md. App. 536, 544 (2004).

DISCUSSION

I. The Discrimination Claim.

Ashkar's flagship question is whether the trial court erred in granting Riverdale's motion for JNOV. He claims that, as there was sufficient evidence for the jury to be satisfied as to the elements of the discrimination claim, the court overstepped its bounds in overruling the jury's decision. Ashkar contends that the derogatory comments made by Lieutenant Colonel Timmons and his apparent role in deciding which tow company the Town should engage was sufficient to establish that the decision to use AlleyCat, rather than renew a relationship with Greg's Towing, was discriminatory. Riverdale counters that the motion was granted properly, claiming Ashkar failed to show that discriminatory animus was a motivating factor and failed to show that AlleyCat was less qualified than Greg's Towing. As such, Riverdale claims there was no direct or circumstantial evidence

of discrimination by the actual decision-makers and there was no way for the jury to find properly a claim of employment discrimination. We agree with Ashkar and reverse the decision of the trial court to grant the motion.

We review a trial court's grant of a motion for JNOV using a non-deferential standard. *Marrick Homes LLC v. Rutkowski*, 232 Md. App. 689, 697 (2017). "We review the trial court's decision to allow or deny judgment or JNOV to determine whether it was legally correct." *Scapa Dryer Fabrics Inc. v. Saville*, 190 Md. App. 331, 343 (2010), *aff'd in part, rev'd in part*, 418 Md. 496 (2011). "Judgment as a matter of law is appropriate if all evidence and inferences permit only one consideration. If there is any competent evidence, however slight, leading to support the plaintiff's right to recover the case should be submitted to the jury." *Id.* (citations omitted). We "resolve all conflicts in the evidence in favor of the [non-moving] party and must assume the truth of all evidence as may naturally and legitimately be deduced therefrom which tend to support the plaintiff's right to recover." *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 349 (2013). But, "[i]f the non-moving party offers competent evidence that rises above speculation, hypothesis, and conjecture, the judgment notwithstanding the verdict should be denied." *Cooper v. Rodriguez*, 443 Md. 680, 707 (2015).

Ashkar's claim of employment discrimination was based, in the first instance, on the Prince George's County Code Division 12, Subdivision 8 §2-229, which provides a private right of action under Md. Code, State Gov't § 20-1202. Ashkar's claim is considered also under Title VII of the Civil Rights Act of 1964, which, in relevant part,

does not permit employers to refuse to hire an individual because of the individual's national origin. 42 U.S.C. §2000e-2(a)(1).

To succeed in getting his case to the jury, Ashkar had the burden of persuading the jury that he had been the victim of intentional discrimination. *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248 256 (1981). He may do this through either direct or circumstantial evidence. *Williams v. Maryland Department of Human Resources*, 136 Md. App. 153, 163 (1999). If relying on direct evidence, the evidence must be such "that directly reflect[s] the alleged animus and bear[s] squarely on the contested employment decision." *Id.* at 163–64. "Once there is credible direct evidence, the burden of persuasion shifts to the defendant to show that it would have [made the same employment decision] had it not been motivated by discrimination." *Id.* at 164. Discriminatory animus is capable of being found when a decision-maker "has no discriminatory animus but is influenced by previous company action that is the product of a like animus in someone else." *Staub v. Proctor Hosp.*, 562 U.S. 411, 417 (2011).

Reliance on circumstantial evidence must surmount a different threshold. There must be proof that "(1) he/she was a member of a protected class, (2) he/she applied and was qualified for the position for which the employer was seeking applicants, (3) despite his/her qualification, he/she was rejected and (4) the position remained open and the employer continued to seek applicants having the plaintiff's qualifications." *Muse-Ariyoh v. Board of Educ. of Prince George's County*, 235 Md. App. 221, 243 (2017). If Ashkar presented admissible evidence, however slight, on these four elements, the burden then shifts to Riverdale to show that the employment decision was made for a nondiscriminatory

reason. *Id.*

> This test involves proving a prima facie case of discrimination, which shifts to the employer the burden of offering a non-discriminatory reason for the contested employment decision. If the employer meets this burden, the employee must show that the employer's stated reason for the decision was a pretext for discrimination. The employee may meet this burden with evidence tending to show that the assigned reason was false, and in this manner use circumstantial evidence to prove that discrimination occurred.

Williams, 136 Md. App. at 164–65 (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)).

Indeed, throughout trial, Ashkar struggled with adducing admissible evidence to prove his claims of discrimination by representatives of the Town. In regard to alleged comments made by the Mayor, the Judge ruled the testimony as to their content inadmissible hearsay. Nor was testimony regarding comments heard by Councilman Ebbler or Officer Sease permitted as neither were called to testify at the hearing, although Ashkar's testimony that they had informed him of derogatory comments was permitted.

Permitted at trial was Ashkar's testimony that he heard select members of the RPPD refer to him using racially-charged language, as recounted earlier in this opinion. Notably among these officers was Lieutenant Colonel Timmons. Riverdale argues that, even if Lieutenant Colonel Timmons and Sergeant Sommerville made the remarks attributed to them, there was no correlation between these comments and the employment decision as the record shows that Chief Morris and Mayor Archer were the actual decision-makers regarding the tow contract.

Although it is uncontroverted that Chief Morris and Mayor Archer were nominally the two Town actors capable of making the final towing contract decision, the record

provides sufficient evidence to link at least Lieutenant Colonel Timmons as a significant figure in reaching the decision. Chief Morris testified that he "directed Colonel Timmons to … locate another tow company," following the temporary initial termination of the relationship between Greg's Towing and Riverdale. There is testimony confirming that Lieutenant Colonel Timmons was the one who selected AlleyCat as the interim provider during this period, evinced by Timmons's engagement of AlleyCat via email. Ashkar's testimony further corroborates this linkage. He testified that Lieutenant Turner told him that "Timmons is in charge" and that he was "just taking orders from Timmons." Although Lieutenant Colonel Timmons may not have made the final decision in a chain-of-command sense, it is clear from the record that a jury could find that he was acting as a significant influencer in the decision-making process of Riverdale at the time he used racial slurs aimed at Ashkar.

Because the burden shifted to Riverdale upon Ashkar establishing a prima facie case of employment discrimination (as we conclude that he did), Riverdale argues that it offered a nondiscriminatory reason for refusing Ashkar the contract—the Prince George's County tow list (inclusion on which was a prerequisite for the County to do tow business with a tow company). Riverdale, and the trial court in its memorandum and opinion explaining why it granted JNOV, point to the fact that Greg's Towing had fallen off the county-approved tow list for the year of 2014-15 (because Prendable failed to submit a timely application due to his retirement decision), whereas AlleyCat was on the list. Riverdale

claimed it relied on inclusion on the county list as a factor in making its decision.[5] It also makes note that "[a]ll of Ashkar's attempts to prove any inferiority in AlleyCat were either disproven and/or never admitted as evidence."

Riverdale further attempts to counter the facts presented by Ashkar by claiming that it was merely using its business judgment when determining that AlleyCat was more qualified than Greg's Towing and that racial animus had no impact on the decision. The jury instruction provided regarding the business judgment rule stated:

> In determining whether the Town of Riverdale Park's through its employees or agents, stated reason for tis action was a pretext for discrimination, you may not question the Town of Riverdale Park's business judgment. Pretext is not established just because you disagree with the business judgment of the Town of Riverdale Park, unless you find that the Town of Riverdale Park through its employees or agents, reason was a pretext for discrimination.
>
> Even if the Town of Riverdale Park is mistaken and its business judgment is wrong, an employer is entitled to make its own policy and business judgments. The Town of Riverdale Park, through its employees or agents, may make those business decisions it sees fit, as long as it is not a pretext for discrimination.

In its Memorandum Opinion regarding its grant of the motion for JNOV, the trial court wrote that it "has considered the evidence and written and oral arguments and finds Defendant's recitation of the facts to be consistent with the evidence presented at trial." It also stated that it determined that Ashkar "provided no direct evidence of discrimination on behalf of [Riverdale]." The court further claimed that discriminatory animus could not be imputed to the Town and, therefore, there was insufficient evidence of discrimination

[5] There was no evidence that Riverdale adopted by ordinance, regulation, or policy inclusion on the county list as a factor in consideration of awarding the contract.

to have sent the case to the jury.

We disagree with the reasoning and result reached by the trial judge. Based on the admitted evidence discussed above, it appears to us that Ashkar established a prima facie case of discrimination that was submitted properly to the jury. Ashkar is a member of a protected class as a Palestinian-American. Ashkar, as Greg's Towing, was qualified objectively to be the Town's tow contractor—he had a tow lot in town; he was the owner of the business that had been the exclusive tow provider for Riverdale for 30 years prior to his obtaining ownership of Greg's Towing; and, Ashkar had been selected to provide towing for other towns and organizations. He was rejected by Riverdale when it contracted with AlleyCat. This decision was made despite Riverdale being aware of Ashkar's objective qualifications and credentials.

The question comes down to whether Ashkar, based on the evidence admitted at trial, satisfied the test in *McDonnell*, e.g., whether the claim that the use of the business judgment rule and the presence of AlleyCat on the county tow list was a pretext and that the employment discrimination was a product of unlawful discrimination. *Williams*, 136 Md. App. at 164 (citing *McDonnell Douglas Corp.*, 411 U.S. at 802). We hold that Ashkar satisfied the test and established sufficiently that the absence of Greg's Towing on the county tow list was a pretext. Ashkar testified that there had been no published tow policy previously for the Town in making such a decision. Chief Morris testified that "[t]here wasn't in 2013 [a formalized criteria for Riverdale selecting a tow provider] and we began working on a process." Chief Morris testified also that the requirement that a party be on the county tow list was not listed on the Town's request for qualifications application form,

nor did AlleyCat indicate in its application whether it was on the county tow list.

Riverdale's attempted parry of Ashkar's argument regarding the county tow list is that Ashkar failed to prove that AlleyCat's presence on the tow list was not a true reason for its selection, but rather was pretextual. "A reason cannot be proved to be a 'pretext for discrimination' unless it is shown both that the reason was false, and that discrimination was the real reason." *Lockheed Martin Corp. v. Balderrama*, 227 Md. App. 476, 512 (2016). "A plaintiff can meet his or her ultimate burden in one of two ways: (1) persuade the factfinder that a discriminatory reason more likely motivated the employer; or (2) show that the employer's proffered explanation is unworthy of credence." *Id.* Riverdale's argument boils down to its claim that the use of the county tow list was a valid and truthful reason for refusing to contract with Ashkar and that Ashkar failed to prove otherwise, as was his burden.

We disagree with Riverdale's position. Viewing the facts of record in the light most favorable to the nonmoving party (Ashkar), a jury could come to the reasonable conclusion that use of the county tow list as a non-discriminatory basis for selecting AlleyCat was no more than a pretext for denying Ashkar the contract based on race. The evidence offered by Ashkar, limited as it was, did "rise[] above speculation, hypothesis, and conjecture . . ." *Cooper v. Rodriguez*, 443 Md. 680, 707 (2015). By granting the motion for JNOV, the trial court erred.

II. The Malicious Prosecution Claim.

The second issue presented to us by Ashkar is whether the trial court erred in granting a motion for judgment on his malicious prosecution claim regarding criminal charges against him stemming from his interaction with Sergeant Sommerville and Corporal Walch on a private tow request within the Town. Ashkar points out initially that the charges for disturbing the peace and hindering passage were stetted conditionally and the charges for obstructing and hindering an investigation were stetted without condition. Both charges were entered ultimately as *nolle prosequi.* Ashkar argues, therefore, that the trial court erred in granting the motion, stating the court "effectively held an initial stet designation followed by nolle prosequi automatically defeats malicious prosecution claim." Riverdale counters by contending that, according to Maryland precedent, a stet is not a favorable outcome, as required as an element of malicious prosecution. We agree with Riverdale and affirm the trial court on this decision.

To establish a prima facie claim of malicious prosecution, a plaintiff must establish that:

> 1) the defendant(s) instituted a criminal proceeding against the plaintiff; 2) the criminal proceeding was resolved in favor of the plaintiff; 3) the defendant(s) instituted the criminal proceeding without probable cause; and 4) the defendant(s) acted with malice or for the primary purpose other than bringing the plaintiff to justice.

Southern Mgmt. Corp. v. Taha, 378 Md. 461, 479 (2003). When considering a motion for judgment at the close of a plaintiff's case during a jury trial, the trial court must "consider all evidence and inferences in the light most favorable to the party against whom the motion is made." Md. Rule 2-519(b).

There is no dispute that Riverdale was responsible for initiation of the charges. According to the District Court docket entries, the District Court judge stetted the charges. Ashkar signed the document evincing his acceptance of the stets. The charges were entered on 11 August 2015 as a *nolle prosequi*, after Ashkar completed his community service condition. Ashkar claims that the charges being entered as *nolle prosequi* is a final judgment resolving the matters in his favor and thus satisfies the second element of a malicious prosecution claim.

"[A] termination in favor of the accused, other than by acquittal, is not sufficient to meet the requirements of an action for malicious prosecution if the charge was withdrawn or the prosecution abandoned 'pursuant to an agreement of compromise with the accused.'" *State v. Meade*, 101 Md. App. 512, 531 (1994), *cert denied, Delwey v. Meade*, 337 Md. 213 (1995), *superseded by statute on other grounds*, 140 Md. App. 282, 325 (2001) (quoting *Restatement (Second) of Torts*, §659). We held in *Meade* that a stet "is not a termination in favor of the accused." *Id.* at 533. Instead, it is a compromise that is accepted by the accused but not an admission of guilt and thus "the question of his guilt or innocence is left open." *Id.* The Court relied on *Restatement (second) of Torts* § 660, Comment (c) to reach its holding, quoting:

> If the accused wishes to clear his name, have a court or jury declare his innocence, and then pursue a tort action against his accuser, he has the ability to do so by either objecting to the "stet" in the first instance or having the case removed from that docket subsequently. It seems to us unfair for the accused to have his cake and eat it too—to allow his guilt or innocence to remain undetermined in the criminal action and then to sue on the premise that the proceeding terminated in his favor.

On the other hand, a *nolle prosequi* is a total "abandonment of the prosecution or a discontinuance of a prosecution by the authorized attorney for the [S]tate." *Ward v. State*, 290 Md. 76, 83 (1981). Notably, "a *nolle prosequi* is not an acquittal or pardon of the underlying offense and does not preclude a prosecution for the same offense under a different charging document or different count." *Id.* at 84. This Court has held, however, that a charge that was entered *nolle prosequi* "acts as a dismissal," and therefore the resolution of a charge entered *nolle prosequi* satisfied the requirements for a charge of malicious prosecution. *Hines v. French*, 157 Md. App. 536, 555 (2004).

In support of his argument that the charges were *nolle prosequi*, rather than stetted, Ashkar testified at trial that he did not agree to the compromise of his criminal charges required by a stet and that the District Court judge had "compelled" him to accept the stets. The record indicates otherwise. Ashkar's signature appears in the record where a court docket entry on 29 June 2015 evinces acceptance of *both* stets. He completed the whole of the 16 hours of community service on the conditional stet.[6] It is clear from the record that both charges were stetted, that Ashkar agreed to the compromise implicit in the entry of the stets. Accordingly, he is blocked from pursuing a claim of malicious prosecution against Appellees. The circuit court did not err in granting the motion for judgment.

[6] Ashkar advances a secondary argument that his community service was limited to the conditional stet. According to Ashkar, should we hold the first charge was stetted and not *nolle prosequi*, we should hold the other charge was not stetted because he did not perform community service in relation to it. The implication behind this argument is that a stet cannot be non-conditional without automatically transforming into a *nolle prosequi*. We reject this argument without more.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED IN PART AND AFFIRMED IN PART. CASE REMANDED TO THE CIRCUIT COURT WITH DIRECTION TO REINSTATE THE JURY VERDICT. COSTS TO BE PAID ONE-HALF BY APPELLANTS AND ONE-HALF BY APPELLEES.

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Shaw Geter,
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(Senior Judge, Specially Assigned)

JJ.

Dissenting Opinion by Shaw Geter, J.

Filed: July 30, 2020

I respectfully dissent as to Question One. In my view, Ashkar failed to offer competent evidence that rises above the speculation, hypothesis, and conjecture necessary to deny a JNOV. *See Cooper v. Rodriguez*, 443 Md. 680, 707 (2015) (quoting *Barnes v. Greater Balt. Med. Ctr., Inc.*, 210 Md. App. 457, 480 (2013)) ("If the non-moving party offers competent evidence that rises above speculation, hypothesis, and conjecture, the judgment notwithstanding the verdict should be denied."). I would, therefore, affirm the decision of the trial court.